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CAPE COD COMMISSION

DEVELOPMENT OF REGIONAL IMPACT SCOPING DECISION

DATE: _____, 2016

TO: BRIAN MADDEN, LEC ENVIRONMENTAL CONSULTANTS, INC.
12 RESNIK ROAD, SUITE 1, PLYMOUTH, 02360

PROJECT APPLICANT (LESSEE): LSDP 15, LLC
180 NORTH STETSON AVENUE, SUITE 3500
CHICAGO, IL 60601

PROPERTY OWNER: EAC ORGANICS, INC. F/K/A EAC DISPOSAL, INC. D/B/A CAPE RESOURCES COMPANY

PROJECT: OLD FALMOUTH ROAD SOLAR (CCC No. LR16020)

Project Site/ LOCATION: 280/0 OLD FALMOUTH ROAD, BARNSTABLE (Marstons Mills), MA

ASSESSOR'S ID: MAP 100, PARCELS 7 & 8

RECORDING INFORMATION: DEED BOOK 6441 PAGE 218
CERTIFICATE OF TITLE NO. 115449

SUMMARY

The Cape Cod Commission (Commission), hereby finds and determines that no further Development of Regional Impact (DRI) review of the proposed ground-mounted photovoltaic installation project located at 280 & 0 Old Falmouth Road in Barnstable, MA (Project) shall be required, and that the Applicant may proceed with local permitting for the Project, subject to the findings and conditions in this decision.

PROJECT DESCRIPTION

The Applicant proposes to redevelop a 36.34± acre site on Old Falmouth Road in Barnstable with a 4.5-MW ground-mounted photovoltaic installation and associated appurtenances

including a gravel access driveway, landscaping, and stormwater management system, which will occupy 20.27± acres of the site. New disturbance of existing forested upland on the site associated with the Project totals 1.53± acres.

The Project constitutes a Change in Use of the Site. The Site formerly operated as a construction and demolition (C&D) debris landfill prior to its current use as a yard waste recycling facility, which use is proposed to be abandoned to allow for the Project.

PROCEDURAL HISTORY

The DRI Scoping Application, prepared by LEC Environmental Consultants, dated August 19, 2016, was received by the Commission on August 19, 2016, including a plan set titled "LSDP15, LLC Solar Development, 280 & 0 Old Falmouth Road", prepared by Meridian Associates, dated August 15, 2016, Sheets 1 - 18, and a report titled "Stormwater Analysis & Calculations Report", prepared by Meridian Associates, dated August 15, 2016. The DRI Scoping application was deemed complete on October 19, 2016.

The Applicant has entered into a lease agreement with the property owner, the terms of which allow the Applicant to permit, construct and operate the proposed development.

The Commission's Executive Director, through staff, drafted a decision recommending that the Project be scoped out of review under all issue areas in the Regional Policy Plan (RPP), and that the Applicant may proceed with local permitting for the Project, subject to the findings and conditions in this DRI Scoping decision, without the requirement for any further DRI review for the Project. At a meeting on October 27, 2016, the Committee on Planning and Regulation (CPR) voted to recommend to the full Commission that it adopt the draft written DRI Scoping decision, including the determination that Applicant may proceed with local permitting without a requirement for further DRI review.

JURISDICTION

The Project qualifies as a Development of Regional Impact (DRI) pursuant to Section 3(f)(iii) of the Commission's *Enabling Regulations* (revised November 2014) as *"Any proposed Change of Use…[f]or Outdoor Uses, where the Total Project Area is greater than 40,000 square feet."*

In accordance with Section 5(a) of the *Enabling Regulations, "[f]or any Project that is a DRI…the proponent may apply to the Commission to limit the scope of the DRI review."*

Pursuant to Section 5(e)(v) of the Enabling Regulations, "*[t]he Executive Director shall issue a written decision following his/her determination of the scope of DRI review*."

FINDINGS

The Executive Director hereby finds as follows:

GENERAL FINDINGS

GF1. Under Section 3(f) of the Enabling Regulations, the Project constitutes a proposed Change of Use of the Site with a new Outdoor Use greater than 40,000 square feet (SF) in Total Project Area. The Applicant submitted application materials on August 19, 2016 to scope DRI review pursuant to Section 5 of the Enabling Regulations. The application for Limited DRI Review was deemed complete on October 19, 2016.

GF2. This Project was reviewed subject to the 2009 RPP, as amended in August 2012.

GF3. The Commission considered the Limited DRI Scoping Checklist for redevelopment in its review of the scoping application.

GF4. The Project consists of: the demolition of all structures, abandonment of the current waste/ recycling use, and the installation of a 4.5± MW ground-mounted photovoltaic installation on the site. This installation includes associated electrical equipment, new utility poles, perimeter fencing with gates, and, upgraded landscaping, gravel access driveway, and stormwater management system. The Project will connect to existing overhead power distribution infrastructure along Old Falmouth Road (Project).

GF5. The Project is proposed to be implemented and constructed in accordance with the following plan sets and other information and documents submitted by the Applicant, reviewed by the Commission and referenced below:

"LSDP 15, LLC Solar Development, 280 & 0 Old Falmouth Road", prepared by Meridian Associates, dated August 15, 2016

Sheet 1: *Cover Sheet & Locus Context Map*
Sheet 2: *Record Conditions Plan Index Sheet*
Sheet 3: *Record Conditions Plan Sheet 1*
Sheet 4: *Record Conditions Plan Sheet 2*
Sheet 5: *Record Conditions Plan Sheet 3*
Sheet 6: *Record Conditions Plan Sheet 4*
Sheet 7: *Permit Site Plan of Land Index Sheet*
Sheet 8: *Permit Site Plan of Land Sheet 1*
Sheet 9: *Permit Site Plan of Land Sheet 2*
Sheet 10: *Permit Site Plan of Land Sheet 3*
Sheet 11: *Permit Site Plan of Land Sheet 4*
Sheet 12: *Erosion & Sedimentation Control Plan Sheet 1*
Sheet 13: *Erosion & Sedimentation Control Plan Sheet 2*
Sheet 14: *Erosion & Sedimentation Control Plan Sheet 3*
Sheet 15: *Erosion & Sedimentation Control Plan Sheet 4*
Sheet 16: *Erosion & Sedimentation Control Notes and Details*
Sheet 17: *Detail Sheet 1*
Sheet 18: *Detail Sheet 2*

DRAFT

Stormwater Analysis & Calculations Report, prepared by Meridian Associates, dated August 15, 2016

Invasive Species Management Plan, prepared by LEC Environmental, dated August 9, 2016

Proposed Buffer Landscape Plan, Sheets 1-2, dated October 12, 2016

GF6. The Applicant has provided a copy of an executed 20-year land lease agreement for the parcels comprising the Project site, in which the property owner, EAC Organics, Inc., is the lessor and the Applicant is the lessee. The lease agreement allows the Applicant to permit, construct and utilize the parcels for Solar Energy Purposes, which include any and all uses associated with or relating to converting solar energy into electrical energy. The lease provides the lessee two (2) successive five-year (5) options to extend the lease agreement.

GF7. The Project is proposed on two commonly-owned, abutting parcels identified on Barnstable Assessor's Map 100 as Parcels 7 & 8, which are to be treated, used and operated as a single site for purposes of this decision ('Site' or 'Project Site').

GF8. The Executive Director, through Commission staff, prepared a draft Scoping Decision recommending that the Project be scoped out of all issue areas in the RPP, and that no further DRI review be required for the Project. At a meeting on October 27, 2016, the Committee on Planning and Regulation (CPR) voted to recommend to the full Commission that it adopt the draft written DRI Scoping decision, including the determination that Applicant may proceed with local permitting without a requirement for further DRI review.

RPP FINDINGS

LAND USE

LUF1. There is an approved Land Use Vision Map (LUVM) for the Town of Barnstable. The Project site is mapped as a Resource Protection Area, but is located in the Town of Barnstable Ground-Mounted Solar Photovoltaic Overlay District (GMSPOD). The Project is a redevelopment project and will not present a threat to the resources intended to be protected and maintained by its land use category, meeting Minimum Performance Standard (MPS) LU1.1 (Development Location). The Project involves abandonment of the existing waste/ recycling use, which is not a permitted zoning use in the underlying zoning district and exists by way of a variance on-site. The Site is basically located across Old Falmouth Road from a municipal landfill facility, a portion of which is also improved with a large photovoltaic array. The Project proposes a more passive and less impactful use, in mapped resource areas, than the present or historical uses of the Site, and proposes clean energy generation. Pursuant to MPS LU1.2 (Compact Development), the Project is clustered on-site to the extent feasible, given the nature and purpose of the Project; it is primarily located on existing disturbed portions of the site, and largely preserves existing undeveloped portions of the site in their natural state. The Project is consistent with Best Development Practices (BDP) 1.3 as it constitutes redevelopment.

LUF2. The Project will connect to existing infrastructure and is appropriately sited in the Town of Barnstable's GMSPOD, as such the Project complies with MPS LU2.1 (Connections to Existing Infrastructure).

LUF3. The Project involves neither substantial deviation from nor significant impact upon the applicable Land Use minimum performance standards and goals of the RPP, and therefore does not require further DRI review under the RPP issue area of Land Use. The RPP issue area of Land Use is hereby scoped out of further DRI review.

ECONOMIC DEVELOPMENT

EDF1. The Project is not located within an Economic Center (MPS ED1.1), but in a Resource Protection Area of the Barnstable LUVM. However, the Project alternately meets MPS ED1.3 (Waiver), as the redevelopment Project meets several of the expressed waiver criteria, through distributed energy generation, by connecting to existing infrastructure and proposing an Emerging Industry Cluster use.

EDF2. The Project is not located on or near agricultural, waterfront or recreational lands. Therefore, MPS ED1.4 (Resource-based Economic Areas) does not apply.

EDF3. The Project will help meet Cape Cod's continuing demand for energy generation by introducing more electrical power into the market, meeting MPS ED4.1 (Demonstrated Need and Public Benefit).

EDF4. The Project involves neither substantial deviation from nor significant impact upon the applicable Economic Development minimum performance standards and goals of the RPP, and therefore does not require further DRI review under the RPP issue area of Economic Development. The RPP issue area of Economic Development is hereby scoped out of further DRI review.

WATER RESOURCES

WRF1. The Project Site is located within the Three Bays watershed, a Marine Water Recharge Area, specifically within the contributing area to the Warren Cove sub-embayment. A Total Maximum Daily Load (TMDL) for nitrogen has been established for the Three Bays system, which requires a 50% reduction in controllable nitrogen load from the Warren Cove sub-embayment watershed. The Site is also located in a Zone II Wellhead Protection Area and because of its existing land use as a stump dump/recycling center, the Site is also considered a Waste Site Area under the Cape Cod Commission's Regional Policy Plan. By virtue of these circumstances, the Site is located in an area considered a "Water Quality Improvement Area" under the Water Resources issue area of the RPP.

WRF2. The Project is subject to standards under RPP Water Resources Goals General Aquifer Protection (WR1), Drinking Water Quality and Quantity (WR2), Marine Water Embayments and Estuaries (WR3), Water Quality Improvement Areas (WR5), and Stormwater Quality (WR7). The Project is not subject to standards under WR4 and WR6, as the Site is not located

within a Freshwater Recharge Area and is not proposing construction of a wastewater treatment facility.

WRF3. The Applicant provided Project site wide nitrogen loading calculations relative to RPP Goal WR1 (General Aquifer Protection) and Goal WR2 (Drinking Water Quality and Quantity), which demonstrate that the Project complies with the maximum site wide five-ppm nitrogen loading standard set out in MPS WR1.1 and WR2.1. The Applicant has provided a turf and landscape management measures (MPS WR1.5), which, among other things, addresses limitations on turf fertilizer use. The Applicant has not provided Identification of any Drinking Water Wells (MPS WR1.2) on properties within 400-feet of the Project, though it requested information about the same from the town as evidenced in its application; however, no wastewater treatment facility or wastewater generation is proposed which could most acutely affect the water quality of any private wells, if any do exist.

WRF4. As the Project is located within a Wellhead Protection Area, no more than "household quantities of Hazardous Materials," defined in the RPP as 25 gallons (or equivalent dry weight), may be used or stored on-site pursuant to MPS WR 2.2. The transformer fluid to be used is Envirotemp FR3, which contains >98.5% vegetable oil and <1.5% of performance-enhancing additives (antioxidants and color). The Cape Cod Commission has previously considered the 1.5% of Envirotemp FR3 to be a potential Hazardous Material pursuant to the RPP definition, as the proprietary ingredients are unknown. Transformers for this Project will contain approximately 30-gallons, by percent concentration, of potential hazardous material on-site. Given the Project proposes to abandon the current use and remove some materials from the Site that likely contain hazardous materials or wastes as so defined in the RPP, and the quantity of materials anticipated to be used or stored on-site that might be considered to be hazardous materials as so defined is generally consistent with limits on such materials set out in the RPP, the Project meets MPS WR2.2. Containment is proposed for transformers, in the event that there is any release of material from them.

WRF5. As the Project is a redevelopment project in a Water Quality Improvement Area that already exceeds the Critical Nitrogen Loading Threshold for the Marine Recharge Area to Warrens Cove, the Project is required to maintain or improve existing site nitrogen loading per MPS WR5.1 (Water Quality Improvement Areas, Nitrogen Loading Standard) in terms of total nitrogen loading to the subject watershed. Based on information provided by the Applicant, Commission staff calculated site nitrogen loading from the Project to determine whether the Project would generate a nitrogen load over and above the Site's existing nitrogen load. On balance, the Project meets the nitrogen loading standard in a Water Quality Improvement Area. Given the existing and historical use of the Site, because the existing Site use is proposed to be abandoned, and associated materials proposed to be removed from the Site are sources that likely contribute to the Site's existing nitrogen load, the Project will not exceed the Site's existing nitrogen load to the watershed. In particular, though some of the fill on-Site is proposed to be graded to allow for Project construction, the Applicant will remove and legally dispose of existing materials in, on and around the Project's existing stormwater basins, and stump piles and the like. The Project's proposed stormwater basins are located in the same general area as the existing basins.

WRF6. Plans for the proposed upgraded stormwater management system are consistent with RPP Water Resources Goal WR7 (Stormwater Quality). No new direct discharges of untreated stormwater are proposed. The proposed stormwater management system will infiltrate all stormwater runoff on-site, provide bioinfiltration for the first inch of stormwater, and provide 80% TSS removal. The site is split into two (2) sub-catchment areas which drain to infiltration basins equipped with sediment forebay berms. A portion of each sub-catchment area will flow through grassed channels to be conveyed to the infiltration basins. The system has been designed to manage the 100-year storm event, and is equipped with a grassed outlet weir that will direct stormwater to a smaller overflow basin when the infiltration basins exceed capacity. To evidence that the proposed stormwater management system has been installed and is operated maintained according to design plans submitted by the Applicant and approved by the Commission herein, the Applicant shall be required as a condition of this decision to submit a stormwater operations and maintenance plan, erosion and sedimentation control plan, and stormwater pollution prevention plan (SWPPP) for further Commission staff review and approval, and have its engineer ultimately certify to the Commission that the stormwater management system, once installed and in operation, was installed and functions according to the design plans approved by the Commission.

WRF7. As conditioned in this decision, the Project involves neither substantial deviation from nor significant impact upon the Water Resources goals and minimum performance standards of the RPP, and therefore does not require further DRI review under the Water Resources issue area of the RPP. The Water Resources issue area of the RPP is hereby scoped out of further DRI review.

COASTAL RESOURCES

CRF1. The Project is not located within or proximate to a coastal resource area. As such, the Project involves neither substantial deviation from nor significant impact upon the applicable Coastal Resources minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP issue area of Coastal Resources. The RPP issue area of Coastal Resources is hereby scoped out of further DRI review.

MARINE RESOURCES

MRF1. The Project is not located within or proximate to a marine resource area. As such, the Project involves neither substantial deviation from nor significant impact upon the applicable Marine Resources minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP issue area of Marine Resources. The RPP issue area of Marine Resources is hereby scoped out of further DRI review.

WETLANDS

WETF1. Bordering Vegetated Wetland (BVW) does occur in the northwestern portion of the Project Site. No work associated with the Project is proposed within BVW or the 100-foot buffer of BVW. The Project is not otherwise located within or proximate to another wetland resource

area or 100' buffer zone thereto. As such, the Project involves neither substantial deviation from nor significant impact upon the applicable Wetland minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP sub-issue area of Wetlands. The RPP sub-issue area of Wetlands is hereby scoped out of further DRI review.

WILDLIFE AND PLANT HABITAT

WPHF1. The Project proposes to alter approximately 1.53 acres of existing, undisturbed vegetated upland. A Natural Resources Inventory (NRI) has been provided in accordance with MPS WPH1.1 (Natural Resources Inventory). The NRI did not identify any specimen trees that would be affected by the project, but did identify some invasive species on the Site. The Applicant has minimized the total area of new disturbance from approximately 6.3 acres as was originally proposed to approximately 1.53 acres, and consolidated development within existing disturbed areas, consistent with MPSs WPH1.2 (Clearing and Grading) and WPH1.3 (Wildlife and Plant Habitat).

WPHF2. The Project Site includes an area mapped by the MA Natural Heritage and Endangered Species Program (NHESP) as Rare Species Habitat in the northwestern portion of the site. The Applicant has received correspondence dated June 15, 2016, from the NHESP indicating further review under the MA Endangered Species Act (MESA) is not required, and that the Project does not propose a prohibited 'take' of rare or endangered species protected under the Massachusetts Endangered Species Act. No development is proposed in the vicinity of the mapped habitat, consistent with the requirements of MPS WPH1.4 (Rare Species).

WPHF3. Per MPS WPH1.6 (Invasive Species), the Applicant has provided an Invasive Species Management Plan, which addresses management of invasive species that currently exist on-site, as well as construction controls to prevent the import of further invasive species to the Site.

WPHF4. As conditioned in this decision, the Project involves neither substantial deviation from nor significant impact upon the applicable Wildlife and Plant Habitat minimum performance standards and goals of the RPP, and therefore does not require further DRI review under the RPP sub-issue area of Wildlife and Plant Habitat. The RPP sub-issue area of Wildlife and Plant Habitat is hereby scoped out of further DRI review.

OPEN SPACE & RECREATION

OSF1. The Project site is located within Significant Natural Resources Area (SNRA) as the site is within mapped Wellhead Protection Area to a public water supply. The open space requirement under MPS OS1.3 (Open Space Requirements) for a project within SNRA is a proportion of 1:2 development to open space; therefore, as the Applicant is proposing to alter approximately 1.53 acres of undisturbed vegetated upland, the Project requirement for open space mitigation is 3.06 acres.

OSF2. At the discretion of the Commission, the RPP allows alternate methods for providing required open space mitigation under DRI review other than restricting land within a project

site, including cash in lieu payments that are to be used to further municipal open space initiatives. The Applicant has proposed a cash contribution in the amount of $280,308 to wholly satisfy its required open space mitigation obligation, which would be used by the Town of Barnstable for open space initiatives in lieu of restricting open space on the Project Site. $280,308 represents the average $91,604 per acre assessed value of undeveloped residential properties in the town multiplied by the required 3.06 acres. Given the relatively short life cycle of the proposed solar installation and the land area necessary to support the Project; the terms of the Site lease between the Applicant and property owner; that there is not land under permanent conservation restriction on adjoining properties abutting and contiguous with the area on the Site where land could reasonably be restricted; and that the Applicant proposes to retain undisturbed areas of natural vegetation on the Site as de facto Site open space, restricted for such use under this decision though not subject to a permanent conservation restriction, the cash in lieu payment method proposed by the Applicant is appropriate to mitigate open space impacts rather than imposing a permanent conservation restriction on the Site or a portion thereof.

OSF3. As conditioned in this decision, the Project involves neither substantial deviation from nor significant impact upon the Open Space and Recreation goals and minimum performance standards of the RPP, and therefore does not require further DRI review under the Open Space and Recreation issue area of the RPP. The Open Space and Recreation issue area of the RPP is hereby scoped out of further DRI review.

TRANSPORTATION

TRF1. Access to the Project site will utilize an existing curb cut onto Old Falmouth Road, a regional roadway.

TRF2. The application materials provide that the number of construction vehicle trips is estimated to be 15, in addition to typical deliveries, and 'permanent' post-installation maintenance site inspections are anticipated to be one (1) vehicle approximately 4-5 times per year, a reduction over existing conditions (RPP Goal TR2 – Trip Reduction/Transportation Balance and Efficiency) (RPP Goal TR3 – Level of Service/Congestion management).

TRF3. The Project will not generate more than 25 total new peak hour trips, or more than 250 new daily trips. Commission Transportation staff determined following a visit to the site that, with proper vegetation management, and so long as no obstructions are added, which shall be made conditions of this decision, the site driveway appears to have sufficient sight distance (RPP Goal TR1 – Safety).

TRF4. As conditioned in this decision, the Project involves neither substantial deviation from nor significant impact upon the applicable Transportation minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP issue area of Transportation. The RPP issue area of Transportation is hereby scoped out of further DRI review.

WASTE MANAGEMENT

WMF1. The Project will not generate hazardous wastes, or significant amounts of waste in its operational phase. The Applicant has provided a demolition protocol for the existing Site buildings detailing how existing materials will be removed, legally disposed of and recycled. Given the Project is located primarily on heavily disturbed areas of the Site, minimizing the volume of land clearing waste, building construction or demolition is not proposed as part of the Project, and materials deemed suitable will not be removed but re-graded into the Site, the Project involves neither substantial deviation from nor significant impact upon the applicable Waste Management minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP issue area of Waste Management. The RPP issue area of Waste Management is hereby scoped out of further DRI review.

ENERGY

EF1. The Project involves the construction and use of a ground-mounted photovoltaic installation designed to generate and provide renewable energy to the regional electric grid. RPP Energy standards only apply to building development and wind energy conversion facilities. Therefore, the Project involves neither substantial deviation from nor significant impact upon the applicable Energy minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP issue area of Energy. The RPP issue area of Energy is hereby scoped out of further DRI review.

AFFORDABLE HOUSING

AHF1. The Project as proposed does not include any building or residential development.

AHF2. The Project is not located in an economic center, and a utility is classified as an "Other" use under MPS AH3.1 (Mitigation Standard). The Applicant states that operation and maintenance of the proposed facility will require less than the equivalent of one full-time on-site or contracted employee.

AHF3. The Project involves neither substantial deviation from nor significant impact upon the applicable Affordable Housing minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP issue area of Affordable Housing. The RPP issue area of Affordable Housing is hereby scoped out of further DRI review.

HERITAGE PRESERVATION/ COMMUNITY CHARACTER

HPCCF1. Due to the nature of the past and present land uses at the Site, the developed portion of the site is heavily disturbed. The Applicant filed a Project Notification Form with the Massachusetts Historic Commission (MHC), and Commission staff confirmed verbally with MHC that the project is unlikely to affect significant historic or archaeological resources. There are no contributing structures or sites listed on the National Register of Historic Places within or proximate to the Site. Therefore, the proposed Project is not expected to impact significant or

archeological resources, consistent with RPP MPS HPCC1 (Historic, Cultural, and Archaeological Resources).

HPCCF2. The proposed Project is adjacent to a ground-mounted photovoltaic installed on the site of a former town landfill across Old Falmouth Road. The Project complies with Community Character Project Siting Standards HPCC2.1 (Strip Development), HPCC2.2 (Protection of Exiting Roadway Character), and HPCC2.3 (Avoid Adverse Visual Impacts), as it is redevelopment that does not create any additional curb cuts or extend strip development.

HPCCF3. Under existing conditions, portions of the Site's frontage along Old Falmouth Road lack a fully vegetated buffer. The Applicant proposes to provide additional landscaping, supplementing an existing vegetative buffer and fencing, along Old Falmouth Road to further buffer the Project, in accordance with a landscape plan titled "Proposed Buffer Landscape Plan", prepared by LEC Environmental Consultants, Inc., dated October 12, 2016. The landscape plan addresses the functional aspects of landscaping such as drainage, erosion prevention, and screening and buffering (MPS HPCC2.10 – Landscape Plan Requirements), and relates the proposed development to the Site. The Applicant proposes to maintain, and replace as necessary, an existing stockade fence that assists in buffering the Project from Old Falmouth Road.

HPCCF4. The Applicant has provided a sign plan (HPCC 2.12) for one proposed exterior sign located at the entrance drive to the Project. No Exterior Lighting (MPS HPCC2.11) is proposed.

HPCCF5. As conditioned in this decision, the Project involves neither substantial deviation from nor significant impact upon the applicable Heritage Preservation and Community Character minimum performance standards and goals of the RPP, and does not require further DRI review under the RPP issue area of Heritage Preservation and Community Character. The RPP issue area of Heritage Preservation and Community Character is hereby scoped out of further DRI review.

CONCLUSION

Based on the foregoing findings, the Commission hereby further finds and determines that the Project as outlined in this decision does not involve substantial deviation from the goals and minimum performance standards of the RPP, does not have significant impact upon the purposes and values identified by Section One of the Commission Act, does not require further DRI review, and that the Applicant may proceed with local permitting for the Project without the requirement for any further DRI review. This decision is subject to the conditions below.

CONDITIONS

C1. This decision applies to and shall run with the properties constituting the Project Site, and allows the Applicant or its successors in title or interest to apply for and obtain local permitting for the Project, subject to the findings and conditions herein. The decision shall bind and be enforceable against, and inure to the benefit of, the Applicant, its heirs, successors, and assigns. The Applicant may undertake and obtain local permitting for the Project without further DRI

review, pursuant to and consistent with this terms and conditions of this decision, within a period of seven years from the date of this decision, which time may be extended by the Commission, upon request and good cause shown by the Applicant.

C2. Failure to comply, and remain in compliance, with all findings and conditions stated herein, shall be deemed cause to revoke or require modification to this decision. No work, including any tree clearing, is allowed on the Site except as expressly allowed and discussed herein, and as depicted on approved Project plans referenced in Finding GF5 herein.

C3. The Applicant shall obtain all necessary federal, state, and local permits for the Project.

C4. No local permitting for development work as approved herein, including but not limited to site work and installation of foundations or footings, shall be undertaken until this decision is final, namely that the decision appeal period pursuant to Section 17 of the Cape Cod Commission Act has elapsed or if such an appeal has been filed, until the appeal has been finally dismissed, settled or is adjudicated or otherwise disposed of in favor of the Applicant. The Commission shall record a copy of this decision with the Barnstable Registry of Deeds when it is final, with recording costs borne by the Applicant. This decision shall not be effective until a copy of the same has been so recorded.

C5. The Project shall be undertaken, constructed, operated and maintained in accordance with the Findings and Conditions set out herein, including the plan sets and other information and documents referenced herein under Finding GF5. This decision does not authorize any other work or development, including futher site clearing, except as expressly authorized herein and depicted on the plans approved hereunder. Changes to the approved Project and to the approved project plans shall require modification to this decision, in accordance with the *Modification* section of the Commission's *Enabling Regulations* then in effect when such modification is sought. All plans and documents required to be submitted as conditions of this decision shall hereby be incorporated into this decision as and when received, reviewed, and approved by the Commission. Modification may result in a change in the scope of DRI review and whether DRI might be required for the Project.

C6. Prior to and as a condition to issuance of a Building Permit or undertaking any development as approved herein, including but not limited to site work and installation of foundations or footings, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that evidences that all conditions in this decision required to have been satisfied prior to the issuance of a Preliminary Certificate of Compliance have been satisfied, and that the Project is in compliance with this decision.

C7. Prior and as a condition to issuance of any Preliminary Certificate of Compliance by the Commission for development as approved herein, the Applicant shall submit copies of final project plans as approved, and permits, licenses and approvals issued, by state, federal, and local authorities (except for a Building Permit) 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 Applicant shall be required to seek a modification to this decision for further review and approval of the project plan changes by the Commission in accordance with the "*Modification*" section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

C8. Prior to and as a condition to issuance of a Preliminary Certificate of Compliance, the Applicant shall provide written proof to the Commission that a copy of this decision has been received by the Project general contractor. This decision and a copy of approved plans for the project shall be maintained on the Project Site throughout project construction.

C9. Prior to and as a condition to issuance of a Certificate of Use/Occupancy for the Project by the Town, the Applicant shall obtain a Final Certificate of Compliance from the Commission that evidences that all conditions in this decision required to have been satisfied prior to issuance of a Final Certificate of Compliance have been satisfied and that the Project is in compliance with this decision.

C10. Commission staff will undertake a review of the Project's compliance with this decision, including the applicable conditions hereof, 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, at reasonable times and upon reasonable notice to the Applicant. 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.

C11. The Applicant's Invasive Species Management Plan (ISMP) proposes some herbicide management of existing invasive species on the Site. Prior to and as a condition to use of any herbicides on-site to manage invasive species under said ISMP, the Applicant shall first coordinate with Commission staff and provide the type and quantity of any herbicides proposed to Commission staff for staff's review and approval.

C12. The Applicant shall keep vegetation trimmed and not place obstructions so as to maintain safe sight distances for the Project's site driveway.

C13. Prior and as a condition to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall submit an engineer certified stormwater operations and maintenance plan, erosion and sedimentation control and plan, and a stormwater pollution prevention plan to Commission staff for review and approval, consistent with the stormwater design plans approved hereunder. When reviewed and approved by Commission staff, the Project shall be constructed and operated according to such plans. Additionally, after the site's stormwater management system has been constructed and in operation for at least one year, the Applicant shall have its engineer certify to the Commission that the stormwater management

system was installed and functions according to the stormwater design plans approved by the Commission.

C14. Prior and as a condition to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall provide Commission staff for its review and approval a landscape maintenance and installation agreement. Such agreement shall be consistent with the findings and conditions herein as well as with applicable RPP water resources and community character standards, and shall address but not be limited to the following: irrigation and water use; limits on chemical fertilizer and pesticide use; appropriate plant installation methods; and provision for replacement of dead or diseased trees. When reviewed and approved by Commission staff, the Project shall be constructed and operated according to such agreement.

C15. The Applicant shall remove and legally dispose of existing fill materials in, on, and around the Project's proposed stormwater basins, and existing standing piles of stumps and the like. The Applicant shall comply with any State and local law and permits for removal and disposal of materials from the Site associated with the prior use of the Site.

C16. The Applicant shall make an open space mitigation payment of $280,308 to the Barnstable County Treasurer to be held for the benefit of and released to the Town of Barnstable upon its request to the Commission for such funds to support acquisitions of open space in the Town of Barnstable. The Applicant shall make such payment prior and as a condition to the issuance of a Final Certificate of Compliance by the Commission.

SEE NEXT PAGE FOR SIGNATURES

DRAFT

SIGNATURES

Executed this _____ day of _____ 2016.

_____
Signature

_____
Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2016

Before me, the undersigned notary public, personally appeared_____,

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

_____
Notary Public

SEAL

My Commission Expires: