



CAPE COD COMMISSION

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DATE: December 14, 1995
TO: Shankpainter Associates, Inc.
FROM: Cape Cod Commission
RE: Hardship Exemption
Cape Cod Commission Act, Section 23
APPLICANT: Shankpainter Associates, Inc.
226A Bradford Street
Provincetown, MA 02657
PROJECT: Shankpainter ANR Plan
Route 6 and Province Road
Provincetown, MA 02657
PROJECT #: HDEX95020
BOOK/PAGE: Book 2570, Page 249

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Development of Regional Impact (DRI) Hardship Exemption application of Shankpainter Associates, Inc. pursuant to Section 23 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for lots 3, 4, and 5 of a five-lot Approval Not Required Plan in Provincetown, MA and retains jurisdiction over lots 1 & 2 as a DRI. The decision is rendered pursuant to a vote of the Commission on December 14, 1995.

PROJECT DESCRIPTION

The project consists of an Approval Not Required plan dividing approximately 34.2 acres into five lots at the intersection of U.S. Highway Route 6 and Province Road in Provincetown, MA. Shank Painter Pond and associated wetlands account for approximately 22 acres of the 34.2 acre site. The Cape Cod National Seashore lies directly west of the project site with single family residential use to the east. The majority of the property is zoned Class B Residential with approximately 3.3 acres of the site zoned Class P Commercial. This 3.3 acre parcel contains an existing 15,000 s.f. warehouse.

Shankpainter ANR Plan - Provincetown, MA #HDEX95020
December 14, 1995 Decision

PROCEDURAL HISTORY

An 18-lot preliminary subdivision plan for the site was referred as a DRI under Section 3(c) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12 by Mr. Gordon Gaskill, Chair of the Provincetown Planning Board on February 15, 1995. A public hearing on the preliminary subdivision plan was opened by a hearing officer of the Commission on April 12, 1995 and continued to June 14, 1995. On June 14, 1995 a hearing officer of the Commission closed the public hearing. A subcommittee meeting was held on June 22, 1995. On June 22, 1995 the Commission and applicant agreed to extend the decision period on the preliminary subdivision plan until January 19, 1996.

The Applicant filed a Chapter 41, Section 81P Approval Not Required Plan for five lots with the Provincetown Town Clerk/Planning Board on September 8, 1995. The five-lot ANR plan was referred to the Commission as a DRI by Mr. Gordon Gaskill, Chair of the Provincetown Planning Board on September 14, 1995.

On October 11, 1995 the Applicant filed a DRI application and Hardship Exemption request for the five-lot ANR plan. A duly noticed public hearing pursuant to Section 5 of the Act was held by an authorized subcommittee of the Commission on November 9, 1995 in the Provincetown Town Hall, Provincetown, MA and was continued to the full Commission meeting on December 14, 1995. Subcommittee meetings were held on November 27, 1995 and December 11, 1995 at the Commission office. At the November 27, 1995 public meeting the subcommittee voted unanimously to recommend to the full Commission that the Hardship Exemption request be granted with conditions.

The full Commission held a public hearing on December 14, 1995. The public hearing and written record were closed on this date. At the close of the public hearing, the Commission voted unanimously to approve the draft decision as amended at the December 14, 1995 public hearing.

Materials submitted for the Record

From the Applicant:

- Plan of Land in Provincetown, MA for Shankpainter Associates, Inc. dated July 31, 1995 prepared by Coastal Engineering Co. Inc.
- facsimile from Will Joy, Coastal Engineering Co. Inc. to Sharon Rooney, Commission staff dated October 7, 1995
- Development of Regional Impact application/Hardship Exemption application submitted by Coastal Engineering Co. Inc. on behalf of Shankpainter Associates, Inc. received October 11, 1995
- Plant and Wildlife Habitat Assessment prepared by Mario DiGregorio, P.W.S., dated October 31, 1995
- letter from Linda L. Rose, Seamen's Bank to Judy Turtz, Turtz and DePalma dated November 22, 1995 re: foreclosure action
- memorandum from Robert & Elizabeth Patrick, Shankpainter Associates, Inc. to Cape Cod Commission dated November 27, 1995 re: Hardship Exemption request

Cape Cod Commission:

- DRI referral notification form to Applicant dated September 19, 1995
- letter with attachments from Patricia Daley, Commission staff counsel to Mr. Gordon Gaskill, Provincetown Planning Board Chair dated September 27, 1995
- memorandum from Commission staff to subcommittee members dated October 13, 1995
- letter from Commission staff to Ms. Elizabeth Patrick dated October 13, 1995
- letter from Commission staff to Massachusetts Natural Heritage and Endangered Species Program dated October 20, 1995
- letter from Commission staff to Celine D.F. Gandolfo dated October 25, 1995
- Cape Cod Commission staff report dated November 2, 1995
- Site Plan of Land with overlays prepared by Commission staff submitted on November 9, 1995
- memoranda from Gabrielle Belfit to Sharon Rooney dated October 17, 1995 and November 27, 1995

Additional materials:

- DRI Referral Form with attachments received from Provincetown Planning Board on September 14, 1995
- letter with attachments from Celine D. F. Gandolfo to Commission staff received October 20, 1995
- letter from Allan S. Klonick to Cape Cod Commission received November 1, 1995
- letter from Massachusetts Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program to Commission staff received November 7, 1995
- letter from Massachusetts Historical Commission to Cape Cod Commission dated November 8, 1995
- letter from Association for the Preservation of Cape Cod to Cape Cod Commission received November 9, 1995
- letter from Brenda J. Boleyn to Cape Cod Commission received November 9, 1995
- memorandum with attachments from Hal Hinds to Provincetown Conservation Trust received November 9, 1995
- article titled The Quaking Bog of Shank Painter Pond by Richard LeBlond, received November 9, 1995
- letter from Richard LeBlond, Provincetown Conservation Trust to Cape Cod Commission received November 9, 1995
- letter from Mark J. Mello to Commission staff received November 9, 1995
- letter from Gordon Gaskill, Provincetown Planning Board Chair to Commission staff received November 9, 1995
- letter from Jackie Snow to Commission staff received November 13, 1995
- Plan of Land in Provincetown, MA for Shankpainter Associates, Inc. dated July 31, 1995 prepared by Coastal Engineering Co. Inc. from John Post, Massachusetts Division of Fisheries & Wildlife on November 27, 1995
- letter with attachments from Celine D. F. Gandolfo to Cape Cod Commission dated December 14, 1995

The application and notices of public hearings relative thereto, the Commission staff notes, exhibits and correspondence, the transcript and minutes of the hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

At the November 9, 1995 public hearing Attorney Christopher J. Snow, representing Shankpainter Associates, stated that the Applicant has owned the site since 1971 and have developed it sparingly. The Applicant can no longer afford to hold the property due to taxes. He stated that the Patrick family seeks to convey lot 5 to an adjoining owner who would otherwise have an unbuildable lot. They are also requesting that lots 3, 4, and 5 be found as exempt from the act so that they may sell lot 4. Mr. Snow stated that the entire property was refinanced in January, 1995 for \$1.3 million. He noted that the Applicant has a short term commitment from the bank until they sell lot 4. The Applicant is in the process of negotiating with the Massachusetts Division of Fisheries and Wildlife to purchase lots 1 & 2 for conservation purposes. The Commission's decision will affect this negotiation. Mr. Prince asked how many lots could be developed on lot 4 under current zoning. Mr. Snow replied that under zoning lot 4 could be subdivided into a maximum of three lots.

Sharon Rooney presented the staff report which focused on the hardship exemption request as received by the Applicant and a review of the project for conformance with the Regional Policy Plan. It concluded that water resources, natural resources, open space, affordable housing, and archaeological resources could be impacted by actual development or further subdivision of the site. Ms. Rooney displayed plans illustrating 100-foot wetland buffers and 300-foot septic setbacks as required by the Regional Policy Plan.

Kathy Sferra reviewed the significance of natural resources and open space issues as they relate to Shank Painter Pond and the town's natural resource base. She noted that eleven rare species could potentially be found in the vicinity of the pond. The uplands are intrinsically connected to the pond and wetlands. The plant and wildlife habitat analysis prepared by the Applicant documents the presence of the eastern box turtle, a regionally significant plant community on lot 4 and the possibility that the larger inland wetland may function as a vernal pool.

Comments from officials included Peter Souza, Provincetown Board of Selectmen, who stated that his goal is to see these types of undeveloped areas preserved. John Post, Massachusetts Division of Fisheries and Wildlife, confirmed that his office had expressed an interest in purchasing lots 1 and 2 in writing to the Patrick family. He noted that the area is remarkable and very sensitive in terms of its natural resources. The Commission's decision regarding the highest and best economic use of the lots will be the foundation of an appraisal for the site. Ted Malone, Provincetown Planning Board, noted that the planning board would have referred the project even if it had been smaller than 30 acres because of the critical nature of the land involved. He supported the hardship exemption but asked that conditions be attached to the project to ensure protection of sensitive resources. Rick Murray, Provincetown Planning Board, urged the Cape Cod Commission to grant a hardship exemption. He encouraged requiring 60% open space on lot 2 and 100' buffers from the wetlands.

Mr. Will Joy, Coastal Engineering Co. Inc. asked if the presence of hydric soils was used when delineating the smaller wetland. Ms. Sferra replied that according to Sabatia, poorly drained hydric soils were found in both wetlands. The wetland boundaries were based on both vegetation and soil.

Comments from the public included Brenda Boleyn, who stated that plans to alter the property should receive careful review due to the large percentage of wetlands on the site. Mike Reynolds, Cape Cod National Seashore, spoke on behalf of Superintendent Maria Burks, requesting additional time to respond to the staff report. Susan Kadar, APCC, noted the uniqueness of the area, the high potential for damage, and APCC's concern that nitrogen loading could exceed 5 ppm. She urged that if the hardship exemption is granted that lots 1 and 2 be permanently protected. Mary Crowley stated that lot 5 would be attached to their lot and would make it buildable. Marty Davis, vice-president of Provincetown Conservation Trust, referred to two letters from Richard LeBlond and Mark Mello that should be seriously considered by the Commission as experts in their fields. Russell DeConti, Center for Coastal Studies, stated that it may be possible to grant a hardship exemption with appropriate conditions and asked that the Commission continue to evaluate lot 2 to determine its development potential while allowing lots 3, 4 and 5 to go forward. He also recommended that the buffer to Shank Painter Pond be determined in the field according to topography and site conditions. Bob Prescott, Massachusetts Audubon Society, stated that this area is unique and urged the Commission to protect the wetlands. He noted that this past summer his staff collected and documented the smallest dragonfly called a Bluebell, found only on this one wetland on Cape Cod.

Celine Gandolfo commended the Applicant for their conservation work. She believed that the few remaining forested areas in Provincetown should be protected, and that there is a close relationship between the wetlands and upland areas. Lorraine Adams, abutter, expressed concerns that the Applicant had not abided by the Wetlands Protection Act and town bylaws for prior development activities, and until Ship's Way is repaired she cannot support their project. Mark Robinson, Compact of Cape Cod Conservation Trust, stated that interest in Shank Painter Pond predates Richard LeBlond's work by 20 years. Joe Notaro, Provincetown Conservation Trust, stated that the Division of Fish and Wildlife got involved in the project at their request. They are interested in seeing the land preserved, and urge serious consideration of the environmental issues concerning this site. Billie Bates-Kelsey, Sierra Club of Cape Cod, stated that the Commission should recognize that the Applicants have been trying to work with conservation groups since February, 1995. She believes the 100' buffer zone is a minimum, and that some experts believe it should be 300'. She also wanted the Commission to consider the value of the uplands to the pond and its value for migratory birds.

Mr. Kaufman made a motion to hold a subcommittee meeting at 9:00 AM on November 27, 1995 at the Cape Cod Commission office. Ms. Bebout seconded the motion and it passed unanimously. Mr. Prince moved to continue the hearing and keep the record open until 3:00 PM on December 14, 1995 at the full Commission meeting, 1st District Courthouse, Barnstable, MA. Mr. Kaufman seconded the motion and it passed unanimously.

At the December 14, 1995 public hearing, the Commission received testimony from subcommittee chair Tom Broidrick on the subcommittee recommendation. Sharon Rooney noted revisions to the draft decision. Alix Ritchie asked about the status of the 18-lot preliminary subdivision plan originally filed for the property. Sharon Rooney requested that the Applicant withdraw this plan from Commission and local review upon approval of the ANR plan. Attny. Christopher Snow, representing the Applicant, stated that a decision had not yet been made on the preliminary subdivision plan. He also noted that the Applicant retained the property through a period of substantial development on Cape Cod, and that real estate taxes due on the property compelled the Applicant to subdivide the land. Mr. Snow also requested that the phrase "regardless of size" be

removed from condition #7 of the draft decision referring to a change of use for the existing warehouse as this would exceed the Commission's current jurisdiction. Patricia Daley, Commission staff counsel, agreed that removal of the phrase would be appropriate. Ms. Mary Crowley asked if an archaeological survey would be required for lot 5. Patricia Daley noted that the survey requirement applies only to areas to be developed. As lot 5 will provide the setback area for the residential lot adjacent to it, a survey would not be required.

Alix Ritchie stated that the Commission's decision allows the Applicant to go forward with the sale of a portion of the property while furthering the protection of Shank Painter Pond. Tom Broidrick made a motion to close the public hearing and record. Ken Brock seconded the motion and it was approved unanimously. Tom Broidrick made a motion to approve the draft decision as amended at the December 14, 1995 public hearing. Ken Mason seconded the motion and it was approved unanimously.

JURISDICTION

The proposed project qualifies as a DRI under Section 3(c) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12 as..."any development which proposes to divide, combine or develop any parcel(s) of land totaling 30 acres or more."

FINDINGS

The Commission has considered the application of Shankpainter Associates, Inc. for the proposed five-lot ANR plan in Provincetown, MA, and based on consideration of such application, the information presented at the public hearings and submitted for the record, the Commission makes the following findings subject to Section 23 of the Act:

1. The project consists of an Approval Not Required plan dividing approximately 34.2 acres into four residential lots (lots 1, 2, 4 and 5) and one commercial lot (lot 3). Approximately 30.9 acres of the property is zoned Class B Residential with a minimum lot size of 8000 s.f. Two of the residential lots (lots 2 & 4) have the potential for further subdivision. Approximately 3.3 acres of the site is zoned Class P Commercial (lot 3). This 3.3 acre parcel contains an existing 15,000 s.f. warehouse and also has the potential for further subdivision.
2. Shank Painter Pond and associated wetlands (lot 1) account for approximately 22 acres of the 34.2 acre site. This lot is undevelopable. Shank Painter Pond and its associated wetland and upland areas is a resource of statewide significance. It is the largest known quaking bog on a barrier beach system found anywhere in the world and has a large variety of different habitat types including freshwater sphagnum and quaking bogs, marshes and open water. The DRI application proposed that Lot 1 be conveyed to an appropriate organization for preservation, however no such conveyance had occurred as of the date of this decision.
3. The upland areas, in particular on lot 2, are intrinsically connected to the wetland system. The Commission has not yet determined whether a 100' buffer is sufficient to protect the natural resources inherent to the pond and bog system. This determination will be made when the Commission subsequently reviews lot 2 as a DRI. Such review shall include but not be limited to the RPP requirements for nitrogen loading, open space, affordable housing, archaeological survey, and wetland buffers.

4. Two small wetlands are also located in depressions within the upland portion of the site and encompass portions of lots 2, 3, and 4. The larger of these wetlands may function as a vernal pool. The presence of these wetlands, combined with the wetlands and pond on lot 1 and the RPP requirement to protect 100' wetland buffers and provide septic system setbacks, constrain development options on lots 2, 3 and 4.
5. Lot 5, totaling 1400 s.f., is proposed to be combined with an existing lot owned by John F. Crowley to render this lot buildable for a single family dwelling under current zoning. There are no wetlands within 100' of this lot.
6. The entire 34-acre site is located within an estimated habitat for rare and endangered species. The Natural Heritage and Endangered Species Program identified the presence of eleven rare species associated with the site. In addition, the Applicant's habitat assessment documented the presence of the eastern box turtle, a state-listed rare species, on the upland portion of the site within the wetland buffer on lot 4.
7. The site is located within the Capewide Open Space Greenbelt Network. Development on the site is required to maintain a continuous wildlife corridor through the site. According to the Provincetown Open Space and Recreation Plan, the site is also the largest undeveloped parcel in Provincetown.
8. The Applicant has submitted documentation in support of a financial hardship pertaining to imminent foreclosure of the property.
9. According to the preliminary subdivision plan originally submitted on this project, lot 2 is capable of being further subdivided into at least 16 lots under local zoning. Lot 4 is capable of being further subdivided into 2-3 lots under local zoning. A nitrogen loading analysis performed by Commission staff on October 17, 1995 indicates that development of this intensity would produce groundwater concentrations in excess of the 5 ppm Commission standard. Furthermore, these nutrient concentrations would be discharged directly upgradient of Shank Painter Pond and may accelerate eutrophication of this significant resource and adversely affect the numerous rare species associated with Shank Painter Pond. Development of three single family dwelling units will not exceed the Commission 5 ppm nitrogen loading standard.
10. Because a change of use or redevelopment or addition was not proposed for lot 3 as part of this application, the impacts associated with such activity could not be examined.
11. The Applicant is currently negotiating with the Massachusetts Division of Fisheries and Wildlife for the sale of lots 1 & 2 to the Commonwealth of Massachusetts. Because of the uncertainty of the disposition of lots 1 & 2 at this time, the Commission has agreed to postpone detailed review of these lots. In the event these lots are not sold to the Commonwealth or other conservation entity, the Applicant has agreed as a condition of the Hardship Exemption approval that lots 1 & 2 will remain subject to DRI review for any proposed development or further subdivision of land and require compliance with the Regional Policy Plan.
12. The Regional Policy Plan requires that residential developments provide 60% upland open space and that commercial developments provide 40% upland open space. Subtracting wetland areas, the total open space requirement for the property is approximately 6.34 acres. The open

space requirement for lots 3, 4, and 5 is approximately 1.72 acres. This open space requirement is primarily satisfied through protection of the 100' buffers to wetlands on lots 3 and 4, which will provide wetlands and wildlife habitat protection on these lots. Any deficiency in meeting the open space requirement can be provided elsewhere on lots #2 - 5. Any open space requirement for lot 2 will be met at the time of further DRI review, should such review occur. Lot 1 does not have an open space requirement as this lot is comprised entirely of wetlands.

13. The proposed five-lot ANR plan does not involve the development of housing units at this time, and therefore impacts to affordable housing due to potential development of lots 2 & 4 cannot be determined at this time. However, Sections 5.1.2 and 5.1.3 of the RPP require residential construction of ten or more units or lots to set aside at least 10% of these units/lots for affordable housing. The affordable housing contribution shall be calculated based on the residential development potential of the 34.2 acre parcel that is the subject of this exemption decision and will be provided through subsequent DRI review.

14. The Massachusetts Historical Commission has determined that the site is considered to possess a strong likelihood for containing significant archaeological deposits and has requested that an intensive locational archaeological survey be conducted prior to any development of the project area.

CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby concludes:

A literal enforcement of the Act would involve substantial hardship, financial or otherwise, to the Applicant. This conclusion is supported by findings #4 and #8.

Barnstable County Assembly of Delegates Ordinance 94-12, Section 3(c) allows for the Commission to waive application of Minimum Performance Standards where the project complies, to the maximum extent feasible, with the Minimum Performance Standards and where any relief granted from the requirements of the Minimum Performance Standards are directly related to the nature of the identified hardship and is the minimum relief necessary to address the hardship. In this case, the Commission finds that the Applicant will provide open space for lots 3, 4 and 5 as buffers to wetlands pursuant to this decision. To address the Applicant's immediate financial hardship, Regional Policy Plan requirements for lots 1 and 2 are hereby postponed to the subsequent DRI review of these lots. The Commission further finds that the project will not result in a substantial detriment to the public good or derogate from the intent and purposes of the Act, provided the following conditions are met:

CONDITIONS

1. The plans as submitted and listed in this decision shall become part of the written decision and any changes shall be approved by the Cape Cod Commission or its designee. The plan of reference for all conditions listed below shall be the Approval Not Required plan titled Plan of Land in Provincetown, MA for Shankpainter Associates, Inc. dated July 31, 1995 prepared by Coastal Engineering Co. Inc.
2. The Applicant shall obtain a Certificate of Compliance from the Cape Cod Commission or its

designee before lots 1, 2, 3, and 4 are conveyed and before the Provincetown Building Inspector may issue any Building Permits for lots 3 and 4 on the ANR plan, except that the Applicant may convey lots 1 and/or 2 to a conservation entity consistent with conditions #4 and 5 of this decision prior to issuance of a Certificate of Compliance by the Commission. No building permits for lots 1 and/or 2 shall be issued under this decision. The Applicant may convey lot 5 prior to issuance of a Certificate of Compliance from the Commission. All conditions attached to this decision must be met prior to the issuance of a Certificate of Compliance from the Cape Cod Commission except as provided herein and in conditions #3, 4, 5, and 11 below.

3. The Applicant, his successors or assigns shall obtain all necessary State and local permits for the project.

4. The Applicant shall provide documentation to the Cape Cod Commission of the conveyance or donation of lot 1 to the Massachusetts Division of Fisheries and Wildlife or similar conservation entity.

5. The Applicant shall provide documentation to the Cape Cod Commission of the conveyance or donation of lot 2 to the Massachusetts Division of Fisheries and Wildlife or similar conservation entity.

6. In the event that lots 1 and/or 2 are not conveyed or donated for conservation purposes, any further subdivision, new construction or development of lots 1 and/or 2 shall be referred to the Cape Cod Commission as a Development of Regional Impact and reviewed for compliance with the Minimum Performance Standards of the Regional Policy Plan. This review shall include but not be limited to the RPP requirements for water resources, open space, affordable housing, archaeological resources, wetlands and wildlife habitat.

7. Any redevelopment or change of use as defined by Commission definition of Change of Use dated June 9, 1994, or new development or redevelopment which exceeds 10,000 s.f. in size on lot 3 shall be reviewed by the Commission as a DRI.

8. The Applicant may subdivide and convey lot 4 without further Commission review, provided that such subdivision or development of lot 4 shall be limited to a maximum of three lots with each lot limited to one single family dwelling unit, and provided all other conditions in this decision pertaining to lot 4 are met.

9. The total open space requirement for lots 3, 4 and 5 is 74,798. s.f. (1.72 acres). The Applicant shall submit a plan defining the areas to be permanently restricted on lots 3 & 4 as open space prior to issuance of a Certificate of Compliance. Such open space shall consist of the 100' buffer to wetlands on lots 3 & 4 and other lands on lots 2 - 5 as needed to comply with this requirement. In the event lot 2 is conveyed to the Massachusetts Division of Fisheries and Wildlife or similar conservation entity, documentation of such conveyance shall satisfy that portion of the open space requirement not met through provision of the 100' buffer to wetlands on lots 3 & 4.

10. The Applicant shall provide the Cape Cod Commission with a conservation restriction or equivalent restriction to be approved by Commission counsel and recorded at the Registry of Deeds or Land Court which provides that all of the open space/buffer areas shown on the site plan noted in condition #9 shall remain as permanent open space. Such restriction shall be recorded prior to

issuance of a Certificate of Compliance from the Commission.

11. Prior to any construction activity including site preparation work on any portion of the 34.2 acre site deemed likely to possess archaeological significance by the Massachusetts Historical Commission, the Applicant shall complete an intensive (locational) archaeological survey (950 CMR 70) in compliance with M.G. L. Chapter 9, Sections 26-27C, and Implementing Regulations (950 CMR 71). The goal of the survey shall be to locate and identify archaeological sites which may be affected by the proposed development. If archaeological sites are identified in project impact areas, the Applicant shall consult with the Cape Cod Commission and the Massachusetts Historical Commission regarding ways to avoid or mitigate any adverse effects to significant archaeological properties. With regards to lots 3, 4, and 5, a Certificate of Compliance may be issued prior to completion of this survey.

12. Prior to any construction activity including site preparation work on lot 4, the Applicant shall complete a survey for nesting sites of the eastern box turtle in any existing wooded areas that will be disturbed as a result of construction. No survey shall be required in open sandy areas. If nesting sites are identified in project impact areas, the Applicant shall consult with the Cape Cod Commission or Massachusetts Natural Heritage regarding ways to avoid or mitigate any adverse effects to identified habitat areas.

13. The construction of ten or more units or lots within the 34.2 acre site shall be required to provide an affordable housing contribution consistent with the requirements of the RPP. Lot 4 may be further subdivided with the understanding that any further subdivision for the purpose of development of residential dwelling units shall be counted toward the affordable housing contribution for the entire parcel. The affordable housing contribution shall be calculated based on the 34.2 acre parcel that is the subject of this Hardship Exemption decision.

14. Nitrogen loading for the 34.2 acre parcel shall not exceed 5 ppm. Nitrogen loading resulting from the development of lot 4 shall be included in the total nitrogen loading calculation for the site.

The Cape Cod Commission hereby grants Shankpainter Associates, Inc. an approval with conditions as a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Act for a five-lot ANR plan in Provincetown, MA.

Sumner Kaufman
Sumner Kaufman, Chair

1/4/96
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 4th day of January 1996

Katharine K Peters
Name, Notary Public

My commission expires: _____

