

## CAPE COD COMMISSION

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E-mail: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

Date: September 9, 1999

Re: Development of Regional Impact Request  
Cape Cod Commission Act

Applicant: Family Ice Enterprises, Inc., d/b/a NHL Skate at Hyannis  
c/o Rick McMenimen  
P.O. Box 412  
Exeter, N.H.

and

Patrick M. Butler, President  
Barnstable Youth Hockey Association, Inc. (BYHA)  
c/o P.O. Box 1630  
Hyannis, MA. 02601

Project #: TR9003

Project: NHL Skate at Hyannis  
770 Independence Drive  
Hyannis, MA

Lot/Parcel: David B. Cole, Trustee under the Will of Enoch T. Cobb. See  
Barnstable Registry of Probate Docket No 6839 and Probate Deed  
dated September 9, 1982 recorded with the Barnstable County  
Registry of Deeds in Book 3553, Page 22.

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### DECISION OF THE CAPE COD COMMISSION

#### SUMMARY

The Cape Cod Commission (Commission) hereby approves the application of Family Ice Enterprises, Inc., d/b/a NHL Skate at Hyannis and Barnstable Youth Hockey Association, Inc. for a Development of Regional Impact approval, pursuant to Sections 12 and 13 of the Cape Cod Commission Act, c. 716 of the acts of 1989, as amended, for the NHL Skate in Hyannis, Massachusetts. The decision is rendered pursuant to a vote of the Commission on September 9, 1999.

#### PROJECT DESCRIPTION

The project consists of two year-round NHL regulation size skating rinks; a main rink (85' x 200') with seating for 550 spectators, and a practice rink (85' x 200') with seating for



200 spectators. The project also includes eight locker rooms for youth and adult hockey and other skating programs, a first-aid room for each rink, administrative and management offices, a classroom with video facilities, a pro-shop (skate sharpening, supplies, etc.), a food concession area, an off-ice recreational area for children, an ice-recycling and resurfacing room and mechanical rooms. The total area of the proposed facility is 75,000 square feet. The buildings and seating areas will be handicapped accessible. 250 parking spaces will be provided.

The facility will be used by the Barnstable Youth Hockey Association (BYHA) and other youth hockey groups, and for figure skating, elite/high school practices, stick practice, public skating, a learn to skate program, high school games, tournaments, figure skating tournaments and shows, and related ice activities.

The project will be located in Independence Park, which is industrially zoned, allows an ice rink facility as a matter of right and is an LCP-certified growth area. The project will be connected to the municipal sewer system. Site access will be via a single driveway off Mary Dunn Road.

The 9.59 acre site consists of kettle hole topography and is wooded with mature vegetation except in an electric company power line easement that crosses the southwestern corner of the site.

#### PROCEDURAL HISTORY

The Cape Cod Commission Subcommittee met with the Barnstable Site Plan Review Committee on March 25, 1999. The Commission's public hearing for the project was opened on April 21, 1999 by a hearing officer in the Cape Cod Commission offices. A substantive public hearing was held on May 27, 1999; the public hearing was continued to July 1, 1999, and was again continued to the July 15, 1999 Commission meeting, when the public hearing was closed in order to meet the 90-day requirement to complete the public hearing. Another public hearing was opened on July 29, 1999 before the full Commission, and continued to August 26, 1999 before the full Commission. On August 26, the public hearing was continued to the Commission meeting of September 9, 1999.

Subcommittee meetings were held on July 12, 1999, July 22, 1999, August 5, 1999, and August 16, 1999.

#### MATERIALS SUBMITTED FOR THE RECORD:

##### *Materials Submitted by the Applicant:*

DRI Application and Attachments, dated and received 3/22/99.

Map and Parcel Map.

Massachusetts Historical Commission Project Notification Form, dated 3/19/99.

NHL Skate at Hyannis narrative.

NHL Skate at Hyannis Project Team list.

NHL Skate at Exeter floor plan by the Design Forum, Inc.

Copy of correspondence from Patrick Butler on behalf of BYHA to Linda Hutchenrider, Barnstable Town Clerk, dated 3/5/99.

Copy of correspondence from Mr. Butler to Jacalyn A. Barton, Barnstable Town Council, dated 3/3/99.

Copy of Town of Barnstable Notice of Joint Public Hearing for March 11, 1999 at 7:00 PM.

Copies of various newspaper articles.

Color copies of photographs of Exeter Ice Rink.

Copy of Site Plan Review minutes for NHL Skate at Hyannis dated 2/25/99.

Facility Elevations for Family Ice Enterprises LLC prepared by the Design Forum, Inc., Sheet A3.1, dated 12/4/98.

Conceptual Site Plan A, Sheet C2, by Jones & Beach Engineers, Inc., dated 1/29/99, received 3/22/99.

Preliminary Site Plan A, Sheet C2, by Jones & Beach Engineers, Inc., dated 1/29/99, last revised 2/25/99.

Preliminary Landscape Plan by Hoxie Landscape Services, Sheet C3, dated 1/29/99, received 3/22/99.

Facility Floor Plan for Family Ice Enterprises LLC prepared by the Design Forum, Inc., Sheet A2.1, dated 3/3/99, last revised 3/22/99.

Copy of correspondence from Robert P. Frazee to Barnstable Town Council, dated 3/11/99, received 3/22/99.

Fax from Mr. Butler to Tana Watt, Cape Cod Commission, dated and received 3/26/99.

Correspondence from Mr. Butler to Tana Watt, dated 3/26/99, received 3/29/99.

Lighting Landscape Plan, prepared by Jones & Beach Engineers, Inc., dated 1/29/99, last revised 3/31/99.

Correspondence from Maryanne Peters, Nutter, McClennen & Fish, LLP, to Tana Watt, Cape Cod Commission, dated 4/1/99, received 4/2/99.

Traffic Analysis prepared by Rizzo Associates, Inc., dated 4/8/99.

Copy of Correspondence from Maryanne Peters, Nutter, McClennen & Fish, LLP, to Mass Historical Commission, dated 3/24/99, signed by MHC on 4/20/99.

Correspondence from Mr. Butler to Tana Watt, dated and received 4/22/99.

Copy of correspondence from Maryanne Peters to Mass Historical Commission with MHC determination, dated 3/24/99, received 4/22/99.

NHL Skate at Hyannis Fact Sheet.

24 minute Video of the Exeter Ice Rink, received 4/22/99.

Correspondence and "Things You Should Know About Ice Rink Construction and Operation" from Mr. Patrick Butler to Tana Watt, dated and received 4/27/99.

Cimco Product Bulletins for Cimco 3000E Ice Rink Controller, and Multi-Point Gas Detector, received 4/27/99.

Correspondence from Mr. Butler to Tana Watt, Cape Cod Commission, dated and received 4/29/99.

DRI Natural Resources Inventory, dated April 1999, received 4/8/99.

Copy of correspondence from Kevin Powers, CIH, Director of Health and Safety, ENSR, to Mr. Butler, dated 4/28/99, received 4/28/99.

Fax of MSDS Sheet from Fisher Scientific, received 4/28/99.

Existing Conditions Plan, Sheet C1, by Jones & Beach Engineers, Inc., dated 1/29/99, last revised 4/30/99.

Overview Site Plan with Utilities, Sheet C2, dated 1/29/99, last revised 4/30/99.

Revised Site Plan, Sheet C3, dated 1/29/99, last revised 4/30/99.

Grading, Drainage & Erosion Control Plan, Sheet C4, dated 3/31/99, last revised 4/30/99.

Landscape & Lighting Plan, Sheet L1, dated 3/31/99, last revised 4/30/99.

Photographs submitted on 5/27/99.

Photographs and BYHA yearbook, received 5/27/99.

Fax from Mr. Butler to Sharon Rooney, Cape Cod Commission, dated and received 6/1/99.

Faxed correspondence from Richard Bryant, Rizzo Associates, Inc., to Glenn Cannon, Cape Cod Commission, dated and received 6/18/99.

Correspondence and photograph of sign from Mr. Butler to Tana Watt, dated 6/28/99, received 6/29/99.

Copy of Correspondence from Mr. Butler to Ralph Crossen, Building Commissioner, dated 6/28/99, received 6/29/99.

Copy of correspondence from Cindy L. Campbell, Mass. Div. of Fisheries and Wildlife, to Donald Schall, ENSR, dated 6/16/99, received 6/29/99.

Copy of correspondence from Terry MacLaughlin, MacLaughlin Management Group, to Rick McMenimen, Seracost Sportsplex Group, dated 3/23/99, received 6/29/99.

Copy of Family Ice Exeter LLC water/sewer bill, received 6/29/99.

Revised Site Plan, Sheet C3, dated 1/29/99, last revised 6/24/99, received 6/29/99.

Revised Grading, Drainage & Erosion Control Plan, Sheet C4, dated 3/31/99, last revised 6/24/99, received 6/29/99.

Revised Lighting Plan, Sheet L1, dated 3/31/99, last revised 6/24/99, received 6/29/99.  
 Copy of fax from John Karch, General Manager of Cimco Refrigeration, to Rick McMenimen, NHL Skate, dated 6/11/99, received 6/29/99.  
 Correspondence from Mr. Butler to Tana Watt, dated and received 7/1/99.  
 Revised Landscape Plan, Sheet L2, prepared by Martin D. Paschal, Hoxie Landscape Services, dated 6/29/99, received 7/1/99.  
 Fax from Mr. Butler to Tana Watt, dated and received 7/8/99.  
 Memo and Keystone Retaining Wall Systems booklet from Marty Paschal, Hoxie Landscape Services, received 7/9/99.  
 Copy of Lighting Cut Sheets from Charron, Inc., to Jones & Beach Engineers, dated 7/9/99, received 7/12/99.  
 Section of NW Building Corner, prepared by Jones & Beach Engineers, received 7/12/99.  
 Revised Landscape Plan, Sheet L2, prepared by Jones & Beach Engineers, Inc., dated 1/29/99, revised 4/26/99, received 7/12/99.  
 Faxed correspondence from Richard Bryant, Rizzo Associates, Inc., to Glenn Cannon, dated and received 7/14/99.  
 Correspondence from Mr. Butler to Tana Watt, dated and received 7/15/99.  
 Draft Memorandum of Understanding re: Stormwater Maintenance Plan, dated and received 7/15/99.  
 Copy of correspondence from Mr. Butler to Glenn Cannon, dated and received 7/15/99.  
 Revised Landscape Plan, Sheet L2, prepared by Martin D. Paschal, Hoxie Landscape Services, dated 6/29/99, revised 7/14/99, received 7/15/99.  
 Fax of letter from Rick Bryant, Rizzo Associates to Rick McMenimen, NHL Skate, dated 7/20/99.  
 Copy of correspondence from Jonathan S. Ring, P.E., Jones & Beach Engineers to Cape Cod Commission, dated and received 7/22/99.  
 Correspondence and sign photograph from Rick McMenimen, President, NHL Skate, to Tana Watt, dated 7/26/99, received 7/27/99.  
 Fax from Rick McMenimen to Tana Watt, dated and received 7/28/99.  
 Fax with sections from Mr. Butler and Jones & Beach Engineers, dated and received 7/29/99.  
 Revised Landscape Plan and trellis details from Marty Paschal, Hoxie Landscape Services dated and received 7/29/99.  
 Photographs of exterior siding and sign, received 7/29/99.  
 Letter from Mr. Butler to Tana Watt, dated and received 8/5/99.  
 Fax (with enclosure from R. Crossen) from Mr. Butler to Tana Watt, dated and received 8/13/99.  
 Fax from Mr. Butler to Tana Watt, dated and received 8/16/99.  
 Fax, with signed letter from Mr. Crossen, from Mr. Butler to Tana Watt, dated and received 8/18/99.  
 Revised set of plans (Sheets A1, C1, C2, C3, C4, L1, L2, S1, S2, D1, D2, E1), received 8/18/99.  
 Fax from Mr. Butler to E. Taylor and Dorr Fox, dated and received 8/19/99.  
 Fax with lighting manufacturers specifications, from Heidi at Charron, Inc. to Andrea Adams, Cape Cod Commission, dated and received 8/24/99.  
 Fax from Mr. Ring to Tana Watt, dated and received 8/27/99.  
 Archetype Luminaire brochure by KIM Lighting, received 8/24/99.  
 Revised plans (Sheets C2, C3, C4, and L2, last revised 8/31/99 and Sheet S1, last revised 8/26/99), received 9/1/99.  
 Initial Lighting Plan, Sheet L1A, 11" x 17", dated 3/31/99, last revised 6/24/99, received 9/1/99.  
 Fax from Mr. Ring to Mr. Butler with cc to Tana Watt, dated 8/31/99, received 9/1/99 (with attached letter to Tana Watt dated 7/22/99 revised 8/23/99, draft Stormwater Maintenance Plan, and draft Emergency Response Plan).

#### Other Submittals:

##### *Materials Submitted by the Town:*

DRI Referral Form, dated 3/4/99, received 3/5/99.  
 Barnstable Fire Department comments dated 2/23/99.  
 Planning Department Comments dated 2/9/99.  
 Engineering Comments dated 2/19/99.  
 Comments from Thomas McKean dated 2/5/99.  
 Site Plan Review memo from Anna Brigham dated 2/4/99.

Copy of Application for Site Plan Review dated 2/3/99.  
Site Plan Review Minutes dated 2/25/99.  
Site Plan Review Agenda dated 3/11/99.  
Existing Conditions Plan, dated 1/29/99.  
Conceptual Site Plan A, dated 1/29/99.  
Fax from Art Traczyk to Tana Watt, dated and received 7/14/99.

*Materials Submitted by Other Interested Parties:*

Letters from:

Peter D. Meyer, Cape Cod Times, to Cape Cod Commission, dated 5/25/99.  
Samuel A. Lorusso, President Cape Cod Aggregates Corp., dated 5/25/99.  
Lynne M. Poyant, Hyannis Area Chamber of Commerce, dated 5/26/99.  
Edward J. Lambert, President, Hyannis Area Economic Development Corporation, dated 5/26/99.  
Marsha P. Kirrane, President of the Bourne Skating Club, Inc., dated and received 5/27/99.  
Larry Thayer, Executive Director, Nauset, Inc., dated and received 5/27/99.  
Allen T. Wright, President, Massachusetts Hockey, dated 5/14/99, received 5/27/99.  
Russell J. Dever, Ed.D., Superintendent of Barnstable Public Schools, dated 5/27/99.  
Christopher Stavros, Excel Switching, dated 5/27/99.  
Samuel J. Patrei, President, Sencorp Systems, Inc., 5/27/99.  
Kristin M. Smith, Cape Cod Chamber of Commerce to received 6/1/99.

*Materials Submitted by Residents:*

Letter from Margaret Gilmore, dated 1/9/99.  
Postcard from Ellen & Sam Falvey, no date.  
Letter from Stanley and Annda Flynn, 1/9/99.  
E-mail from Karen Enos, 5/27/99.  
Phone Call from Bob Schulte, 5/26/99.  
Beatrice M. Clark, Director of Traffic and Roads, Cummaquid Heights Association, 7/20/99.  
Priscilla Jones, 7/17/99.  
E-mail from Robert St. John to Cape Cod Commission, dated 8/24/99, received 8/25/99.

The application and notice of the public hearing relative thereto, the Commission's staff reports, memos, notes and exhibits, minutes of the hearings and all submissions received in the course of the proceedings, including materials submitted on file #TR98036, are incorporated into the record by reference.

TESTIMONY

*March 25, 1999 Public Hearing/Site Plan Review Meeting*

Mr. Patrick Butler, Barnstable Youth Hockey Association (BYHA), and Mr. Rick McMenimen, NHL Skate, described the project, the building, the hockey program, and the brine ice-making system. Mr. Butler discussed the project in relation to the Regional Policy Plan, including open space, natural resources, hazardous materials, economic development, community character and traffic.

Mr. David Ernst, Cape Cod Commission, asked about advertising on the scoreboards and on the site; Mr. Butler described the proposal. Ms. Taylor asked what other sites had been considered; Mr. Butler, Mr. McMenimen and Mr. Daigle responded. Ms. Tana Watt, Cape Cod Commission staff, noted staff's concern about adequate buffers and regional views of the facility. Mr. Herbert Olsen asked about ingress/egress from the site; Mr. Butler responded by describing the previous plan and the current plan.

Mr. Thomas McKean, Barnstable Board of Health, noted the need for floor plans, food listing, grease trap, and an outdoor refuse dumpster; the applicant described the plans. Chief Jones, Barnstable Fire Department, noted the requirements for emergency access and permitting. Mr. Peter Fish, Barnstable, noted that all the leaching basins are located in 2 or 3 locations beneath the parking lot.

Mr. Sumner Kaufman, Cape Cod Commission and Barnstable Board of Health, asked about ammonia deliveries; Mr. Butler described the delivery process. Ms. Heather McElroy, Cape Cod Commission staff, noted that the site was mapped as rare habitat by Natural Heritage. Ms. Andrea Adams, Cape Cod Commission staff, stated that the site was located in a Zone of Contribution, and asked how ice is made; Mr. McMenimen briefly described the ice-making process.

Mr. Tom Broidrick, Cape Cod Commission, asked about Exit 6 1/2, the architecture, and the floor plan. Mr. Butler replied that if Exit 6 1/2 should happen, it would be to the left of the property; Mr. McMenimen described a textured material on the exterior of the building and Mr. Butler described the floor plan.

Mr. Art Traczyk, Barnstable Planning Department, noted the Town's zoning requirements and made suggestions about the site plan and economic impacts. Mr. Ralph Crossen, Barnstable Building Commissioner, asked about the storage tanks, the site plan, the access road, and public use of the rinks; Mr. Butler and Mr. McMenimen described the plans.

Ms. Gabrielle Belfit, Cape Cod Commission staff, asked about pretreatment of stormwater and a stormwater maintenance plan; the applicant replied that this would be provided, as well as oil and grease hoods. Ms. Taylor asked about leaks in the brine system; the applicant described the leak detection system.

#### *May 27, 1999 Public Hearing*

Mr. Patrick Butler presented the project, noting the support the project had received, and that he needs to meet 4 tests for approval: prove to the Subcommittee that the probable benefits outweigh the probable detriments, conform with the RPP, comply with local zoning and the LCP, and have tangible and intangible economic benefits and community benefits for the kids. He described the building and discussed the project's compliance with the RPP, including hazardous materials and natural resources/open space. Mr. Jonathan Ring, Jones & Mead Engineers, N.H., described the site plan, including exterior lighting, sewer, snow storage, utilities and stormwater treatment.

Mr. Rick Bryant, Rizzo Associates, discussed traffic and the 20% trip reduction requirement. Mr. Butler noted that Barnstable Youth Hockey would represent 25% of the total use.

Mr. Herb Olsen asked what the project's total land coverage was, noted that the local by-law requires that 30% of the site be naturally vegetated, and asked that the applicant calculate these percentages to demonstrate that the project complies with the local by-law. Mr. Olsen encouraged the applicant to consider terracing to reduce side slopes.

Ms. Taylor asked if there was any way the building itself could be at different levels. Mr. Rick McMenimen replied there would be problems with handicapped access and the energy efficiency of the refrigeration system.

Ms. Watt gave the staff report, stating that the project was being reviewed jointly by the Town and the Cape Cod Commission. She played a video tape of the Exeter facility provided by the applicant.

Mr. Cannon gave the transportation report, noting that there are three issues this project has impacts on relative to the RPP: traffic impacts, trip reduction and parking. The project has traffic impacts based on two scenarios, daily operations and special events. He said that the applicant still needs to reduce 8% of the average daily traffic.

Ms. Laffin asked if the applicant believed that they could reduce trips by 8%. Mr. Cannon replied that alternatives are available that could do this.

Ms. McElroy gave the natural resources report, saying that the project is located within a Significant Natural Resources Area with mapped endangered species habitat by Natural Heritage and Endangered Species Program. She discussed open space, the natural resources inventory, information that was still required, and her concern about fragmentation of habitat, lack of wildlife corridors and the extent of clearing and grading.

Ms. Laffin asked about Natural Heritage and possible rare species. Mr. Shephard asked what happened near the building and in the parking islands. Mr. Broidrick asked about the buffer to Route 6. Mr. Shephard asked about proposed grading relative to existing grade on the Route 6 side of the building.

Ms. Gabrielle Belfit presented the water resources report, saying that the project is located within a zone of contribution to several municipal wells, a nitrogen sensitive marine embayment, and partially within a potential public water supply area. She discussed nitrogen loading and stormwater discharge, the use of calcium chloride brine proposed as part of the ice-making system, and that the Subcommittee could consider the use of the flexibility clause in this case.

Ms. Laffin asked about storage of dry calcium chloride on-site, the leak detection system, about any change in natural vegetation as a result of the brine solution, and about the extent that the monitoring wells would be used.

Mr. Olsen stated that he would like to know about the reliability of the leak detection system and would like the specification sheets. Ms. Laffin asked if there were any offers of open space and if redeveloped land could be used for open space.

Ms. Watt concluded the staff report, discussing hazardous materials, economic development, community character, lighting plans and sign plans. She concluded by saying that the proposal must meet the RPP, the LCP, local by-laws, and must show that the benefits outweigh the detriments.

Ms. Laffin asked if it was possible to use vegetative screens, such as evergreens, in lieu of building materials. She also asked about alternatives to using riprap. Ms. Taylor asked why extra parking spaces were needed. Mr. Shephard asked about the motto "Grace, Speed, Power".

Mr. Demetras J. Atsalis, State Representative, spoke in favor of the project, stating that a new rink is needed.

Mr. Dave Chase, BYHA registrar, spoke in favor of the project. He stated that there is a real need for this project.

Mr. George DeMello, BYHA coach, said that the program teaches how to handle emotions that will carry through life, as well as technique.

David Cole, Trustee of Cobb Trust, said that said that when the Commission is weighing benefits/detriments, they should remember that the rents that are paid go to the benefit of Barnstable public school students as well as the benefits of the program itself. He asked that the Commission not impose costly conditions of this project.

Mr. Patrick McEvoy, senior at Barnstable High School, Captain of Barnstable High School Varsity Team, said this was a great opportunity for a facility with high-tech capability.

Mr. Joe O'Brien, Director of BYHA, said that there was a need for an additional rink, not just a new rink.

Mr. Jack Girvan said that this program was a good investment.

*July 12, 1999 Subcommittee Meeting:*

Ms. Watt presented the staff report. She noted that there are still concerns about architectural design. She noted that the plan would not provide much buffering of the project, and that a landscape plan should be approved by the Subcommittee before a project decision, since it is integral to the project. She discussed transportation, noting that the applicant had not yet made a proposal to mitigate the additional 8% of average daily traffic. Ms. Watt said that the applicant still needs to identify a proposed open space parcel or commit to a monetary donation. She discussed economic development and educational benefits, noting that the Subcommittee may want to consider them to be benefits of the project if an approval is granted.

Ms. Adams stated that she needed to look more closely at the information about exterior lighting that she had just received, but that it generally appeared to conform to the RPP. She noted that it was possible that additional material would be needed to meet the Technical Bulletin's submittal requirements.

Ms. Belfit asked several questions to clarify her understanding of the drainage plan, sewage flow, total water use and the vapor barrier. She stated that she had an answer to most of her questions.

Mr. Butler discussed the landscape plan, stating that the project would be screened by the proposed plantings, and agreed to provide a landscape maintenance contract. He said that the RPP has been met in the areas of lighting and water resources. He discussed transportation, distinguishing between new trips and existing trips. He discussed the idea of donating a parcel of vacant developable land to meet the 20% trip reduction requirement.



Mr. Butler said that BYHA was exploring the idea of donating off-site land to meet the open space requirement, as well as other alternatives including a monetary contribution, and a combination of the two.

Mr. Broidrick asked about open space mitigation requirements, rink time, users of the facility and vegetation.

Mr. Shephard asked about trip generation and who was financing the project. Mr. Butler responded by stating that this was an existing user group with trips already on the road, and described the financing agreements.

Mr. Shephard questioned the differences in staff and applicant opinion about the landscape design. Ms. Watt stated that the architecture did not reflect traditional Cape Cod styles, and that the landscaping was not adequate to screen the project. Mr. Shephard stated that landscape considerations should be satisfied.

Ms. Watt asked where the parking spaces had been reduced, noting that removing parking spaces along the front of the building would give more room for vegetative buffering. Mr. McMenimen showed where the spaces had been removed, noting that none had been removed from the front of the building because they were the most heavily used and in proximity to the front door.

Mr. Ralph Crossen, Barnstable Building Commissioner, stated that the town was not concerned any longer about the ice containment system, water use, or recycling. He stated that the project had educational and recreational benefits, and that the Town endorses the proposal. Ms. Taylor asked about the Kennedy Rink; Mr. Crossen described its users.

Ms. Taylor noted that there were still traffic and open space issues. The Subcommittee, staff and the applicant discussed conditioning the open space in a decision.

Ms. Taylor asked what open space offers had been received by the applicant. Mr. Shephard noted that it would be a big problem if the open space restriction did not happen. Mr. Butler, Mr. Fox and Mr. Crossen discussed how they could meet the requirement.

Ms. Taylor asked about the stormwater maintenance plan. Ms. Belfit described what she was looking for in the draft stormwater maintenance plan.

Ms. Taylor asked how landscaping and line-of-site had been left. The applicants and the Subcommittee discussed landscape plan revisions. Ms. Taylor asked about building color, noting that a change in color would help to reduce visibility. The applicant explained why they had chosen the material and color they had proposed. Ms. Taylor asked about elevations of the terraces and landscaping. Mr. Broidrick suggested ivy on the walls of the building.

*July 22, 1999 Subcommittee Meeting:*

Ms. Tana Watt reviewed the Community Character findings and conditions in the draft decision, saying that the architectural design of the building was inconsistent with the RPP. She said that while the proposed buffer to Route 6 had been strengthened and was now adequate, the buffer to the east was still unlikely to adequately screen the project from the east. She noted where additional information was needed in the areas of landscaping and screening, and she discussed exterior lighting and signage.

Mr. Butler discussed landscaping with respect to limiting adverse impacts to the surrounding community and the project location. Mr. McMenimen said that the amount of the trelliswork is being reduced because of concern for the building. Ms. Watt and Ms. Korjeff discussed the relationship between architectural design and landscaping for this project.

Ms. Taylor asked if the applicant had provided a sample of the proposed exterior, and if the color of the building could be changed to something less reflective. Mr. McMenimen discussed the color, the exterior materials and parking. Ms. Watt discussed parking in the 30' setback, and Mr. Butler said plans were being revised to take it out of the setback area. Mr. Shephard asked about topography and future buildings on the adjacent lots. Ms. Taylor asked if we have a cross section from Mary Dunn Road.

Mr. Broidrick noted that the project is located in an industrial park, and that perhaps community character is being overemphasized. Ms. Korjeff explained how the RPP standards apply to this project. Ms. Taylor said that this project has views from neighboring areas into the project. Mr. McMenimen said the landscaping was becoming cost prohibitive. Mr. Butler said that they would provide elevation drawings to show that landscaping will be effective. The applicants discussed town signage requirements and the sign proposed for the project.

Mr. Shephard noted that the issue of visibility from Mary Dunn Road was the concern of the Subcommittee, and that the architectural standards should be consistent with the surrounding industrial park; however, he also concurred with Ms. Taylor that residents on Mary Dunn Road should not have to be impacted by a big structure.

Ms. Taylor asked about using lower poles for the exterior lights. Mr. Butler and Mr. McMenimen provided an explanation.

Mr. Cannon gave the transportation report, noting that there was resolution on the type of mitigation that is appropriate, but the amount of mitigation that was proposed had not been agreed upon. Mr. Cannon said that the applicant would still need to comply with the 20% trip reduction requirement. Mr. Butler said that a land donation made the most sense. Mr. Cannon said that he was comfortable that a land donation could meet the requirements.

Mr. Broidrick asked when the donation would be made, and Mr. Cannon and Mr. Butler agreed that the identification would be prior to applying for a partial Certificate of Compliance.

Ms. McElroy spoke about Natural Resources, saying that the project is not in compliance with the minimum performance standards. She said that the Subcommittee could invoke the flexibility clause, in which case the open space that is provided should be of better quality than the existing open space, or that more open space should be provided in lieu of meeting the open space standard. She noted that open space could be provided in smaller parcels as long as they were contiguous to other protected open space.

Mr. Butler said that they shouldn't be required to meet these requirements because of the nature and location of the project. Ms. McElroy said that the RPP has standards for all projects requiring that habitat fragmentation and site alteration be minimized, and she discussed this site in relation to the RPP.

Ms. Taylor asked if they are leasing the easement area, suggesting that they could use the power line area as a maintained open field for wildlife habitat. Ms. McElroy did not recommend this approach. Mr. Butler said that BYHA is seeking a donation of open space that could be used as a charitable tax deduction. Ms. McElroy said that more open space is also an alternative. Mr. Butler said that on these two issues, they are fine.

Mr. Butler and Ms. McElroy discussed the open space requirement. Mr. McMenimen said that he does not have a concern about additional open space, but he is concerned about having to provide better quality land because it increases the cost of the project. Ms. Taylor asked if there were any potential donors at this time. Mr. Butler discussed potential donors and potential open space language in the decision.

Mr. Shephard noted that there was no distinction in the RPP and that we must apply the same standards to all projects.

Mr. Butler said that the benefits/detriments test could be used to off-set the open space requirement. Mr. Shephard said that the benefits/detriments test was the last and vaguest test, and the least objective. He said that flexibility was good, but that unresolvable differences at the time of a Certificate of Compliance was of concern.

Mr. Butler, Ms. McElroy and the Subcommittee discussed the details of language in the draft decision regarding open space, land donation, cash option and timing.

In response to a question from Ms. Watt, Mr. McMenimen said that 4 to 6 months would be required for construction.

Ms. Watt reviewed a list of community character submittals that are still needed. Mr. McMenimen said he would explore another alternative, and that he would provide a closeup picture of the EIFS and a sample of the steel siding. Ms. Watt discussed local zoning requirements and questioned whether the project would meet town zoning requirements. She noted that staff would need a letter from the Barnstable Building Commissioner confirming that the plan is in conformance with local zoning, which Mr. Butler said he would obtain. Ms. Watt noted additional submittals that were needed in the area of Water Resources. Ms. Watt noted that Mr. Olsen was concerned about using the flexibility clause for this project, and that Ms. Daley was of the opinion that calcium

chloride was defined as a hazardous material under the definition in the RPP and therefore the flexibility clause was necessary.

Ms. Taylor noted the receipt of two letters for the record, one from Beatrice M. Clark, Cummaquid Heights Association, and one from Priscilla Jones.

Mr. John Hendersen, President of the Cummaquid Heights Association, noted that Mary Dunn Road was designed for light traffic use and that traffic should be directed down Route 132. Mr. Butler said that these concerns would be satisfied, and that traffic would be directed down Route 132. Mr. Ernst noted that this should be included as a condition of approval.

The Subcommittee discussed the letter from Priscilla Jones requesting the need for additional public skating for town residents.

*August 5, 1999 Subcommittee Meeting:*

Staff, the applicant and the Subcommittee reviewed the draft decision and made changes to the findings and conditions including:

Findings: ED6, T8, T9, T10 and CC9. Ms. Watt discussed visibility from Mary Dun Road, and suggested that the applicant landscape a portion of the first island of Independence Drive nearest Mary Dunn Road under the flexibility clause. The applicant agreed with this approach.

Conditions: CC2, CC3, CC4, CC8, G4, WM1, WM6, NR5 and delete all references to "trellis".

Mr. Olsen made a motion to delete the detriments reasoning in the benefits/detriments test in the conclusion. Mr. Shephard seconded the motion. The motion was passed 3 in favor to 1 against. Mr. Broidrick made a motion to move the detriments reasoning to the findings. There was no second. Mr. Shephard made a motion to move the benefits/detriments reasoning to the General Findings and reference the flexibility clause. Mr. Broidrick seconded the motion, and it was unanimously approved.

Mr. Butler discussed open space in Condition NR2, asking the subcommittee not to require an extra 1.27 acres or better quality open space, as well as not to require a cash contribution on the 1.27 acres. Ms. Sferra explained the reasoning behind the condition, as well as how the value of the land was determined. They discussed the requirements of the flexibility clause.

The Subcommittee scheduled another subcommittee meeting to consider a revised draft decision and the open space requirement.

*August 16, 1999 Subcommittee Meeting:*

Ms. Watt reviewed changes to the decision relating to the resolution of previously identified issues, including off-site grading on the adjacent Commonwealth Electric site and the submittal of a letter allowing such grading, revised site plans, revised landscaping plans, and the need for staff review of the hazardous materials spill response plan.

The Subcommittee made further changes to Findings G3, G4, G6, WR8, NR 4, NR5, ED6, and Conditions G5, NR1, NR2, CC1, and CC4.

The Subcommittee requested that the applicant obtain a letter from Mr. Crossen, Barnstable Building Inspector, confirming that no Certificate of Occupancy will be issued until the Commission issues a Certificate of Compliance.

The Subcommittee added a Condition related to grading off-site.

The Subcommittee voted to recommend approval of the modified Decision with Conditions to the full Commission.

### JURISDICTION

The NHL Skate project qualifies as a mandatory referral under Section 3(e) of the Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as amended, as a proposed commercial business with new construction having a gross floor area greater than 10,000 sq. ft.

### FINDINGS

Based upon testimony received at the public hearings, application materials submitted by the project proponent, written material submitted by all interested parties, and supporting technical information provided by staff, the Commission voted that the proposed NHL Skate project be approved based upon the following findings:

#### General Findings:

G1. The project consists of the construction of two year-round NHL regulation size skating rinks and associated facilities totaling 75,000 square feet with 250 parking spaces.

G2. The project is located on 9.59 acres of industrially zoned land within Independence Park in Hyannis, Massachusetts. The Town's Commission-approved Local Comprehensive Plan designates Independence Park as a Growth/Activity Center. The project site does not lie within a District of Critical Planning Concern. The project is located in an economic opportunity area (EOA) designated by the Town of Barnstable and the Commonwealth of Massachusetts.

G3. The applicant submitted a letter from Jonathan Ring, Jones & Beach Engineers, dated July 22, 1999, providing calculations for pervious/impervious surface and natural/revegetated landscape. The Barnstable Building Commissioner provided a letter dated August 12, 1999 confirming that the project meets local zoning requirements for the Groundwater Protection Overlay District and the Industrial District.

G4. The applicant has agreed not to request a temporary or permanent Certificate of Occupancy from the Town of Barnstable prior to applying for a final Certificate of Compliance from the Cape Cod Commission, and has submitted to the record a letter from Mr. Butler, representing the applicant, dated August 5, 1999 to that effect.

G5. The applicant intends to file an Approval Not Required (ANR) plan to subdivide the Enoch T. Cobb Trust property (approximately 14.32 acres) into Parcel A (4.73 acres) and Parcel B (9.59 acres) consistent with the site plans hereby approved. The NHL Skate project is to be located on Parcel B.

G6. The applicant states that permission has been obtained from Commonwealth Electric Company to grade a portion of their adjacent property as part of the NHL Skate project. On August 26, 1999, Mr. James Weaver of Commonwealth Electric Company, verbally informed staff that the applicant will need to obtain a letter of permission to perform work in the ComElectric easement, and a license to enter the property to do such work.

G7. The Commission finds that the benefits outweigh the detriments of the project. The Commission finds that the project will provide a recreational resource within the Town of Barnstable, will expand the economic viability of Cape Cod's "shoulder seasons", will provide economic benefits to residents and businesses in the Town and the County, and will provide off-site landscaping to improve community character in the immediate area. In addition, arrangements for donated ice hockey times and instructional skating blocks (an estimated value of \$30,000 per year) have been worked out with the Barnstable Public School System.

Detriments of the project include the construction of a structure that is not consistent with traditional Cape Cod architectural styles, clearing and leveling of a majority of the site with little retention of existing vegetation, an insufficient buffer along the eastern edge of the property to prevent adverse visual impacts on the community, and lack of on-site greenways and corridors.

Through the use of the RPP's flexibility clause, the Commission finds that these detriments are mitigated by the provision of off-site open space and additional on-site or off-site landscaping, and that the interests of the Minimum Performance Standards of the Regional Policy Plan have been protected by alternate approaches.

#### Water Resources Findings:

WR1. The NHL Skate facility falls within several water classification areas.

It is within a Zone of Contribution to 7 public supply wells: 5 are located to the south in the Town of Barnstable, and 2 are due east in Yarmouth. The project is directly upgradient from a shallow surface water body, Israel Pond, and within the recharge area to a nitrogen sensitive marine embayment, Lewis Bay. Finally, portions of the property are identified as potential future water supply areas, however the existing development surrounding the area greatly limits this potential.

WR2. The project will be served by the Barnstable municipal wastewater treatment facility, therefore Minimum Performance Standard (MPS) 2.1.1.2.A.1, relating to nitrogen loading, does not apply. MPS 3.2.1 states that sewage treatment facilities may be used for projects located in growth/activity centers. However, the project is subject to MPS 2.1.1.C.1 and must address marine impacts since wastewater discharged at the treatment facility is still within the Lewis Bay area.

WR3. The project will use calcium chloride as part of the ice making system, which use, as proposed, does not pose a risk to water quality. Calcium chloride in its dry form is a hazardous material as defined by the Regional Policy Plan and therefore is regulated by MPS 2.1.1.2.A.2 and MPS 4.2.2.3. However, because the chemical will be used in a dilute brine solution, the relatively limited amounts of material and the low likelihood of adverse environmental impacts as discussed below, the Cape Cod Commission finds that the interests protected by MPS 2.1.1.2.A.2 will be achieved.

WR4. The refrigerant system that will be used by NHL Skate is manufactured by CIMCO. In over 4,000 rink installations, CIMCO reports that a total system brine loss has never occurred. To alert rink operators to any leaks in the refrigerant piping, a gas leak detector will be used. The leak detection controller has a digital display for gas value indication. A multicolor LED and audible alarm will indicate any loss in pressure.

WR5. The brine will be circulated through a plastic piping system that is laid in the sand, but is underlaid with an impermeable vapor barrier that extends horizontally underneath the ice surface and vertically at the ice perimeter. In spite of this plastic barrier system, the remote possibility exists that the brine could leak and would leach directly to the groundwater underlying the building. Potential impacts were evaluated based on literature pertaining to calcium chloride used for highway deicing. The rink will use 2000 gallons of brine in a 21.5% solution of calcium chloride; the estimated chemical dry weight equivalent is approximately 3,600 pounds. Highway deicing typically uses 300 lbs per lane mile for each storm, or 1,200 lbs per 4 lane highway per storm. With 3 storms per year, 3,600 pounds of calcium chloride might be applied annually to the stretch of Route 6 adjacent to the project.

WR6. Once calcium chloride is introduced to the water it will disassociate into calcium and chloride. Potential water quality related impacts from the chloride component of the deicing chemical include a reduction in water quality to public and private wells, a potential lowering of DO due to a density stratification caused by the introduction of salty water, and potential changes in vegetation species.

Staff estimates that if all of the brine were released in one event, groundwater directly beneath the site would dilute the brine to a concentration that was less than 250 mg/l. 250 mg/l is the Federal and State drinking water standard for chloride as well as the Massachusetts Surface Water Criteria. As the water moves off the site, it would become increasingly diluted as it mixed with downgradient sources. It is the opinion of staff that in the unlikely event of a complete brine release, the calcium chloride would not adversely impact water supplies.

Groundwater modeling conducted by the Nature Conservancy estimates that flow is towards the southeast towards Israel Pond. This pond is very shallow, and in fact, under low water table conditions becomes semi-perched, or disconnected from the underlying aquifer. Low dissolved oxygen is not likely to occur since this pond is mixed throughout the year by wave action. This mixing keeps sufficient dissolved oxygen present in the water. A potential change in vegetation species due to the introduction of a salty slug of

water is unknown, but it is unlikely since it would be a one time event, probably similar to the salting experienced by a noreaster.

WR7. Three monitoring wells will be installed on the property due to the abundance of sensitive water resources in the area. The wells will serve two purposes: to develop a more exact water table contour map of the area, and as monitoring points in the unlikely event of a leak.

WR8. The stormwater design proposed for the project meets MPS 2.1.1.6 of the RPP and the State's stormwater management policy criteria. These policies require pretreatment for stormwater generated in high risk areas, such as commercial parking lots. The use of hooded catch basins with deep sumps and vegetative detention basins, as proposed, will greatly improve pretreatment of stormwater. Due to the sensitive nature of the project location, shutoff valves will be installed in the drainage pipes at every outlet to the grassed ponds to ensure effective isolation while providing stormwater storage capacity within the catch basins themselves. The applicant has provided a storm-water maintenance plan and a hazardous material contingency plan to protect water quality in the event of a hazardous materials release outside of the building.

#### Natural Resources and Open Space Findings:

NR1. The project is located within a Significant Natural Resource Area (SNRA) as mapped by the Cape Cod Commission, as well as a Zone II. The property consists of unfragmented forest habitat. A natural resources inventory was submitted indicating that the site does not contain unusual plant or wildlife species. According to the natural resources inventory there are no wetlands or vernal pools on the site.

NR2. The Natural Heritage and Endangered Species Program (NHESP) submitted a letter indicating that they do not anticipate site related development to adversely impact rare or endangered species; no additional wildlife surveys are required.

NR3. The project does not comply with MPS 2.4.1.2 which requires that development minimize clearing of vegetation and alteration of natural topography, and MPS 2.4.1.3 which requires that projects limit fragmentation of wildlife and plant habitat through the maintenance of greenways and corridors. The plans show clearing and significant grading of nearly the entire site. The proposal retains no wildlife corridors onsite, and it is unlikely that any of the landscaped areas within the project area would provide wildlife habitat.

NR4. The project is required to provide 6.23 acres of open space to meet the Regional Policy Plan requirements. The project proposes to meet this requirement entirely off-site, as allowed by the Regional Policy Plan. An off-site open space proposal has not been submitted; the open space proposal should consist of a parcel located within an SNRA and one which provides natural resource values equal to or greater than those values found on-site. The Commission urges the proponent, if at all possible, to locate the open space within the Town of Barnstable.

NR5. The Flexibility Clause permits the Commission to find that a project complies with the intent of the standards of the RPP if it can be demonstrated that the interests of a particular standard are met by alternate means or through mitigation. Consequently,



the Commission finds that in order to comply with the intent of MPS 2.4.1.2 and 2.4.1.3, and the intent of Goal 2.4.1, the applicant shall provide permanently protected off-site open space of a natural resource value equal to or greater than the natural resource value of the habitat on the site prior to development. Open space of 6.23 acres with a natural resource value equal to or greater than the existing habitat may include, for example, more mature forest than what currently is present on the site, or forest which contains rare species habitat, or contains surface water or wetlands, or demonstrates a habitat type unique to Cape Cod, or is contiguous to existing permanently protected open space, or is provided in one entire piece.

Economic Development Findings:

ED1. It is anticipated that the project will employ ten to fifteen year-round employees with a total annual payroll of \$350,000.00. Several of these positions will be full-time, and will include a rink manager, hockey coordinator, figure skating/skating program coordinator and administrative staff and personnel.

ED2. It is estimated that sales and property taxes will total \$150,000.00 per year.

ED3. The project will allow Barnstable residents who currently travel to facilities in Bourne, Falmouth, Dennis, and Orleans to utilize a facility in Barnstable, with an economic savings in fuel and travel costs of approximately \$103 per family per year, and approximately \$61,800 per year for residents in the Town of Barnstable.

ED4. The property is owned by the Cobb Trust, which was established for the benefit of the school children of the Town of Barnstable. Accordingly, the annual receipt of monies in excess of \$30,000.00 by the Cobb Trust as rent will have direct and immediate benefits to the school children of the Town of Barnstable.

ED5. The NHL Skate facility will attract participants from off-Cape who will require food and lodging during their stay. A majority of these events will occur during the "shoulder season", particularly during the months of November, December, February, March and April, providing an economic benefit consistent with Other Development Review Policy (ODRP) 3.3.2.

ED6. As confirmed by a letter from Russell J. Dever, Barnstable Superintendent of Schools, dated May 27, 1999, arrangements for ice hockey times and skating blocks have been worked out between the Superintendent of Schools and NHL Skate. NHL Skate states that they will donate one hour of ice time per day to the Barnstable Public Schools for use in the physical education program, a value of approximately \$30,000.00. The NHL Skate facility will contain a "Center of Excellence" which includes classrooms, meeting space and audio-visual equipment.

Transportation Findings:

T1. NHL Skate at Hyannis proposes to construct and operate a 75,000 square foot recreational ice rink facility consisting of two ice surfaces, 750 seats, 8 locker rooms, pro shop, food concession, office and lobby space on Mary Dunn Road in Hyannis, MA. An existing driveway, Enoch Cobb Way, on the west side of Mary Dunn Road is proposed to provide access to the site. Mary Dunn Road is a regional road as defined in the Regional

Policy Plan (RPP). The project will be located in Independence Park, which is a certified growth center within the Town of Barnstable.

T2. The trip generation for this project is based on Institute of Transportation Engineer (ITE) and traffic data submitted by the proponent for a 750 seat ice rink. Averaging the estimated peak hour uses from ITE and an existing NHL Skate ice rink in Exeter, New Hampshire, the ice rink facility is estimated to generate 71 vehicle trips during the highest peak hour (the PM peak hour) and 600 daily vehicle trips. The peak hour trip generation estimates submitted by Barnstable Youth Hockey were withdrawn from consideration. The trip generation estimates submitted by Barnstable Youth Hockey were not consistent with ITE or the traffic counts from the existing NHL Skate Facility in New Hampshire. The Commission concludes that these trip generation estimates were based on full participation of recreational activities at the facility, which would not represent average peak hour conditions.

T3. The traffic impacts from this project have been assessed in accordance with MPS 4.1.1.3 which states that if a Development of Regional Impact meets the 20% trip reduction goal, then 20% of the site generated traffic can be subtracted from the anticipated traffic impact locations. Based on MPS 4.1.1.3 the project's peak hour traffic impacts are 57 afternoon peak hour trips.

T4. MPS 4.1.1.1 threshold for traffic impacts within a certified growth center are 50 peak hour trips generated by the development. The proponent's traffic engineer estimates that the trip distribution of site generated traffic will be 30 percent north on Mary Dunn Road and 70 percent south on Mary Dunn Road. To ensure the 70 percent trip distribution south of Mary Dunn Road, the proponent has agreed to direct regional traffic in this direction, though the use of signs, specified truck routes and informational directions. Distributing the 57 afternoon peak hour trips over the roadway network indicates the roadway network from the site driveway to Route 132 would be the most heavily impacted. It is anticipated that the development would generate 40 new vehicles trips during the afternoon peak hour on this roadway network. The 40 vehicle trips is below the threshold of 50 vehicle trips in a certified growth center. Therefore, mitigation is not required of this project due to traffic congestion impacts.

T5. The intersection of Mary Dunn Road and Route 6A is not located within a certified growth area, therefore the DRI review threshold is 25 vehicles per peak hour. The Mary Dunn Road/Route 6A intersection would experience an increase of 17 vehicle trips during the same afternoon peak hour. The 17 vehicle trips are below RPP review thresholds, thus no analysis or mitigation is required at this intersection.

T6. The traffic impacts listed above are calculated based on typical daily uses of the facility, such as hockey practice, hockey games, public skating, figure skating practices, etc. However, traffic impacts from the peak periods of operation have been addressed by the proponent. As stated in the DRI application, the proposed 750 seat facility may reach capacity on a number of special events. Based on the expected special event trip generation outlined in the DRI application, the project has the capacity to generate 252 vehicle trips per hour during a special event. The proponent has worked with the Town of Barnstable Police Department to complete a traffic management plan for these special

events. The traffic management plan includes police officer control at the site driveway and any additional intersections as determined by the Barnstable Police Department for the special events.

T7. MPS 4.1.1.5 requires all Developments of Regional Impact (DRIs) access/egress locations with public ways to meet Massachusetts Highway Departments (MHD) and American Association of State Highway Transportation Officials (AASHTO) standards for safe stopping sight distance. Based on field observations the stopping sight distances are adequate based on AASHTO and MHD standards.

T8. The Town of Barnstable requires 250 parking spaces to be provided on site and the site plan shows 250 parking spaces. The proposed parking is consistent with the Regional Policy Plan Minimum Performance Standard 4.1.1.15.

T9. Regardless of project size, all Developments of Regional Impact (DRIs) are required to reduce site generated traffic by 20 percent (MPS 4.1.2.1). The total vehicle trips for the development is 600 daily vehicle trips. The proponent must reduce the average daily automobile trips by 20% or 120 trips.

The proponent has agreed to a trip reduction plan that is anticipated to reduce 12% of the average daily traffic. The proponent has come forward with a plan to reduce the other 8% of average daily traffic to comply with MPS 4.1.2.1. That mitigation plan consists of a donation of vacant developable land to a conservation trust. MPS 4.1.3.2 allows vacant developable land as an acceptable mitigation alternative, however at this time the land has not been identified. Once the parcel of land is identified, the proponent will submit a concept plan showing that the parcel is of sufficient size to be developable and that the expected traffic generation from that parcel will meet MPS 4.1.2.1.

#### Solid and Hazardous Waste Management Findings:

WM1. According to the DRI application, the site will be on sewer. The zamboni machines will be powered by propane gas and major servicing of them will be done off-site. To create ice, the facility proposes to use an ammonia-based coolant system. The ammonia is in a gaseous state and is used to cool a water-based calcium chloride brine held within rubber tubing throughout the rink's surface under the ice sheet.

WM2. Based on the DRI information, it is likely that the construction phase will involve on-site storage and handling of paints, solvents and similar products.

WM3. According to maps produced for the 1996 Regional Policy Plan, the site is within a Wellhead Protection District (Zone II). As such, the requirements of MPS 4.2.2.3 apply to this project. Calcium chloride's prime hazard (as a pure chemical, undiluted) is that of corrosivity to human tissues: contact with skin and particularly mucus membranes will cause irritation or chemical burns. The dilute brine is also considered to be a hazardous material within the definition of the Regional Policy Plan because it retains the characteristic of corrosivity, although to a lesser extent than pure calcium chloride. Further research by the Commission's Water Resources Office indicates that:

- a. Calcium chloride is a hazardous material as defined by the Regional Policy Plan.

- b. Calcium chloride is a chemical compound used by many entities, including Town DPWs as an alternative winter road treatment in place of salt (sodium chloride).
- c. Calcium chloride is currently used as a dust suppressant on unpaved roads.
- d. According to the DRI information, CaCl<sub>2</sub> (even as a pure chemical) is not listed as a chemical or compound of concern under statutes or regulations including the Clean Water Act or the Massachusetts Hazardous Materials List under 310 CMR 40.00, and
- e. The brine to be used for this project is a relatively weak solution (about 21.5% CaCl<sub>2</sub>).

WM4. The Regional Policy Plan contains the Flexibility Clause which states that the Commission may modify the application of Minimum Performance Standards. It requires that the Commission "must make a finding that the proposed use will not be more detrimental to the protected resource than would be allowable under the applicable Minimum Performance Standard." (pg. 6 of the RPP). For the following reasons, the Commission finds that the proposed use will not be more detrimental to the protected resource than would be allowable under the applicable Minimum Performance Standards:

- a. The hazardous material in question, calcium chloride, is to be utilized in a dilute, brine form. It is not shipped to or used on the site in a pure form.
- b. The use of calcium chloride as proposed is not expected to create an adverse environmental impact because of the limited amounts to be utilized.
- c. Calcium chloride (the pure chemical) is currently applied to Cape roads as a salt substitute (for sodium chloride) and dust suppressant.
- d. Calcium chloride's primary hazard is corrosivity to human tissues. It is not, however, listed as a chemical of concern according to statutes or regulations including but not limited to the federal Clean Water Act and Massachusetts Hazardous Materials List (310 CMR 40.00). As such, the chemical, particularly in brine form, poses little risk to groundwater given the project's proposed usage.

WM5. The DRI application materials indicate the brine coolant system will be monitored by a 24-hour gas leak-detection system.

Heritage Preservation/Community Character Findings:

CC1. The project site is not located within an historic district and is not adjacent to any identified historic structures. Massachusetts Historical Commission determined on April 20, 1999 that the proposed project is unlikely to affect significant historic or archaeological resources.

CC2. The project will clear and level nearly the entire site, essentially eliminating all of the natural grade and vegetation and opening the project to views from Route 6 (to the north) and the surrounding community to the east. At the eastern buffer to the project, the applicant proposes a terraced keystone retaining wall planted with shrubs and, at the top along the parking lot edge, a privet hedge maintained at 10' in height. The landscape plan also includes landscaping at the front of the building.

CC3. In an area without distinctive architecture, the RPPs MPS 6.2.2 requires that the mass, scale, roof pitch and basic proportions of a building be consistent with traditional

Cape Cod architectural styles. The proposed NHL Skate building does not incorporate traditional architectural forms or materials into its design. While the entrance area includes large windows and a small gable roof which add some variety to the front facade, the majority of the proposed building is sided with vertical metal siding without windows or detailing and has a flat roof and is thus not consistent with traditional Cape Cod architectural forms. The Commission finds that it is appropriate to invoke the flexibility clause of the Regional Policy Plan in this case. Based on the nature of the proposed use and the necessity of using non-traditional exterior materials, the structure's location within an industrial park, and the land-locked nature of the proposed site, the Commission finds that the interests protected by MPS 6.2.2 can be equally achieved by providing improved screening either on-site or off-site to reduce the visibility of the proposed project or to reduce the visual impact of other features of the industrial park which are inconsistent with the Cape's traditional character. Such improved screening must be provided either along the eastern border of the project site, or on the Independence Drive median strip nearest the intersection with Mary Dunn Road. The Commission finds that vegetated screening on the Independence Drive median strip near Mary Dunn Road will reduce the visual impact of the industrial park on Mary Dunn Road and make the industrial park entrance more consistent with the otherwise traditional character of the roadway. Vegetated screening along the median strip shall include trees, shrubs, perennials and flowers and shall be maintained in perpetuity so long as the property is used in conformance with this Development of Regional Impact Decision.

CC4. MPS 6.2.1 requires that the height and scale of a new building be compatible and harmonious with its site. It also requires that no new development include a single structure which has a footprint greater than 50,000 square feet unless the applicant demonstrates that the building design and screening methods prevent its having adverse visual impacts on the community. The height difference between the proposed rinks and the concession/locker room area make the building appear to be composed of several massings, the larger massings having a footprint of approximately 40,000 square feet. These building design features and the improved screening discussed in the previous finding will prevent the building's having adverse visual impacts on the surrounding community.

CC5. MPS 6.2.3 requires that all new development provide adequate landscaped buffers in order to limit adverse visual impacts on the surrounding community. As proposed on the Landscape Plan (Sheet L2), dated 1/29/99 and last revised on 8/31/99, landscaping will adequately buffer regional views from Route 6 within three years. At the present time, the undeveloped industrial lots to the east of the project act as a buffer to Mary Dunn Road (a regional roadway). Although the proposed landscaping will limit adverse visual impacts on the surrounding community to the east, based on section drawings provided by the applicant, the project would be visible from Mary Dunn Road after the adjacent lots are developed. The improved screening discussed in the previous findings will prevent the project's having adverse visual impacts on the surrounding community.

CC6. MPS 6.2.8 prohibits the use of internally illuminated signage and RPP Goal 6.2 calls for consistency with the Commission's Technical Bulletin 96-001, Design Guidelines for Cape Cod. The applicant has submitted information with details regarding the size, materials and method of illumination for the proposed exterior signage. A 6 foot by 3 foot

wooden sign will be located at the entrance to the project, and will be externally lit from the front. No exterior wall signs will be mounted on the building. These plans are consistent with Town by-laws and with the Regional Policy Plan.

CC7. The applicant has agreed to provide a two-year warranty for replacement of plant materials, and has stated that they will be responsible for the maintenance of all landscaped areas on-site and off-site.

*Exterior Lighting:*

CC8. The DRI application materials submitted included an exterior lighting plan showing iso-footcandle diagrams. On August 18, 1999, the Commission received additional site plans for the proposed NHL Skate facility, including another exterior lighting plan (Sheet L1) with the latest revision dated August 26, 1999.

CC9. The parking lot light poles selected are 16 foot poles with 3 foot high footings (a total of 19 ft.) together with shoebox style fixtures using metal halide luminaires. This is in conformance with Technical Bulletin Standards 2.3, 2.6 and 2.4, including the maximum cutoff requirements in Standard 2.4.

CC10. The wallpack lights selected are to be mounted at 14 feet. This is in partial conformance with Standard 2.7.

CC11. On August 24, 1999, the Commission received manufacturers' catalog sheets for the pole-mounted lights. Similar information on wall packs was provided on July 12, 1999. Based on this information, it appears the wall packs are in conformance with Standard 2.7, particularly the requirement for light cutoff of 70 degrees from vertical.

CC12. The revised exterior lighting plan (Sheet L1) received by the Commission on August 18, 1999 shows footcandle levels (maintained condition) between 1.0 and 5.71. No initial condition plan was submitted as required by Section 3.0 of the Technical Bulletin. However, the lighting levels shown are in conformance with Technical Bulletin Standard 2.8.

### CONDITIONS

The Commission has reviewed the project against the Minimum Performance Standards in the Regional Policy Plan and has determined that the project, as conditioned below, will comply with all Regional Policy Plan Minimum Performance Standards.

General Conditions:

G1. The site shall be developed as shown on the Overview Site Plan, Sheet C2 (dated 1/29/99, last revised 8/31/99), the Site Plan, Sheet C3 (dated 1/29/99, last revised 8/31/99), the Grading, Drainage & Erosion Control Plan, Sheet C4 (dated 3/31/99, last revised 8/31/99), the Lighting Plan, Sheet L1 (dated 3/31/99, last revised 8/26/99), and the Landscape Plan, Sheet L2 (dated 1/29/99 and last revised 8/31/99). The building shall be constructed as shown on the Proposed Exterior Architectural Elevation drawings entitled "Family Ice Enterprises, L.L.C., Barnstable, MA", Sheets A3.1 (dated 12/04/98), A3.2 (dated 3/22/99) and A3.3 (dated 3/22/99). All exterior signage shall be externally illuminated.

G2. Prior to applying for a building permit from the Town of Barnstable for the project, the applicant shall obtain a partial Certificate of Compliance from the Cape Cod Commission. This shall apply to Conditions that are so noted. The applicant shall notify the Commission staff of the intent to seek a partial Certificate of Compliance at least 30 days prior to applying for a building permit. Unless otherwise stated, all conditions of this decision shall be met prior to the issuance of a final Certificate of Compliance.

G3. A final Certificate of Compliance is required prior to applying for a Certificate of Occupancy for the NHL Skate project. Prior to receiving a permanent or temporary Certificate of Occupancy for the proposed project, the applicant shall obtain a partial or final Certificate of Compliance from the Cape Cod Commission. Unless otherwise stated in this decision, the project shall be constructed in accordance with final plans listed elsewhere in this decision and all conditions of this decision shall be met prior to issuance of a partial or final Certificate of Compliance for the proposed project.

G4. Prior to applying for a final Certificate of Compliance, the applicant shall notify Commission staff of the intent to seek a Certificate of Compliance at least 30 days prior to the anticipated date of occupancy. Such notification shall include a list of key contact(s) for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition within seven (7) business days of such notification and inform the applicant of any deficiencies and corrections needed. The applicant understands that the Commission has no obligation to issue a Certificate of Compliance unless conditions are complied with or secured consistent with this decision.

G5. Town-approved ANR plans consistent with the site plans hereby approved shall be submitted to the Cape Cod Commission prior to applying for a partial Certificate of Compliance.

G6. Prior to applying for a partial Certificate of Compliance, the applicant shall submit a letter of permission and license from Commonwealth Electric Company granting permission to enter and grade a portion of their adjacent property as part of this project.

Water Resources Conditions:

WR1. The applicant shall provide \$240 as a one time contribution to be used in the assessment of critical nitrogen loading for Lewis Bay.

WR2. The applicant shall install three monitoring wells as indicated on the site plan. The wells shall be installed flush mounted, within a locking curb box to assure long term use. After installation wells shall be properly developed and a measuring point established relative to a NGVD benchmark. Water table elevations shall be measured and a water table map prepared to establish the local groundwater flow direction. The final water table map shall be submitted to the Barnstable Water Department, Town Board of Health and the Cape Cod Commission for their information.

WR3. Drainage shutoff valves shall be installed prior to applying for a final Certificate of Compliance. A stormwater management plan that addresses operation and long term

maintenance of all drainage structures shall be implemented prior to applying for a partial Certificate of Compliance. A hazardous material contingency plan that addresses releases outside of the building shall be implemented prior to the issuance of a final Certificate of Compliance. A copy of the completed and signed stormwater management plan and hazardous material contingency plan consistent with the draft plans shall be submitted to the Commission prior to an application for a final Certificate of Compliance.

WR4. A letter from the Town of Barnstable verifying that the project has Town approval to connect to the municipal sewer system shall be submitted prior to applying for a partial Certificate of Compliance.

Natural Resources and Open Space Conditions:

NR1. Prior to applying for a partial Certificate of Compliance, the applicant shall identify and provide a plan depicting the required open space to be protected to meet the traffic mitigation requirements as discussed in Finding T9 and Condition T2, as well as the method of permanent protection, and this open space proposal shall be approved by Commission staff.

NR2. Prior to applying for a final Certificate of Compliance, the applicant shall identify and provide a plan depicting the required open space to be protected in conjunction with the project and discussed in Finding NR5, as well as the method of permanent protection, and this open space proposal shall be approved by Commission staff. The open space requirement for this project includes 6.23 acres of open space containing natural resource values equal to or greater than the natural resource values existing on-site, as defined in Finding NR5, to meet the Regional Policy Plan's Open Space requirement and to compensate for the lack of compliance with MPS 2.4.1.2 and 2.4.1.3.

The Commission encourages the applicant to address this requirement well in advance of the application for a final Certificate of Compliance, given the time required to review, approve, and record the open space provision.

NR3. Commission staff shall approve all proposed open space parcels. At a minimum, the parcel(s) donated to meet the Regional Policy Plan's open space and natural resources requirements shall be wooded and located within a Significant Natural Resource Area. The parcel donated to meet the Regional Policy Plan's traffic mitigation requirement shall be a vacant, developable parcel of land.

NR4 Prior to applying for a final Certificate of Compliance, the applicant shall permanently protect all required open space parcel(s) to comply with Conditions NR1 and NR2 by one of the following methods:

A. The applicant may donate the required open space to the Town of Barnstable, the Barnstable Land Trust, or other qualified land trust to be held solely for conservation purposes, and provide proof of the recording of said donation prior to applying for a final Certificate of Compliance from the Cape Cod Commission.

B. As an alternative, the applicant may work with the Barnstable Land Trust or the Town of Barnstable to identify open space parcel(s) to meet the open space requirement, and pay the Barnstable Land Trust or the Town of Barnstable for the purchase of such open space parcel(s) for permanent conservation.



C. As an alternative, the applicant may make a cash contribution to the Barnstable Land Trust or the Town of Barnstable in lieu of providing permanent open space. In this alternative, the applicant shall provide a cash contribution at the rate of \$1.50 per sq. ft., or \$407,068 (6.23 acres x \$1.50).

NR5. Should the applicant fail to meet Condition NR4 prior to applying for a final Certificate of Compliance from the Commission, the applicant shall place \$407,068 into an escrow account of a form and content acceptable to Commission Counsel, to be held for a period of twelve months. The Cape Cod Commission may expend such funds for purchase of open space if the requirements set forth in Condition NR4 are not met within six months of issuance of the final Certificate of Compliance.

Economic Development Conditions:

ED1. Prior to receiving a final Certificate of Compliance, the applicant shall provide a report to the Commission regarding the number of Cape Cod construction companies and workers, as well as regular employees, employed as a result of the project. This report shall also include the net increase in jobs by type and the salary ranges for the positions.

Transportation Conditions:

T1. The applicant shall implement a trip reduction plan that consists of the following:

- appointing the facility manager or his designee as on-site ridesharing program coordinator. The ridesharing program coordinator shall be responsible for continuously providing information on carpool/vanpool opportunities, in-house support and sponsorship of matching services, ridesharing promotions, financial incentives, preferential parking for car-poolers, accommodation of schedules for car-poolers, and the guaranteed ride home program.
- distributing information regarding carpooling and its benefits to employees and patrons of the ice rink facility.
- a designated area where car-pool information will be posted.
- semi-annual articles in the Barnstable Youth Hockey Association newsletter listing interested car-poolers along with the program coordinator name and telephone number.
- a guaranteed ride home program in case of an emergency for registered car-pool employees.
- designating six preferential parking spaces (in front of the building) for employees or patrons that carpool.
- a financial incentive program to encourage employees to rideshare.
- provide secure bicycle storage areas to accommodate up to 10 bicycles for both employees and patrons.
- an incentive program for those employees who bike to work.
- provide on site services to decrease employee midday tripmaking.

T2. Identify and donate a parcel of land, in excess of RPP open space requirements, of sufficient size and development potential, to offset 48 daily trips. The proponent must demonstrate that the parcel is developable and estimate the potential traffic generation from the parcel. This parcel of land will be identified and approved by staff prior to an application for a partial Certificate of Compliance.

T3. NHL Skate shall be responsible for police details to control traffic during special events as required by the Barnstable Police Chief or his/her designee.

T4. To ensure the 70 percent trip distribution south on Mary Dunn Road, the proponent has agreed to the following:

- install a directional sign to Route 6 at the exit driveway. The sign will direct motorists to travel south on Mary Dunn Road from the project site to Route 6.
- delivery trucks will be instructed to use Route 6 to Route 132 to Hadaway Road to Independence Drive to Mary Dunn Road.
- anyone seeking directions to the NHL Skate facility shall be directed to use the regional roadway system, specifically
  - East - Route 6 to Route 132 to Hadaway Road to Independence Drive to Mary Dunn Road.
  - West - Route 6 to Route 132 to Hadaway Road to Independence Drive to Mary Dunn Road.
  - South - Route 28 to Route 132 to Independence Drive to Mary Dunn Road.

Solid and Hazardous Waste Management Conditions:

WM1. Prior to issuance of a final Certificate of Compliance, the applicant shall submit for Commission staff review and approval plans which describe their efforts to minimize their hazardous waste generation through source reduction, reuse, material substitution, employee education and recycling. These plans shall include methods to evacuate the building in case of a fire or other emergency.

WM2. Prior to issuance of a Building Permit, the applicant shall submit to the Commission verification that construction contractors are familiar with the requirements of the Hazardous Waste regulations, and that they will properly dispose of any hazardous wastes generated during construction.

WM3. During the construction phase of the project, contractors shall be limited to not more than Household Quantities of Hazardous Materials or Hazardous Wastes as defined in the 1996 Regional Policy Plan which may be stored or handled on site at any one time.

WM4. On-site maintenance of zamboni machines shall be limited to greasing of fittings or changing of empty propane tanks for full ones. All other maintenance or repairs shall be performed off-site.

WM5. Post-construction, the on-site use, generation, treatment, handling, storage or disposal of Hazardous Materials and/or Hazardous Wastes shall be limited to propane gas, ammonia refrigerant, ice marking paint and calcium chloride (solid and brine forms). Excluded from this limit are other Hazardous Materials and/or Hazardous Wastes used by employees in the workplace in Household Quantities as defined by the 1996 Regional Policy Plan.

WM6. Emergency power generation and/or building heating, if needed, shall be provided using gas. On-site storage of fuel oil for these or other purposes is prohibited.

WM7. Construction and operation of the facility shall be in conformance with Article 39 of the Barnstable Town Ordinances.

Heritage Preservation/Community Character Conditions:

CC1. The applicant shall construct the project sign as described in a letter (with attached photograph) from Mr. Rick McMenimen, President, NHL Skate, dated July 26, 1999. The sign shall be externally illuminated and shall be constructed of wood, as will any accessory support structures.

CC2. Prior to applying for a partial Certificate of Compliance, the applicant shall obtain Commission staff approval of a landscape plan for improved on-site or off-site vegetative screening in conformance with this decision. Prior to the issuance of a final Certificate of Compliance, the applicant shall landscape the site in accordance with the approved Landscape Plan (Sheet L2), dated 1/29/99 and last revised on 8/31/99, and the approved on-site or off-site vegetative screening plan. Such landscaping shall include the landscaped buffer to Route 6 and other site perimeter buffers, parking lot plantings, plantings adjacent to the building, and improved on-site or off-site vegetative screening as approved by Commission staff in accordance with Finding CC3.

CC3. The applicant shall be responsible for on-site and off-site landscape maintenance, including mulching, watering, pest management, fertilization and routine maintenance as detailed on the Landscape Plan (Sheet L2), dated 1/29/99 and last revised on 8/31/99. Prior to an application for a final Certificate of Compliance, the applicant shall provide documentation identifying the person/persons responsible for such maintenance and their qualifications, and a signed affidavit from the person(s) responsible verifying receipt of the approved Landscape Plan (Sheet L2), dated 1/29/99 and last revised on 8/31/99. In addition, the applicant shall submit a fully executed 2-year replacement warranty on all plant materials prior to an application for a final Certificate of Compliance.

CC4. Approved off-site landscaping shall be maintained by the applicant in perpetuity so long as the property is used in conformance with this Development of Regional Impact Decision.

*Lighting:*

CC5. The project's exterior lighting design shall be in conformance with MPS 6.2.7, MPS 6.2.8 and Technical Bulletin 95-001, in particular Section 2.0.

CC6. The exterior lighting design shall be coordinated with the proposed landscaping and shall be sensitive to topography.

CC7. Prior to issuance of a final Certificate of Compliance by the Commission, Cape Cod Commission staff shall verify in the field the types, mounting heights and light levels of exterior fixtures. If, based on in-the-field verification, the light levels, fixture types and/or mounting heights are found not to be in compliance with MPS 6.2.7 and/or Technical Bulletin 95-001, the applicant shall modify the exterior lighting design as may be recommended by the Cape Cod Commission or Commission staff. Such modification shall take place prior to issuance of a final Certificate of Compliance. The applicant shall also submit plans and/or other technical information relative to the modification

requirements as needed to bring the exterior lighting design into conformance with MPS 6.2.7, MPS 6.2.8 and Technical Bulletin 95-001 prior to issuance of a final Certificate of Compliance.

CC8. Billboards, off-site signage (except approved directional signage) and internally-illuminated or flashing signs are prohibited.

### CONCLUSION

Based on the findings above, the Cape Cod Commission hereby concludes that the benefits of the proposed project outweigh the detriments.

As conditioned above, the project is consistent with the Minimum Performance Standards in the Regional Policy Plan, the Town of Barnstable zoning bylaws and the Barnstable Local Comprehensive Plan.

The Commission hereby grants NHL Skate at Hyannis a Development of Regional Impact approval with Conditions.

Thomas Broidrick  
Tom Broidrick, Chairman

9/9/99  
Date

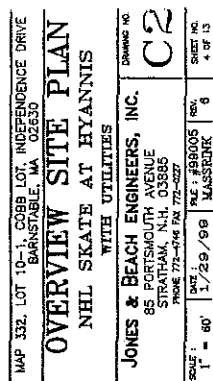
### **Commonwealth of Massachusetts**

Barnstable, ss.

Subscribed and sworn to before me this 9<sup>th</sup> day of Sept 1999  
Katharine L. Peters  
Name, Notary Public

My commission expires:





DATE: 9/9/99

3	4/20/99	ISSUE FOR SITE REVIEW	285
2	3/17/99	REVISE DRAFTING	284
1	2/22/99	ISSUED FOR REVIEW	284
5	8/21/98	REVISE UNDERGROUND BLENDING	282
5	8/28/98	REVISE PER DEC COMMENTS	282
461	DATE	REVISION	281

GRAPHIC SCALE

RETURNS/SHOWS CLOSING	1	PROPOSED TENDER HANDLE	1
SLOPED GRANITE CURBING	1	PROPOSED TENDER LINE	1
STANDARD GRANITE CURBING	1	EXISTING TENDER LINE	1
CASTING CONTOURS	1	EXISTING SEAL LINE	1
PROPERTY LINES	1	EXISTING SEAL LINE	1
LIMITS OF EXCAVATION	1	PROPOSED SIDEWALK	1
PROPOSED SEWER LINE	1	PROPOSED CATCH BASIN	1
PROPOSED SEWER LINE	1	EXISTING CATCH BASIN	1
PROPOSED GAS LINE	1	EXISTING UTILITY MARKS	1
PROPOSED WATER VALVE	1	EXISTING ELECTRIC HANDLE	1
PROPOSED MISCANT	1		

[illegible]