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CAPE COD COMMISSION

Date:	January 31, 2013
To:	Jonathan Fitch Attorney at Law 3010 Main Street (Rte. 6A) Barnstable, MA 02630
From:	Cape Cod Commission
Re:	Limited DRI Decision Cape Cod Commission Act, Section 13(a) Cape Cod Commission *Enabling Regulations*, Sections 3, 5, & 7
Applicant/Owner:	Howland Development Corp. and Snake Pond Realty Trust
Project:	Greenwood Meadows
Project #:	LR/TR 12041
Project Location:	Farmview Drive, Sandwich, MA

(Recording information attached to decision)

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), hereby approves, with conditions, the proposed large scale ground mounted photovoltaic project located at Farmview Drive in Sandwich, MA as a Development of Regional Impact (DRI) pursuant to Sections 12, 13, and 13(a) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended. This project is also subject to a Limited DRI scope as determined by an authorized Commission Subcommittee in a decision dated January 8, 2013. The Limited scope of DRI review was granted subject to Sections 3, 5, and 7 of the Commission's Enabling Regulations (revised July 2012), and limited the scope of DRI review in the 2009 Regional Policy Plan (RPP) (as amended August 2012) to the issue areas of Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space

and Recreation and Waste Management. The DRI decision is rendered pursuant to a 11-1 vote of the Commission on January 31, 2013.

PROJECT DESCRIPTION

The Applicant is proposing to develop a 16.56 acre solar field, accessed via a proposed 15-foot wide gravel road extending from Farmview Drive.

According to the application materials, the solar field will occupy approximately 16.56 acres of the project site. The area of the project site on which the solar field is proposed contains approximately 12.23 acres of forested upland (including 4.86 acres of early successional Pitch Pine forest habitat), and 4.33 acres of previously disturbed area. The proposed 15-foot wide gravel road will extend for approximately 560 feet through the currently forested upland. The limit of disturbance associated with the gravel road totals 0.24 acres. This proposed fifteen foot road width includes two, foot-wide shoulders on either side of the road.

PROCEDURAL HISTORY

The applications for a Limited Development of Regional Impact ("Limited DRI") and DRI were received by the Commission on October 9, 2012. The project was referred to the Commission on November 27, 2012 as a mandatory referral by the Sandwich Town Planner, Nathan Jones.

A duly noticed public hearing was held on the Limited DRI scoping and DRI on December 20, 2012 at the Jan Sebastian Meeting Room located at 16 Jan Sebastian Drive in Sandwich, Massachusetts. The Subcommittee conducted a site visit prior to the public hearing. At this hearing, the Subcommittee voted to continue the public hearings to 4:00 PM on January 8, 2013 at the Commission's office in Barnstable, MA. A duly noticed public meeting took place following the public hearing on December 20, 2012, at which the subcommittee voted to limit the scope of DRI review to the RPP issue areas of Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management, and voted unanimously to direct Commission staff to draft a written Limited DRI Scoping Decision.

At the continued public hearing on January 8, 2013, the Subcommittee took additional testimony on the project, closed the public hearing on the Limited DRI review and continued the public hearing on the DRI to the January 31, 2013 full Commission meeting in the Assembly of Delegates Chamber in the First District Courthouse in Barnstable, MA. At the public meeting following the hearing, the Subcommittee reviewed a draft written Limited DRI Scoping Decision and voted unanimously to approve the draft written decision. The Subcommittee then deliberated on the project and voted unanimously to recommend approval of the DRI to the full Commission, with conditions, and directed Commission staff to draft a written Limited DRI decision for Commission review and approval.

MATERIALS SUBMITTED FOR THE RECORD

TABLE 1: Materials Submitted for the Record

Materials from Cape Cod Commission	***Date Sent***
Letter from Elizabeth Enos (EE) to Jonathan Fitch (JF), Attorney representing the Applicant, re: Hardship Exemption	10/10/12
Letter from EE to JF requesting additional materials	10/19/12
Email correspondence between Richard Tabaczynski (RT) and James	10/30/12

Sherrard (JS) re: refueling in PPWSA	
Email correspondence between EE and JF re: Conservation and Management Permit	11/2/12
Email correspondence between EE and JF re: mandatory referral	11/5 - 11/6/12
Email correspondence between JS and Dan Mahoney of the Town of Sandwich re: PPWSA designation	11/9/12
Email from EE to JF requesting additional materials	11/15/12
Email correspondence between JS and RT re: PPWSA	11/27/12
Letter from Gail Hanley (GH) to JF re: mandatory referral	11/28/12
Email correspondence from EE to JF re: certified list of abutters	12/3/12
Email from EE to subcommittee re: public hearing	12/3/12
Letter from EE to JF deeming application complete	12/5/12
Email from GH to Sandwich Town Clerk with attached hearing notice for posting	12/13/12
Email from EE to JF and Nathan Jones, Town Planner for the Town of Sandwich with attached Staff Report	12/14/12
Hearing Outline, attendance sheet and PowerPoint from 12/20 hearing	12/20/12
Email from GH to Sandwich Town Clerk with attached hearing notice for posting	1/2/13
Cover memo with attached information mailed to subcommittee: draft Limited DRI Scoping Decision, Draft minutes from 12/20 public hearing and meeting, letter from Town of Sandwich Water Dept and additional materials sent/received	1/3/13
Email from EE to Don Keeran re: testimony in the record	1/3/13
Email from EE to JF re: additional materials	1/8/13
Subcommittee outline, Memo from James Sherrard, Commission Hydrologist to EE re: additional materials received from Applicant, materials received from Applicant, and additional correspondence sent/received since mailing for subcommittee	1/8/13
Email from GH to Sandwich Town Clerk with attached hearing notice	1/9/13
Email from EE to JF reminding him about materials for CCC meeting	1/10/13
Draft minutes from 1/8 public hearing and meeting	1/24/13
Cover memos to CCC members and subcommittee	1/24/13
Email from EE to JF and NJ with attached draft decision	1/24/13
Materials from Applicant	***Date Received***
Application materials from the Applicant	10/9/12
Letter from JF re: Limited review application	10/16/12
Email from RT to JS re: refueling in PPWSA	10/30/12
Email correspondence from JF to EE re: Conservation and Management Permit	11/1 – 11/2/12
Email from JF with attached CMP information	11/2/12
Letter from JF with attached supplemental materials	11/2/12
Email correspondence from JF to EE re: mandatory referral	11/6/12
Email correspondence from JF to EE requesting update on completeness	11/15/12
Email from RT to JS re: Sandwich Water District	11/16/12
Email correspondence from RT to JS re: PPWSA	11/26 – 11/27/12

Email from JF to EE with supplemental materials, including copy of Power Purchase Agreement with the Town of Sandwich	12/7/12
Statement of Probable Benefits hand delivered by the Applicant at 12/20 public hearing	12/20/12
Email from JF to EE with attached supplemental materials in response to public hearing	1/4/13
Email from JF to EE re: public hearing	1/8/13
Email from JF to EE re: thank you	1/10/13
Materials from Public Agencies/Towns/State/Federal	***Date Received***
Email from Nathan Jones, Town Planner for the Town of Sandwich re: consistency with local regulations	12/10/12
Email from Don Keeran from the Association to Preserve Cape Cod re: agricultural soils	12/19/12
Letter from the Sandwich Water District re: PPWSA designation	12/21/12
Email correspondence between EE and DK re: testimony in the record	1/3/13
Materials to/from Members of the Public	***Date Received***

TESTIMONY

December 20, 2012 Public Hearing

A public hearing was held at 5:00 PM on December 20, 2012 at the Jan Sebastian Meeting Room in Sandwich, Massachusetts.

Attorney Jonathan Fitch, representing the Applicant, provided a general overview of the project and explained how the solar panels work.

Gary Hogg, a consultant from Ethos Energy, explained that he had been working with the Applicant since September 2011 to determine the potential for solar at the site. Mr. Hogg stated that the Applicant has entered into an agreement with the Town of Sandwich to purchase 100% of the power, which will help the Town in achieving designation as a "Green Community".

Brian Madden, Senior Wildlife Scientist with LEC Environmental Consultants, explained that he has been working closely with the Natural Heritage and Endangered Species Program (NHESP) to permit the project and reviewed the requirements of the permitting process and considerations in siting the project.

Rich Tabaczynski, Vice President and Project Manager with Atlantic Design Engineers discussed stormwater and drainage at the site. Mr. Tabaczynski also described the area that would be used for refueling during construction and noted that the Sandwich Water District has written a letter to the Commission which states that they are not considering the area for a potential public water supply at this time.

Elizabeth Enos, Regulatory Officer with the Commission, provided a general overview of the Staff Report and the project, including the existing setting, project description, procedural overview, standards of review and approval, Commission staff's analysis, and conclusions and recommendations. In her PowerPoint presentation, Ms. Enos discussed the project's consistency with the Regional Policy Plan and the Minimum Performance Standards in each issue area. Ms.

Enos stated that Commission staff suggests that DRI review be limited to the Regional Policy Plan (RPP) issue areas of the Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management. Ms. Enos requested additional materials from the Applicant and noted that the Commission has received written testimony from Nathan Jones, Town Planner for the Town of Sandwich, in which he notes that the project is consistent with the Local Comprehensive Plan (LCP) and municipal development bylaws. Further, Ms. Enos stated that the project is not located in whole or in part within a designated District of Critical Planning Concern (DCPC) and that the Commission will need to deliberate on the probable benefits and probable detriments from the proposed project.

Nathan Jones, Town Planner for the Town of Sandwich, stated that the project meets the requirements of section 9.3 of the LCP and section 41.80 of the May 2012 Zoning By-Laws for Large Scale Ground Mounted Solar Photovoltaic Installations. Mr. Jones stated that the Green Committee supports the project and that the Town is in negotiations for energy buyback.

The Subcommittee and the Applicant discussed the Power Purchase Agreement with the Town of Sandwich, the maintenance required at the site and what would be needed to keep the panels clean, and refueling at the site.

The subcommittee voted to close the record on the limited review and leave the record open on the DRI and continue the public hearing on the Limited DRI/DRI to January 8, 2013 at 4:00 PM at the Cape Cod Commission located at 3225 Main Street, Barnstable.

December 20, 2012 Public Meeting

The Subcommittee voted to limit the scope of DRI review to the RPP issue areas of Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management and directed Commission staff to draft a written Limited DRI Review Scoping Decision for review and approval by the subcommittee.

January 8, 2013 Public Hearing

Elizabeth Enos, Regulatory Officer for the Commission, provided an update on the project. She noted additional materials in the subcommittee's packets and supplemental materials provided by the Applicant since the last public hearing. Ms. Enos presented a memo from James Sherrard, Commission Hydrologist, addressing the supplemental materials' compliance with the Minimum Performance Standards under Water Resources.

Attorney Jonathan Fitch, representing the Applicant, provided a brief update on the project, summarizing the additional materials that were provided and asking the subcommittee to approve the project.

The public was given the opportunity to provide additional public testimony at this hearing but no members of the public appeared or testified on the project.

January 8, 2013 Public Meeting

The Subcommittee voted unanimously to approve the draft written Limited DRI Review Scoping Decision and the minutes from the December 20, 2012 public hearing and public meeting. The subcommittee deliberated on the project and made motions for the purpose of providing the Commission with a recommendation on the project's consistency with the RPP, municipal development bylaws, local comprehensive plan and Districts of Critical Planning Concern and voted to recommend that the probable benefit of the proposed development is greater than the

probable detriment. The Subcommittee voted unanimously to recommend approval of the proposed project, with conditions, and directed Commission staff to draft a written DRI decision for review and approval by the Commission.

JURISDICTION

The project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(e)(iii) of the Commission's *Enabling Regulations* (Revised July 2012) as *"new construction or development that has a Total Project Area greater than 40,000 square feet."*

FINDINGS

The Commission has considered the DRI application of Howland Development Corp. and Snake Pond Realty Trust for the proposed large scale ground mounted photovoltaic project located at Farmview Drive in Sandwich, MA, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings, pursuant to Sections 12 and 13 of the Act:

General Findings

GF1. The Commission finds that as the first substantive hearing on the proposed project was held on December 20, 2012, that this project was reviewed subject to the 2009 Regional Policy Plan (RPP), as amended in August 2012. The Commission further finds that pursuant to a Limited DRI Scoping Decision, dated January 8, 2013, DRI review is limited to the RPP issue areas of Land Use, Economic Development, Water Resources, Wildlife and Plant Habitat, Open Space and Recreation and Waste Management.

GF2. The Commission finds the proposed project consists of a 16.56 acre solar field, accessed via a proposed 15-foot wide gravel road extending from Farmview Drive.

According to the application materials, the solar field will occupy approximately 16.56 acres of the project site. The area of the project site on which the solar field is proposed contains approximately 12.23 acres of forested upland (including 4.86 acres of early successional Pitch Pine forest habitat), and 4.33 acres of previously disturbed area. The proposed 15-foot wide gravel road will extend for approximately 560 feet through the currently forested upland. The limit of disturbance associated with the gravel road totals 0.24 acres. This proposed fifteen foot road width includes two, foot-wide shoulders on either side of the road.

GF3. The Commission adopts the 12/10/12 written and 12/20/12 oral testimony of Nathan Jones, Town Planner for the Town of Sandwich, and finds that the proposed project is consistent with the Town of Sandwich's Local Comprehensive Plan (LCP) and municipal development bylaws.

GF4. The Commission finds the proposed project is not located in whole or in part within a designated District of Critical Planning Concern (DCPC).

GF5. The project is proposed to be constructed in accordance with the following plan set titled "Special Permit Site Plans for the Greenwood Meadows Solar Project" by Atlantic Design Engineers, Inc. dated September 13, 2012:

- Sheet 1 of 11: Cover Sheet
- Sheet 2 of 11: Overall Existing Conditions Plan
- Sheet 3 of 11: Overall Site Layout Plan

- Sheet 4 of 11: Site Layout Plan
- Sheet 5 of 11: Site Layout Plan
- Sheet 6 of 11: Overall Grading and Erosion Control Plan
- Sheet 7 of 11: Grading and Utilities Plan
- Sheet 8 of 11: Grading and Utilities Plan
- Sheet 9 of 11: Grading and Utilities Plan
- Sheet 10 of 11: Overall Landscaping and Lighting Plan (*Lighting withdrawn*)
- Sheet 11 of 11: Details Plan

GF6. The Commission finds that probable benefits of the proposed development include generation of renewable energy, consistency with Sandwich zoning regulations and planning goals, consistency with regional planning, addition to Sandwich tax base and revenue, no water consumption during operations, no noise during operations, no wastewater generated during operations, enhancement of wildlife and plant habitat, preservation of open space, no demands on municipal schools and services, the Power Purchase Agreement between the Applicant and Town saves the Town substantial energy costs, the facility advances the Sandwich goal of Green Communities designation, restoration of existing degraded conditions at the site, preserves prime farmland soils, no measurable impact on traffic, no generation of solid waste from operations, no adverse visual impact, does not create a need for housing, and replaces 21 approved house lots under Chapter 40B within a Wellhead Protection Area and Potential Public Water Supply Area.

GF7. The Commission finds there are no probable detriments from the proposed project.

GF8. The Commission finds that the probable benefit of the proposed development is greater than the probable detriment.

Land Use

LUF1. The Commission finds that the proposed project site is mapped a Resource Protection Area (RPA) on the Town of Sandwich Land Use Vision Map. RPAs are areas that warrant protection, and where additional growth is not desired, due to the presence of one or more sensitive resources.

LUF2. Minimum Performance Standard (MPS) LU1.1 requires that development and redevelopment shall be consistent with the category of desired land use where the project is located as well as the characteristics of that category. It also states in part that:

> *"Notwithstanding this requirement, the Commission may find that development and redevelopment has met this requirement, if, in its discretion, it finds each of the following:*
>
> 1) *The proposed project is a redevelopment, or the expansion of a previously approved DRI; and,*
>
> 2) *The Commission finds that the proposed development does not present a threat to the resources and/or characteristics intended to be protected and maintained by its land use category."*

The Commission finds that the proposed project consists of redevelopment, as a remainder of the lot has been permitted and partially constructed for a 40B residential project and portions of

the project site were also previously disturbed and used for gravel removal and equipment staging for nearby development. The Commission further finds the proposed project does not present a threat to the resources and/or characteristics intended to be protected and maintained by its land use category as the Applicant has worked with the Natural Heritage and Endangered Species Program (NHESP) to redesign the project to address the requirements of a Conservation Management Permit (CMP). As such, the Commission finds the proposed project is consistent with MPS LU1.1.

LUF3. The Commission finds that MPS LU1.2, 2.2 and 2.2 do not apply to the proposed project as the project does not involve construction of a building, it is located within an area where a solar facility is allowed by town zoning, and a telecommunications facility is not being proposed.

LUF4. The Commission finds the project is consistent with MPS LU3.1 (buffers to agricultural uses) as there is an existing naturally vegetated buffer, approximately 280 feet wide, to the proposed development.

LUF5. MPS LU3.2 (impacts to agricultural lands) requires development unrelated to agricultural operations to be designed so as to avoid or minimize development on lands capable of sustained agricultural production as evidenced by soils, recent agricultural use, and or surrounding agricultural use. The Commission finds the proposed development is located within an area mapped as Enfield silt loam (EnA) soils according to the Soil Survey of Barnstable County, Massachusetts issued in March 1993, which are defined as well suited to cultivate crops and are among the most productive soils in the area. According to the application materials, the topsoil will be preserved and stockpiled and spread over the solar field footprint after the initial clearing and grading. As such, the Commission finds the proposed project complies with MPS LU3.2.

Economic Development

EDF1. The Commission finds the proposed project meets the following waiver criteria, and thus complies with MPS ED1.1 and 1.3:

1. Emerging Industry Cluster – The project is consistent with the region's Emerging Industry Clusters, which include marine sciences and technology; arts and culture; information and related technology; renewable and clean energy, and education and knowledge-based industries or other high-skill, high-wage, knowledge-based business activity.
2. Distributed Energy Generation – The facility will be a clean renewable distributed energy generator.
3. Green Design – By creating clean renewable energy the project meets the Green Design criteria.
4. Municipal Endorsement – The Applicant provided an executed Power Purchase Agreement between the Applicant and the Town of Sandwich as well as supporting information from Nathan Jones, Town Planner for the Town of Sandwich, to demonstrate compliance with the Municipal Endorsement waiver criteria, including evidence of the project's location in a zoning district specifically adopted and approved for solar facilities.

EDF2. The Commission finds MPS ED1.4 and 2.1 do not apply as neither the project site nor surrounding properties are working agricultural land, working waterfronts and harbors, fin- and shellfishing grounds, or recreational areas and the proposed development does not involve gaming.

EDF3. As an infrastructure project, the proposed development must also comply with MPS ED4.1 (Demonstrated Need and Public Benefit). The 11/1/12 supplemental application materials cite the regional need and demand for the project articulated by the Massachusetts Legislature in the Green Communities Act, by the Town of Sandwich in the Local Comprehensive Plan, which calls for exploration and development of renewable energy sources, and by the RPP, which articulates a healthy and sustainable environment as an Energy-related goal. The application materials also address this standard through the inclusion of a Power Purchase Agreement between the Town of Sandwich and the Applicant for the purchase of renewable energy at a discounted rate, thus improving the cost of services for the Town of Sandwich and establishing a public benefit for its residents. As such, the Commission finds the proposed project meets MPS ED4.1.

Water Resources

WRF1. As mapped on the Cape Cod Water Resources Classification Maps I and II, the project site is located within a Wellhead Protection Area (WHPA), multiple Marine Water Recharge Areas (MWRA) contributing to the Waquoit Bay, Green Pond and Bournes Pond watersheds, a Fresh Water Recharge Area (FWRA) contributing to the Ashumet Pond sub-watershed, and a Potential Public Water Supply Area (PPWSA). A public drinking water supply well (MMR "J" Well) is located approximately 400 feet down gradient of the southeastern portion of the project site.

WRF2. The Commission finds that the Applicant submitted a letter on 12/20/12 from the Town of Sandwich Water Department which stated that the proposed refueling area (provided on page 20 of supplemental material received 11/2/12) is released from consideration as a PPWSA pursuant to MPS WR2.4. As such, the Commission finds that MPS WR2.4 and 2.6 do not apply. The Commission further finds that the project complies with MPS WR2.2 and WM1.1.

WRF3. The proposed development does not withdraw groundwater and is not a residential development and as such, the Commission finds MPS WR1.3 and WR1.4 do not apply. The Commission further finds that the Turf and Landscape Management Plan provided by the Applicant incorporates water conservation measures including the use of native and drought resistant plantings and minimizes the amount of pesticides and chemical fertilizers in compliance with MPS WR1.5.

WRF4. The Commission finds the proposed project site is roughly 400' from the MMR "J" Well and site impacts are contained outside of the 400' buffer and will not impact the water quality of the existing wells. As such, the Commission finds the proposed project complies with MPS WR1.2.

WRF5. Pre- and post-construction nitrogen loading concentrations for the proposed development are less than 1 ppm based on the nitrogen loading calculations submitted by the Applicant, and as such, the Commission finds the project complies with the applicable nitrogen loading limitations set out in MPS WR1.1, WR2.1 and WR2.6.

WRF6. As no private or public wastewater treatment plants are proposed as part of this project, MPS WR2.3 does not apply. Further, there are no identified future well sites within 400 feet of the proposed development, and no activities prohibited within a Zone II are proposed as part of this project. As such, the Commission finds the project is in compliance with MPS WR2.3 and WR2.4.

WRF7. The Commission finds that nitrogen loading to the identified MWRAs will not exceed critical loading thresholds as put forth by the Massachusetts Estuaries Program (MEP), and as such, the proposed project complies with MPS WR3.1, WR3.2, WR3.3 WR3.4 and WR3.5. Further, as no public or private wastewater treatment facilities are proposed, MPS WR3.6 does not apply.

WRF8. The Commission finds the proposed development will not have a significant impact on Freshwater Resources in compliance with MPS WR4.1 and WR4.2. The Commission further finds that as no public or private wastewater treatment facilities are proposed, MPS WR4.3 does not apply.

WRF9. The Commission finds the proposed project is not located within an RPP designated Water Quality Improvement Area and is not proposing public or private wastewater treatment facilities. As such, the Commission finds that MPS under Sections WR5 and WR6 do not apply.

WRF10. The Commission finds the project includes installation of a stormwater management system, including grassed channels, bioretention systems, sediment forebays and a natural infiltration basin, designed to contribute no new direct discharges of untreated stormwater to water resources, and to manage runoff generated by a 25 yr., 24 hr. storm in compliance with MPS WR7.1 and WR7.4. The Commission further finds that the proposed roadway and parking design limits impervious surface and incorporates bioretention in compliance with MPS WR7.6.

WRF11. The Commission finds that Erosion Control site plans provided by the Applicant comply with MPS WR7.9 (Best Management Practices during Construction).

WRF12. The Commission finds the Applicant has provided a Professional Engineer-certified stormwater maintenance and operation plan demonstrating compliance with MPS WR7.10 and the Massachusetts Stormwater Guidelines, including a schedule for inspection, monitoring, and maintenance of the system. The Commission finds, as required by MPS WR7.10, one year from completion of the stormwater system, a Professional Engineer shall inspect the system and submit a letter to Commission staff certifying that the system was installed and functions as designed, including certification to the system's compliance with the design standards contained in MPS WR7.2 and 7.8.

WRF13. The Commission finds the project will not create rooftop areas, does not propose any structured infiltration devices, and does not involve a land use that poses a high risk to contaminate groundwater, and as such, MPS WR7.3, WR7.5, WR7.7 and WR 7.11 do not apply.

Hazardous Materials/Waste Management

WMF1. The Commission finds that the solar PV array requires no lubricants, fuel or water for operation, and generates no wastewater requiring disposal. The Commission finds that 12 gallons, by concentration of the 800 total gallons of the proposed vegetable based FR3 transformer fluid constitutes no greater than an allowable household quantity of hazardous material. Further, the refueling area has been released from consideration as a PPWSA. As such, the Commission finds the proposed project complies with MPS WR2.2 and WM1.1.

WMF2. The Commission finds that as refueling is proposed to occur outside of a Wellhead Protection Area and the amount of Hazardous Materials on site is limited to a Household Quantity, MPS WM1.2 and 1.3 do not apply.

WMF3. The Commission finds the Applicant has provided a Pollution Prevention and Emergency Response Plan which addresses, among other things, an on-site refueling design and contingency protocol in compliance with MPS WM1.4.

WMF4. The Commission finds that the Applicant shall provide information to Commission staff for review and approval in order to satisfy the requirements of MPS WM1.5 , including: 1) notification or registration with the Massachusetts Department of Environmental Protection, 2) a written plan to manage the Hazardous Waste, and 3) a signed disposal contract with a registered, licensed company.

WMF5. The Commission finds that prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit to Commission staff for review and approval a plan that addresses the disposal of construction and demolition waste in order to ensure compliance with MPS WM2.1 and 2.2. The Commission further finds that as the proposed project will not involve post-construction or food waste, MPS WM2.3 and 2.4 do not apply.

Wildlife & Plant Habitat

WPHF1. The Commission finds the project site is located within a Significant Natural Resource Area (SNRA) due to the presence of mapped rare species habitat, public water supply wellhead protection areas, and potential public water supply. According to the application, the Natural Heritage and Endangered Species Program (NHESP) has determined that the project will result in a "take" of one or more state listed species, including the Eastern box turtle, the Frosted Elfin (butterfly), and 8 moth species. The project will require a Conservation and Management Permit (CMP) from the NHESP to mitigate the impacts to state listed species, and the application indicates that the applicant has worked with the NHESP to redesign the project to address the requirements of a CMP. As such, the Commission finds the proposed development complies with MPS WPH1.4.

WPHF2. The Commission finds the Applicant has provided a natural resources inventory that is consistent with MPS WPH1.1. The Commission further finds the Applicant will stockpile the soil on the site during site development, as stated in the application materials, in an area outside of turtle nesting habitat, and shall redistribute the soil after installation of the solar array to facilitate revegetation.

WPHF3. The Commission finds that locating the project outside of the sand pit area to improve or protect turtle nesting habitat is consistent with MPS WPH1.2.

WPHF4. The Commission finds there are no wetlands, including vernal pools, on or adjacent to the project site and as such, MPS WPH1.5 does not apply to the proposed development.

WPHF5. The Commission finds that the Applicant shall provide an invasive species management plan to Commission staff for review and approval in order to meet MPS WPH1.6.

Open Space and Recreation

OSF1. MPS OS1.3 requires that projects within SNRA provide open space mitigation at a rate equal to twice the total development area (new disturbance) of the project. The Applicant has proposed to place a statutory conservation restriction (CR) on 30.3 acres as part of the CMP to mitigate impacts to rare species. According to the application materials, the solar array and access road will utilize 16.8 acres of the site. The Commission finds the open space requirement may be reduced by the previously degraded area, as allowed by MPS OS1.3, thus reducing the area of new clearing to 12.47 acres. The Commission further finds the open space requirement is

twice this total cleared area, or 24.94 acres, and that the proposed 30.3 acre CR will address the Regional Policy Plan open space requirements for the project, as well as mitigate impacts to rare species.

OSF2. The Commission finds the Applicant shall provide a draft CR to Commission Counsel for review and approval prior to issuance of a Preliminary Certificate of Compliance which identifies a grantee. The Commission further finds that in order to comply with MPS OS1.2, the Applicant shall record or register a permanent statutory conservation restriction pursuant to MGL Chapter 184 ss. 31-33 on the proposed open space and provide proof of recording to Commission staff prior to issuance of a Final Certificate of Compliance.

OSF3. The Commission finds that upon satisfaction of the above conditions, the proposed project complies with MPS OS1.1 (Clustering of Development), OS1.2 (Open Space Connections), OS1.4 (Sensitive Natural Resources), OS1.6 (Sensitive Open Space Resources), and WPH 1.3 (Wildlife and Plant Habitat), as the restricted open space will allow for adequate wildlife corridors and protection of wildlife habitat, and contiguity with abutting open space and adjacent rural and forested landscapes.

OSF4. The Commission finds that MPS OS1.5 does not apply to the proposed development as a residential subdivision is not proposed as part of the project. The Commission further finds that the proposed project is not located in a Growth Incentive Zone or designated Economic Center, and does not propose a shared parking garage, and as such MPS OS1.7 and 1.8 do not apply.

CONCLUSION

Based on the above Findings, the Commission hereby finds and concludes:

1. That upon satisfaction of the conditions identified in this decision, the proposed project is consistent with the 2009 (as amended) Regional Policy Plan.

2. The project is consistent with Sandwich's Commission-Certified Local Comprehensive Plan and local development by-laws/ordinances.

3. The project is not located in whole or in part within a District of Critical Planning Concern.

4. That the probable benefit of the proposed development is greater than the probable detriment.

CONDITIONS

The Commission hereby approves, with conditions, the DRI application of Howland Development, Inc. and Snake Pond Realty Trust for the proposed large scale ground mounted photovoltaic project located at Farmview Drive in Sandwich, MA provided the following conditions are met:

GENERAL CONDITIONS

GC1. 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. Unless otherwise more specifically addressed or conditioned herein, this decision shall be appurtenant to and run with the property which is the subject project site.

GC3. The term *"Applicant"* as used herein shall include its heirs, successors, and assigns in interest, and its employees, representatives, and agents, as the context implies. The decision shall be enforceable against the Applicant, its heirs, successors, and assigns.

GC4. The Applicant shall obtain all necessary federal, state, and local permits for the proposed project.

GC5. Failure to comply, and remain in compliance, with all conditions stated herein, and with all related statutes, ordinances, laws and other regulations, shall be deemed cause to revoke or modify this decision.

GC6. The project shall be constructed and undertaken consistent with the following plan set titled "Special Permit Site Plans for the Greenwood Meadows Solar Project" by Atlantic Design Engineers, Inc. dated September 13, 2012:

- Sheet 1 of 11: Cover Sheet
- Sheet 2 of 11: Overall Existing Conditions Plan
- Sheet 3 of 11: Overall Site Layout Plan
- Sheet 4 of 11: Site Layout Plan
- Sheet 5 of 11: Site Layout Plan
- Sheet 6 of 11: Overall Grading and Erosion Control Plan
- Sheet 7 of 11: Grading and Utilities Plan
- Sheet 8 of 11: Grading and Utilities Plan
- Sheet 9 of 11: Grading and Utilities Plan
- Sheet 10 of 11: Overall Landscaping and Lighting Plan (*Lighting withdrawn*)
- Sheet 11 of 11: Details Plan

GC7. No development, or application for local permits, licenses or approvals authorizing development work, as the term *"development"* is both defined in the Cape Cod Commission Act and is approved herein, shall be undertaken until all appeal periods have elapsed or if such an appeal has been filed, until the appeal has been finally dismissed, adjudicated or otherwise disposed of in a manner favorable to the Applicant.

GC8. Prior to issuance of any Preliminary Certificate of Compliance by the Cape Cod Commission for development as the term *"development"* is both defined in the Cape Cod Commission Act and is approved herein, the Applicant shall submit final project plans as approved by state, federal, and local authorities for review by Commission staff who shall determine their consistency with this decision. If Commission staff determines that the final plans are not consistent with those project plans approved, referenced and incorporated herein, the Commission shall require that the Applicant seek a modification to this in accordance with the *"Modification"* section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

GC9. Unless otherwise more specifically addressed or conditioned herein, prior to issuance of a building permit or undertaking any development as the term *"development"* is both defined in the Cape Cod Commission Act and is approved herein, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision

required to have been satisfied prior to the issuance of a Preliminary Certificate of Compliance have been satisfied. Such Certificate of Compliance shall not be issued unless and until all applicable, required conditions have been satisfied.

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 any development, as the term *"development"* is both defined in the Cape Cod Commission Act and is approved herein.

GC11. Prior to issuance of any Certificate of Use/Occupancy, the Applicant shall obtain a Final Certificate of Compliance from the Commission that states that all conditions in this decision required to have been satisfied prior to the issuance of a Final Certificate of Compliance have been satisfied. Such Certificate of Compliance shall not be issued unless and until all applicable, required conditions have been satisfied.

GC12. Commission staff will undertake a review of a project's compliance with the applicable conditions of the decision upon the Applicant's request to the Commission for issuance of a Preliminary or Final Certificate of Compliance. At the time the Applicant requests such a Certificate, it shall provide Commission staff a list of key project contact(s), along with their telephone numbers, mailing addresses, and email addresses, in the event questions arise during the Commission's compliance review. As part of its compliance review, Commission staff may make, and the Applicant hereby authorizes, a site inspection, as needed. Upon review, the Commission shall either prepare and issue the requested Certificate, or inform the Applicant in writing of any compliance deficiencies and the remedial action required for the issuance of the requested Certificate.

GC13. If determined that any development work required to be performed as a condition to issuance of a Final Certificate of Compliance is incomplete at the time a Final Certificate of Compliance is sought by the Applicant from the Commission, the Final Certificate of Compliance may issue, at the discretion of the Commission, provided that the decision is still in force and effect, and that any incomplete work shall be subject to an escrow agreement in form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the estimated cost of the incomplete work, including labor and materials. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The escrow funds account shall be maintained by the *Barnstable County Treasurer*. Commission staff shall review the work as it is completed for its consistency with the decision prior to authorizing any release of the escrow funds. Unexpended escrow funds shall be returned to the Applicant upon completion of the work. The timeline for the performance of the work shall be established in the escrow agreement but shall nevertheless be performed within the original seven year time frame of the DRI decision or DRI extension of that decision, if one is approved by the Commission.

Water Resources

WRC1. In order to comply with MPS WR7.10, one year from completion of the stormwater system and prior to issuance of a Second Final Certificate of Compliance, a Professional Engineer shall inspect the system and submit a letter to Commission staff certifying that the system was installed and functions as designed, including certification to the system's compliance with the design standards contained in MPS WR7.2 and 7.8.

Waste Management

WMC1. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall provide information to Commission staff for review and approval in order to satisfy the requirements of MPS WM1.5, including: 1) notification or registration with the Massachusetts Department of Environmental Protection, 2) a written plan to manage the Hazardous Waste, and 3) a signed disposal contract with a registered, licensed company.

WMC2. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit to Commission staff for review and approval a plan that addresses the disposal of construction and demolition waste in order to ensure compliance with MPS WM2.1 and 2.2.

Wildlife & Plant Habitat

WPHC1. Prior to issuance of a Final Certificate of Compliance, the Applicant shall stockpile the soil on the site during site development, as stated in the application materials, in an area outside of turtle nesting habitat, and shall redistribute the soil across the site after installation of the solar array to facilitate revegetation.

WPHC2. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall provide an invasive species management plan to Commission staff for review and approval in order to meet MPS WPH1.6.

Open Space

OSC1. The Applicant shall provide a draft CR and CR plan to Commission Counsel for review and approval prior to issuance of a Preliminary Certificate of Compliance which identifies a grantee. The Applicant shall record or register, as the case may be, a permanent statutory conservation restriction and plan pursuant to MGL Chapter 184 ss. 31-33 on the proposed open space and provide proof of recording or registration to Commission staff prior to issuance of a Final Certificate of Compliance.

Executed this 31st day of January 2013.

Signature

JOHN D. HARRIS CHAIRMAN

Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss Jan 31, 2013

Before me, the undersigned notary public, personally appeared John D. Harris, 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
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
September 28, 2018

Gail P. Hanley

Notary Public
My Commission Expires: 9-28-18

ATTACHMENT

Recording Information for Greenwood Meadows Project
LR-TR12041

Registered Owner: Snake Pond Realty Trust, Michael A. Howland, Trustee

Title Reference:

Land Court Certificate of Title No. 137565 Land Court Plan 6139-7,

Sheet 1, Lots	947	955	963
	948	956	964
	949	957	985
	950	958	986
	951	959	987
	952	960	1000
	953	961	
	954	962	

Sandwich Tax Assessors Map 05, Parcels 291, 292, 293, 294, 295, 296, 297, 298, 319, 320, and 321
Map 01, Parcels 001, 002, 003, 004, 005, 006, 007, 008, 009, 010 and 011