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CAPE COD
COMMISSION

CAPE COD COMMISSION
DEVELOPMENT OF REGIONAL IMPACT (DRI) DECISION

Date:	September 28, 2023
Project:	Yarmouth Riverwalk Park (CCC File No. 22031)
Project Applicant/ Property Owner:	Town of Yarmouth
Project Location:	669 Route 28, Yarmouth 0 Nearmeadows Road, Yarmouth
Assessor's ID:	Map 32 Parcel 122 Map 24 Parcel 92
Title Reference:	BCRD Book 4985 Page 181 BCRD Book 5742 Page 175
Subcommittee:	Committee on Planning and Regulation

SUMMARY

Pursuant to a vote of the Commission at its meeting on September 28, 2023, the Cape Cod Commission ("Commission") hereby grants Development of Regional Impact ("DRI") approval, with Conditions, for the "Yarmouth Riverwalk Park Project," to improve the former Yarmouth Drive-In Theatre at 669 Route 28 into a public park with a large central event space and an elevated boardwalk loop over Lewis Pond salt marsh areas west of the Parkers River.

FINDINGS

F1. The Project is proposed to utilize two Town-owned properties to provide accessible active and passive recreation to the public within a natural setting. Planned improvements to redevelop the properties are designed to offer a wide range of outdoor recreation and

entertainment opportunities as well as to restore degraded riverfront areas. The Town seeks to provide a scenic public park for residents and tourists.

F2. The Project consists of:

- The conversion of the vacant Drive-In property into a public park featuring a central four-acre grassed multi-use field area for periodic outdoor events encircled with field and walking paths;
- a nature-based play area for children near the Parkers River that is planned with play structures, lawn games, and shade sails;
- a pile- supported boardwalk to a float for launching canoes, kayaks and paddleboards on Parkers River;
- a woodland path that will connect the park to a 1,400 linear foot, 6-foot-wide elevated boardwalk loop over salt marsh, including a pedestrian bridge, three overlook areas, and four bench areas;
- a porous paving parking lot for 88 new parking spaces with lighting;
- a small park office and restroom building (1,130 sf);
- up to nine artist shanties (at 140 sf each);
- a kiosk near the kayak launch; and
- associated utilities.

DRI JURISDICTION

F3. The Project requires mandatory DRI review pursuant to Section 2(d)(i) of the Commission's Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact ("Enabling Regulations"), revised November 2021, because the Project required the preparation of an Environmental Impact Report ("EIR") pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62I ("MEPA").

PROCEDURAL HISTORY

F4. The Project required an Environmental Notification Form ("ENF") under MEPA because it requires state agency actions and will involve the alteration of 10 or more acres of any other wetlands. It also required an ENF because it will result in the alteration of 1,000 or more square feet of Salt Marsh and the alteration of one half or more acres of any other wetlands.

F5. The Project required preparation of an Environmental Impact Report ("EIR") pursuant to 301 CMR 11.06(7)(b) because it is located within a Designated Geographic Area around an Environmental Justice ("EJ") population.

F6. The Project received the Secretary's certificate on its Single Environmental Impact Report ("SEIR") stating that the project properly and fully complies with MEPA on June 23, 2023.

F7. A staff hearing officer opened the DRI hearing period procedurally on August 7, 2023. The Applicant submitted a DRI application for the Project to the Commission on August 15, 2023.

F8. A substantive public hearing on the Project was opened by the Committee on Planning and Regulation on September 21, 2023.

F9. The Committee on Planning and Regulation held a public meeting on September 26, 2023 to review a draft DRI decision and recommend approval of the Project to the full Cape Cod Commission.

F10. The full Cape Cod Commission held a hearing on the Project at its meeting on September 28, 2023. It considered the recommendation of the Committee on Planning and Regulation, including the draft written DRI decision. At the hearing on September 28, 2023 the Commission voted to adopt the draft written DRI decision, and approve the Project, with the Conditions set out in said decision.

DRI REVIEW STANDARDS

F11. Section 6(c)(viii) of the Commission's Enabling Regulations contains the standards to be met for DRI approval, which include, as applicable, consistency with the Cape Cod Commission Act, the Cape Cod Regional Policy Plan ("RPP"), municipal development bylaws, District of Critical Planning Concern ("DCPC") implementing regulations and Commission-certified Local Comprehensive Plans ("LCP"). The Commission must also find that the probable benefit from the Project is greater than its probable detriment.

F12. DRI review of the Project is subject to the 2018 Regional Policy Plan ("RPP"), as amended in March 2021, which is the version of the RPP in effect at the time of the Commission's first substantive public hearing on the Project. The Commission determines the Project's consistency with the Act and RPP by determining whether the Project is consistent with the Goals and Objectives in Section 6 of the 2018 RPP, as particular goals and objectives are deemed applicable and material to the Project.

CAPE COD REGIONAL POLICY PLAN

Applicable and Material RPP Goals

F13. The following RPP Goals are applicable, material, and regionally significant and are thus subject to RPP consistency review: Water Resources (Objectives WR1, WR3, WR4), Wetlands Resources, Wildlife and Plan Habitat, Open Space (Objectives OS1 and OS2), Coastal Resiliency, Community Design, Cultural Heritage (Objective CH2), Transportation, and Climate Mitigation. The Commission makes the following findings relative to the Project's consistency with these RPP Goals and relevant Objectives and Technical Bulletin guidance.

Water Resources

F14. The Water Resources Goal of the RPP is to maintain a sustainable supply of high-quality untreated drinking water and protect, preserve, or restore the ecological integrity of Cape Cod's fresh and marine surface water resources.

F15. The following Objectives are applicable and material to the Project:

- **WR1** – protect and preserve groundwater quality
- **WR3** – protect, preserve and restore marine water resources
- **WR4** – manage and treat stormwater to protect and preserve water quality

F16. The Project is consistent with Objective WR1. The Project is not within a Wellhead Protection Area (WPA) or Potential Public Water Supply (PPWSA) and there are no downgradient drinking water wells, thus the Project must have a site-wide nitrogen loading concentration less than 5 ppm-N. The Project does not propose the use of fertilizer, and wastewater will be handled temporarily by a "tight tank" until connection to sewer is available. The Project has a site-wide nitrogen load of 0.965 ppm as calculated under the Commission's Water Resources Technical Bulletin, meeting this standard.

F17. The Project is consistent with Objective WR3. The Project plans to connect to sewer, consistent with the Town's CWMP and overall conditions are improved by the Project due to stormwater treatment.

F18. The site is within a Marine Water Recharge Area (MWRA) for the adjacent Parkers River, which is a nitrogen impaired embayment and has an established Total Maximum Daily Load (TMDL). The Project may only add nitrogen to the MWRA if the Town has a Comprehensive Wastewater Management Plan (CWMP) that has been approved as consistent with the Section 208 Area Wide Water Quality Management Plan and that calls for initiation of nutrient reduction actions or strategies sufficient to offset nutrient contributions from the Project within five years of project approval. The Project is located in an area that is to be sewered within the next five years, and the CWMP is on target to exceed nitrogen reduction goals established by the TMDL (Yarmouth Notice of Project Change 2022, Appendix C: 2021 Parkers River Nitrogen Balance Memo).

F19. Due to the CWMP and near-term sewering, the Project may add nitrogen to the MWRA. The Project will result in a de minimus additional sitewide nitrogen loading concentration of .06 ppm over existing conditions due to an increase in impervious area. However, existing conditions result in untreated stormwater flowing into Parkers River, and overall conditions are improved by the Project due to stormwater treatment.

F20. Wastewater from on-site restroom facilities will be temporarily stored in a 5,000 gallon underground "tight tank" and pumped regularly by a contracted sanitary sewer service for off-site treatment. Sewer main hook ups will also be installed and available for use when the Town of Yarmouth's pump station is online and a final force main sewer connection to

the pump station can be made, which has received funding and is proposed for 2026. This plan is consistent with Yarmouth's CWMP phase 1, and therefore, with Objective WR3.

F21. The Project is consistent with Objective WR4. The Project will increase the impervious surface from 1.08 acres to 1.75 acres. While increasing impervious surface area, the Project proposes stormwater management strategies that will effectively manage and treat stormwater better than existing conditions. Stormwater management strategies include a drainage swale, underground infiltration systems, a sediment forebay, grass filter strips, and use of porous pavers. The entrance drive and parking are proposed on the south side of the property near the river. Alternatives to decrease impervious cover and move impervious surfaces further away from the riverfront were explored but not chosen due to further increasing the area of impervious surface, noise concerns, and access preference developed through the Town's planning process. To ensure runoff is not directly entering and impacting the river or nearby wetlands, stormwater runoff from impervious driveway areas is directed to infiltration management systems. Additionally, the Applicant has been responsive to concerns regarding compaction of the grass field from vehicular traffic and has proposed maintenance solutions to promote filtration of stormwater in this area. The proposed stormwater management practices promote treatment and groundwater recharge through low impact design (LID) methods consistent with the Massachusetts Stormwater Handbook and Objective WR4.

Wetland Resources

F22. The Wetlands Resources Goal of the RPP is to protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers.

F23. The following Objective is applicable and material to the Project:

- **WET1** – protect wetlands and their buffers from vegetation and grade changes
- **WET2** – protect wetlands from changes in hydrology
- **WET3** – protect wetlands from stormwater discharges
- **WET4** – promote the restoration of degraded wetland resource areas

F24. The Project is consistent with WET1. The application materials include an assessment of wetlands present on the site including a comprehensive resource area boundary delineation report and a site plan showing delineation of all wetland resources and the 100-foot buffer to those delineations. While the Project results in unavoidable impacts to wetlands, for the reasons noted below, impacts have been minimized and mitigated to the maximum extent practicable.

F25. The Project will result in impacts to the 100-foot buffer zone to vegetated wetlands, including impacts to salt marsh. Most of these impacts are within previously degraded wetland buffer zones. New alteration of undeveloped land associated with the project is limited to clearing for the proposed woodland paths and construction of the boardwalk over salt marsh.

F26. While the RPP prohibits most alteration of wetland resource areas, alteration may be allowed where the Applicant can show that there is a public benefit, there is no feasible alternative to alteration, and the impacts are minimized and mitigated. Specifically allowable are redevelopment of previously disturbed areas, water-dependent structures and uses, and pedestrian access paths. The Project meets these requirements as there is a clear public benefit due to the public access it provides, most of the site was previously developed, there is no feasible alternative to the alteration, elements within the wetland buffer can be categorized as water-dependent structures and uses, and it includes pedestrian access paths, and the alteration will be minimized and mitigated.

F27. The Project is consistent with additional methods to meet WET1. Much of the existing vegetation within the 100-foot buffer will be maintained and the boardwalk and kayak launch have been designed to provide sufficient light penetration to the salt marsh below and to allow for unimpeded flow of water and resource migration. Mitigation for impacts to salt marsh and the buffer zone includes restoring wetland resource areas through removal of refuse and debris, planting with native vegetation, and invasive species management. Mitigation measures during construction will also be used including timing the salt marsh work in the winter, using swamp mats to prevent soil compaction and minimize impacts to salt marsh vegetation, and implementation of a Storm Water Pollution Prevention Plan.

F28. No stormwater management currently exists on the site. Consistent with WET2, the Project proposes a stormwater management system that meets requirements of the Massachusetts Stormwater Standards. As shown on the project plans, stormwater overflows have been located as far from wetland resources as possible with the closest overflow discharge located roughly 100 feet from the limits of salt marsh. Stormwater runoff from impervious driveway areas is directed to infiltration systems to ensure runoff is not directly entering and impacting the river or wetlands and the runoff does not alter wetland hydrology. The stormwater management system will improve stormwater discharge quality compared to existing conditions.

F29. No new groundwater withdrawals are proposed as part of the project.

F30. Consistent with WET3, the Project's stormwater management system has been designed to fully comply with the Massachusetts Stormwater Standards and stormwater overflows have been located as far from wetland resources and their 100-foot buffers as possible. The Project will result in a total of 1.75 acres of impervious area with new impervious area totaling 0.67 acres. All impervious surfaces will be treated in accordance with the Massachusetts Stormwater Standards.

F31. Stormwater management on the site has been designed to direct runoff from impervious surfaces towards the proposed infiltration Best Management Practices (BMPs). Stormwater BMPs include low impact development approaches, infiltration basins, porous pavement, a collection trench, vegetated filter strips, and vegetated swales. Peak flow rates and runoff volumes towards Parkers River will be significantly reduced.

F32. The Project is consistent with WET4. Over 60,000 square feet of wetland resource areas will be restored as part of the proposed project including removal of invasive species and planting of native species. Restoration will also include removal of pavement to promote infiltration and restore the soil profile and removal of debris from previous development. As noted in the application, native vegetation proposed for restoration will enhance wetland resource area functions by improving wildlife habitat, flood control, storm damage and pollution prevention, and protection of land containing shellfish.

Wildlife and Plant Habitat

F33. The Wildlife and Plant Habitat Goal of the RPP is to protect, preserve, or restore wildlife and plant habitat to maintain the region's natural diversity.

F34. The following Objectives are applicable and material to the Project:

- **WPH1** – to maintain existing plant and wildlife populations and species diversity
- **WPH2** – restore degraded habitats through the use of native plant communities
- **WPH3** – protect and preserve rare species habitat, vernal pools, 350-foot buffers to vernal pools
- **WPH4** – manage invasive species
- **WPH5** – promote best management practices to protect wildlife and plant habitat from the adverse impacts of development

F35. The Project is consistent with WPH1. A detailed resource area report was prepared for the site, documenting natural resources present including the locations of wildlife habitats and native vegetation communities within undisturbed areas of the site, mainly the forest and salt marsh where the path and boardwalk are proposed. The other areas of the site consist primarily of degraded areas that provide limited and low-quality plant and wildlife habitat due to the former use as a drive-in movie theater.

F36. Consistent with WPH1, the Project has been carefully designed to concentrate development within areas of previous disturbance and minimize clearing and grading in other areas. The vegetation along the perimeter of the site and in the forested area south of the event space will remain, except invasives species. Most of the proposed development and intensive use areas are located within existing degraded areas void of trees and the walking path routes have been selected to avoid clearing large caliper trees. Tree protection is proposed in areas not to be disturbed.

F37. Impacts to areas of existing vegetation along the perimeter of the site are limited, and restoration between existing areas of habitat fragmentation should improve habitat connectivity along the Parkers River. No continuous fencing is proposed, therefore wildlife will be allowed to move unimpeded through the site.

F38. Much of the site is mapped BioMap Critical Natural Landscape and a portion of the site is mapped Natural Heritage and Endangered Species Program (NHESP) rare species habitat. The Project avoids other sensitive resource areas such as Important Bird Areas and

Areas of Critical Environmental Concern. Correspondence from NHESP indicates the Project will not adversely affect rare species habitat, and it will not result in a "take" of rare species. The Project will not negatively impact the function of the BioMap Critical Natural Landscape as the project area within this much larger landscape block will remain minimally impacted by development and will enhance connectivity and resilience.

F39. Consistent with WPH2, over 60,000 square feet of resource areas will be restored as part of the Project. Restoration includes removal of invasive species and planting of native species appropriate to the site's ecological conditions. Restoration will also include removal of pavement and debris to promote infiltration and assist in restoring the soil profile.

F40. A planting plan (which includes types, quantities, and sizes) proposes use of native species appropriate to the site. Also included was a draft invasive species management plan.

F41. The southern portion of the site is mapped habitat for three rare migratory tern species, but the Project measures to avoid direct impacts to rare species include constructing the boardwalk in the winter months when the terns are not present. The Project is consistent with Objective WPH3 as NHESP determined the project will not result in a "take" of rare species.

F42. The site is not located within proximity to any vernal pools.

F43. Inspections of the site revealed extensive growth of several invasive plant species in approximately 90,500 square feet of previously disturbed areas along the Parkers River. Consistent with WPH4, a draft invasive species control plan outlining potential methods of control including manual, mechanical and chemical options has been provided. The plan requires the selected contractor to provide a detailed invasive species control plan and that plan, in addition to detailing control methods, should include best management practices during construction (e.g., truck washing) to avoid introduction and spread of invasive species. Monitoring should occur for at least three growing seasons to ensure infestations are controlled. As conditioned herein the Project is consistent with Objective WPH4 subject to Commission staff review of a final invasive species management plan incorporating these elements prior to construction.

F44. Consistent with WPH5, the Applicant proposes several best management practices to protect wildlife and plant habitat from the adverse impacts of development including: removal of invasive species; restoration of impacted areas with native plants; construction fencing, erosion, sedimentation and turbidity controls; and using mats and light-weight rubber tracked equipment on the salt marsh and timing marsh work in the winter to minimize soil compaction and impacts to marsh vegetation and rare birds.

Open Space

F45. The Open Space Goal of the RPP is to conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems.

F46. The following Objectives are applicable and material to the Project:

- **OS1** – protect and preserve natural, cultural, and recreational resources
- **OS2** – maintain or increase the connectivity of open space

F47. The Project is consistent with OS1. As noted in the application, the site is and will remain permanently protected open space protected for public use under Article 97 and as committed in 1986 when the land was purchased.

F48. The Project is consistent with OS2. The Lewis Pond Marsh Conservation Area abuts the drive-in parcel and is protected for conservation purposes. Proposed project elements are both passive and active in nature and were designed to provide recreation opportunities appropriate for each area of the site.

F49. Consistent with OS2, the Project has been designed to protect and enhance wildlife habitat through locating the boardwalk around stands of existing forested areas and developing paths that minimize clearing. In addition, proposed restoration activities will enhance opportunities for the movement of wildlife. The proposed shared-use path will connect to MassDOT-planned bicycle/pedestrian accommodations along Route 28, which will connect the site to other green spaces throughout Yarmouth.

Coastal Resiliency

F50. The Coastal Resiliency Goal of the RPP is to prevent or minimize human suffering and loss of life and property or environmental damage resulting from storms, flooding, erosion, and relative sea level rise.

F51. The following Objectives are applicable and material to the Project:

- **CR1** – minimize development in the floodplain
- **CR2** – plan for sea level rise, erosion, and floods
- **CR3** – reduce vulnerability of built environment to coastal hazards

F52. The Project Site is within the 100-year floodplain (A zone), with base flood elevation ranging from 11 to 13 feet. Consistent with CR1, there is no development proposed in V zones. While the project includes development in the A zone has been limited, it is mostly redevelopment, there is no feasible alternative and the impacts have been minimized and mitigated and, as a municipal open space project, it will have an overriding public benefit.

F53. To mitigate floodplain impacts and prevent future damage, the Project includes native vegetation along the banks of the Parkers River to minimize erosion. In addition, stormwater runoff from the site will be managed in accordance with local and state standards to provide enhanced treatment compared to existing conditions.

F54. The proposed restroom building and artist shanties are designed to be flood resistant. Fill and grading on the drive-in site will elevate the restroom, driveway, and parking, which will reduce the area of localized flooding and velocity of flood waters during smaller events.

While fill is required, this enables the design to incorporate stormwater management features that will enhance water quality protection and incorporate flood protection for project elements.

F55. The Project is consistent with CR2. According to the resource area delineation report, there is no coastal bank on the site. Appropriately designed and sited pedestrian walkways and elevated decks with appropriate orientation, height, and spacing between planks will allow sufficient sunlight penetration to maintain underlying vegetation. Extensive alternatives analyses and public input by the Town has designed and sited the proposed boardwalk appropriately while balancing ADA requirements that limit spacing between deck boards to ½" in width, which still allows some light penetration to the salt marsh vegetation. The Project locates development as far landward of resource and coastal hazard areas as is feasible within the site while still meeting project goals and includes restoration of degraded wetlands, including salt marsh, consistent with CR2.

F56. To accommodate sea level rise, structures within A zones should be elevated at least one foot above base flood elevation or two feet above existing grade, whichever is higher. Accordingly, the proposed restroom will be elevated and dry flood-proofed to two feet above base flood elevation, with the ability to add flood protection as sea levels rise. The drive and parking lot surfaces will also be elevated by several feet by re-grading the area and creating an earthen berm limiting the effects of flood waters. The boardwalk is elevated a minimum of 6 feet above the salt marsh, so increases in sea level should not impact the function of the boardwalk over the anticipated 40-year life span.

F57. The Town completed a flood study demonstrating the Project will not impact flow rates and velocities of the flood path. According to the study, the proposed fill will decrease flooding conditions during smaller events for abutters, which are more likely to be frequent. Further protecting the site from sea level rise, the proposed restoration of vegetation associated with the project should help to reduce wave heights and erosion across the site. To further minimize erosion, the design minimizes hard structures on the site. During the MEPA review process, refinement of the project's overall design and grading was completed, which included removal of areas of reinforced turfgrass in the event space and large landscape boulders in flood flow paths to decrease risk of dislodging, flood debris and erosion.

F58. Regarding salt marsh migration, the Applicant reviewed the Sea Level Affecting Marshes Model (SLAMM) to explore how the salt marsh on site might respond to anticipated sea level rise during the lifespan of the Project. According to SLAMM, in 2050, marsh migration is anticipated to occur on the site along the Parkers River in the vegetated areas that will remain following project construction. In 2070, under a higher sea level rise scenario, there is potential for brackish / transitional marsh extending onto the site. While the Project would prevent salt marsh migration onto the former drive-in at the northern limit of the site at that time, the salt marsh migration pathway south of the site would be maintained.

F59. Consistent with CR3, the Project's portions within coastal resource areas are primarily redevelopment. Additionally, the Project includes removing pavement and other debris from the site and restoration of degraded wetland resource areas, including salt marsh.

F60. The Project has been designed to minimize impacts to natural functions of coastal resources and address anticipated sea level rise through setting the development as landward as possible while still meeting project goals, elevating project elements, and restoring vegetation along the Parkers River to improve the storm damage and pollution prevention functions of these areas.

Community Design

F61. The Community Design Goal of the RPP is to protect and enhance the unique character of the region's built and natural environment based on the local context.

F62. The following Objectives are applicable and material to the Project:

- **CD1** – promote context sensitive building and site design
- **CD2** – minimize the amount of newly disturbed land and impervious surfaces

F63. The Project is consistent with CD1. The proposed bathroom facility and artist shanty buildings are small, low structures designed with traditional pitched roof forms and appropriate siding materials that will not impact scenic views or neighborhoods in the vicinity. The proposed future wastewater pump station on the Route 28 frontage is modest in scale and landscaped so it can serve as an effective frontage building appropriate for the streetscape. Lighting is proposed to be dark-sky compliant and no higher than 15 feet. Together, these design features respond to the surrounding context and make the project consistent with Objective CD1.

F64. The Project is consistent with CD2. In addition to the small buildings proposed, the Project involves construction of new parking areas, mostly clustered in narrow configurations at the edges of the open area and partially screened by existing vegetation. Some portions of the parking areas will use pervious pavement, and additional parking needed for large events will be provided on grassed areas, limiting the amount of pavement proposed. The fact that the site was previously developed and that all proposed impervious areas will be clustered together makes the project consistent with Objective CD2.

Cultural Heritage

F65. The Cultural Heritage Goal of the RPP is to protect and preserve the significant cultural, historic, and archaeological values and resources of Cape Cod.

F66. The following Objective is applicable and material to the Project:

- **CH2** – protect and preserve archaeological resources and assets from alteration or relocation

F67. The Project is consistent with CH2. There are no historic structures on the proposed project site, and no inventoried historic buildings in the project vicinity that would be impacted by the proposal. Given the site's location adjacent to Parker's River and extensive wetland areas, some portions of the property that were not previously disturbed could be determined archaeologically sensitive. The Applicant submitted a Project Notification Form ("PNF") to Massachusetts Historical Commission and several Tribal Historic Preservation Officers on October 31, 2022. On November 21, 2022, MHC determined that the project was unlikely to affect significant historic or archaeological resources.

Transportation

F68. The Transportation Goal of the RPP is to provide and promote a safe, reliable, and multi-modal transportation system.

F69. The following Objective is applicable and material to the Project:

- **TR1** – improve safety and eliminate hazards for all users of Cape Cod's transportation system
- **TR2** – provide and promote a balanced and efficient transportation system that includes healthy transportation options and appropriate connections for all users
- **TR3** – provide an efficient and reliable transportation system that will serve the current and future needs of the region and its people

F70. The Project has been designed to provide safe accommodations for both vehicular and non-vehicular (pedestrian/bicyclist) movements throughout the site. The existing site driveway will be repaved to provide two exit lanes and one entry lane separated by a center median, which will provide a pedestrian refuge for the crosswalk across the site driveway. A second access point for emergency vehicles only is proposed via Courtland Way and will be gated. Based on the Traffic Memorandum dated August 8, 2022, the site driveway will meet the minimum safety requirements to provide safe stopping sight distance and the Applicant has ensured that the proposed sewer pump station and landscaping will not obstruct driver sight lines when pulling onto Route 28. The Applicant performed a crash analysis within the study area and reviewed a recent Road Safety Audit (RSA) report performed by MassDOT for the future Route 28 Corridor Improvement project. Although the site driveway is not considered a high crash location, a segment within Route 28 in the vicinity of the site is considered above average. The MassDOT Route 28 project proposes five-foot wide shoulders, a shared use path on the southern side of the road and sidewalk upgrades on the northern side of the road and is currently at the 75% design level. Since funding for the MassDOT project is not slated until late 2028, the Applicant should locate a mid-block crosswalk on Route 28 and install ADA-compliant ramps in the interim to provide safe access to and from the Project Site for pedestrians, bicyclists, and transit riders. Subject to conditions included herein, the Project is consistent with Objective TR1.

F71. The Project is consistent with Objective TR2 subject to the Town to relocating the Route 28 mid-block crosswalk and installing ADA-compliant ramps ahead of the future MassDOT Route 28 project, as conditioned herein.

F72. The Project Site includes a complete internal path network connecting to existing sidewalk and transit facilities on Route 28. Bike racks are proposed at various locations within the site to promote alternate modes of transportation. The Project Site is located along the existing CCRTA H2O transit route which operates with flag stops along Route 28. It may be desirable to install a bench along the Route 28 frontage for transit riders as an amenity.

F73. The Project is consistent with TR3. Based on the BETA Traffic Memorandum, the Project is expected to generate a moderate amount of traffic associated with the park uses (artist shanties, boardwalk, canoe launch, playground) during the peak season with approximately 32 to 100 vehicle trips generated during a weekday afternoon or Saturday midday peak hour based on activity levels. The memorandum states these estimates are conservative as they do not account for trips arriving by walking, biking or a transit bus. The traffic analysis results concluded that the additional traffic from the Riverwalk project will not significantly degrade traffic operations on Route 28 and the site driveway will operate under capacity. The Traffic Memorandum states that the Police Department will coordinate with event sponsors to implement traffic management strategies (i.e. parking within the turf field, traffic control officers, message boards, traffic cones and reversible enter/exit lanes) for special larger events and is an appropriate mitigation approach to traffic management during special events.

Climate Mitigation

F74. The Climate Mitigation Goal of the RPP is to support, advance, and contribute as a region to the Commonwealth's interim and long-term greenhouse gas reduction goals and initiatives, including a state-wide net zero carbon target by 2050.

F75. The following Objectives are applicable and material to the Project:

- **CM1** – promote low or no carbon transportation alternatives and technologies
- **CM2** – promote low or no carbon technologies for building energy use, including appliances, lighting, and heating, ventilation, and cooling (HVAC) systems
- **CM3** – promote carbon sequestration and other emissions removal practices and technologies as appropriate to context
- **CM4** – promote low or no carbon energy generation technologies as appropriate to context

F76. Consistent with Objective CM1, the Project proposes an internal shared use path that connects to existing Route 28 sidewalks as well as a future proposed shared use path on Rte. 28, which will promote walking and biking into the park. The Applicant should work with state agencies to install a crosswalk at the site drive prior to the future reconstruction

of Route 28. Additionally, a pedestrian actuated beacon is planned for the site drive as a part of the Route 28 Corridor Improvement project.

F77. The Project incorporates dedicated EV parking spaces. EV charging was deemed infeasible due to concerns over flooding and other practical concerns. Thus, the Project is consistent with Objective CM1

F78. The proposed restroom and shanties will not be heated or air conditioned, thus the Project is consistent with Objective CM2.

F79. The Project is consistent with Objective CM3. As discussed previously under multiple RPP issue areas (see WET1, WET4, WPH1, WPH2, WPH5, CR1), the Project will significantly restore the site through the planting of native species and other measures, includes aspects of low impact design, and protects existing vegetation.

F80. The Project is consistent with Objective CM4. The only portion of the Project that involves a building with utilities is the unheated and unairconditioned bathroom building. The roof of the bathroom building is small due to the small footprint of (+/- 1100 sf), but the roof will be solar ready.

OTHER DRI REVIEW STANDARDS

Consistency with applicable Municipal Development Bylaws

F81. The Project requires Site Plan Review by the Planning Board, a Special Permit for Use from the Zoning Board of Appeals, a permit for the restroom septic system from the Board of Health, and an Order of Conditions and Stormwater Management Permit from the Conservation Commission. These permits were all approved during the first half of 2023. Additionally, the Project will require a Building Permit from the Building Department.

DCPC Implementing Regulations

F82. There are no DCPC implementing regulations that apply to the Project.

Consistency with CCC-certified Yarmouth LCP

F83. Chapter 4 of Yarmouth's LCP identifies the Town's goals to improve economic development. These goals include promoting new business in the Town that are compatible with the Town's environmental, cultural, and economic strengths while minimizing impacts and enhancing quality of life. The Project is intended to create a new recreational area for the Town that restores natural areas and provides public access. The proposed park provides opportunities for economic growth by adding artist shanties for local vendors and food truck access during events.

F84. Chapter 16 of Yarmouth's LCP aims to ensure facilities are adequate to meet community and regional needs. The Project is consistent with this goal, as it does not propose a significant increase on demands for water and power utilities given that the

proposed restrooms will only require approximately 800 gallons per day except during sporadic events and electricity use is limited to streetlights and the restroom.

F85. Chapter 6 of Yarmouth's LCP lists three main goals associated with Recreation and Open Space. These goals include promoting conservation, open space for the community, and recreation for residents and visitors. The Project is consistent with the Open Space Chapter of the LCP as the Project will restore a previously unused Town-owned property into an important source of outdoor recreation opportunities. The LCP also discusses the importance of redeveloping the Drive-In property as a public park. Efforts to restore the riverfront along the Parkers River will improve habitat for several known endangered and common wildlife species.

F86. Chapter 8 of Yarmouth's LCP identifies the goals for land use growth and management for the Town. These goals aim to improve quality of life, preserve natural areas and historic areas, and encourage employment and business consistent with the Town's resources and character. The Project, located adjacent to a residential neighborhood and several local businesses, improves the local economy by attracting nearby residents and tourists to the area. The Project is consistent with these goals as it will improve the quality of life through providing residents with increased recreation opportunities and will preserve areas along the coastline.

Probable Project Benefit versus Probable Project Detriment

F87. The probable benefit of the Project outweigh the probable detriment of the Project, from a regional perspective.

F88. The probable benefits of the Project are:

- The Project will provide a multiple-use recreational park for public use through the improvement of an underutilized and previously developed site.
- The Project will provide public access to the Lewis Pond salt marsh while minimizing impacts to the greatest extent practicable.
- The Project will provide opportunities for local artists to exhibit and sell work at a community scale.
- The Project provides new public access to Parkers River for canoers, kayakers, and paddleboarders.

F89. The probable detriments of the Project are:

- The Project will impact salt marsh, particularly during the construction of the boardwalk.

CONCLUSION

Based on the Findings above and subject to the Conditions set out below, the Commission further determines, finds, and concludes that the Project is consistent with the 2018 Cape Cod Regional Policy Plan, applicable provisions from the Yarmouth Local Comprehensive

Plan, and applicable municipal development bylaws; the probable benefit of the Project is greater than the probable detriment; and the Commission hereby grants DRI approval for the Yarmouth Riverwalk Park Project (File No. 22031).

CONDITIONS

General Conditions

C1. This Decision shall be final when the appeal period set out in Section 17 of the Cape Cod Commission Act has elapsed without appeal (or if such an appeal has been filed, when the appeal has been finally settled, dismissed, adjudicated, or otherwise disposed of in favor of the Applicant). Thereafter, this Decision shall be valid and in effect, and local development permits may be issued pursuant hereto for a period of seven years from the date of this Decision, or for such extended period as may be permitted by the Commission pursuant to the Enabling Regulations.

C2. A copy of the Decision, when final and prior to commencement of the Project, shall be recorded with the Barnstable Registry of Deeds.

C3. This Decision shall be appurtenant to and run with the Property. The Decision shall bind and be enforceable against, and inure to the benefit of, the Applicant, its heirs, successors, and assigns.

C4. The Applicant shall obtain all required federal, state, and local permits, licenses, and approvals. The Project's consistency with required Municipal Development Bylaws shall be ratified and confirmed by the Applicant obtaining the required municipal development permits.

C5. The Applicant shall provide or otherwise ensure that the Commission is copied on all state and local permits, licenses, and approvals.

C6. The Project shall be constructed, operated, and maintained consistent with the following documents ("Approved Project Plans"). Plans, protocols, and other documents received or required to be submitted as Conditions of this Decision shall be treated as incorporated into the Approved Project Plans once received, reviewed, and approved for consistency with this Decision by Commission staff, and the Project shall thereafter be constructed, operated, and maintained consistent with the Approved Project Plans, as so supplemented:

- *Town of Yarmouth, Massachusetts, Yarmouth Riverwalk Park, Single Environmental Impact Report MEPA Plan Set*, consisting of 61 pages, prepared by Beta Group, Inc., dated April 2023

C7. Prior to and as a condition to issuance of a final building permit close out for the Project from the Town of Yarmouth Building Department, the Applicant shall request and obtain from the Commission a Certificate of Compliance; the issuance of such Final

Certificate of Compliance evidences that the Applicant has satisfied all Conditions in this Decision required to have been satisfied prior to the issuance of a local final building permits close out, and shall confirm that the Project was constructed or implemented in accordance with this Decision.

C8. The Applicant hereby authorizes Commission staff to make site visits as necessary, at reasonable times and upon reasonable notice to the Applicant, to confirm that the Project has been implemented in accordance with this Decision, including upon an Applicant's request for a Certificate of Compliance hereunder.

C9. Any changes to the Project resulting from other review processes may require modification of this Decision.

Transportation

C10. Prior to completion of the Project, the Applicant shall coordinate with state and other agencies, as necessary, to install a mid-block crosswalk and ADA-compliant ramps on Route 28 proximate to the site drive.

Natural Resources

C11. The Applicant shall submit a final Stormwater Pollution Prevention Plan for review and approval by Commission staff.

C12. The Applicant shall submit a final Invasive Species Management Plan for review and approval by Commission staff.

C13. The Applicant shall maintain all landscaping with native species consistent with those listed on the proposed Landscape Plan and/or on the Commission's list of approved species.

SIGNATURE PAGE FOLLOWS

Executed this 28 day of September 2023

For the Cape Cod Commission by:

Signature

Frederick Chrights

Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

September 28, 2023

Before me, the undersigned notary public, personally appeared Frederick Chrights,

in his/her capacity as Vice Chair and on behalf of the Cape Cod Commission,

whose name is signed on the preceding or attached 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 [X] personal knowledge of the undersigned.

Lisa Dillon

Notary Public

My Commission Expires: 8-28-26

LISA P. DILLON
NOTARY PUBLIC
Commonwealth of Massachusetts
My Commission Expires
August 28, 2026