



CAPE COD COMMISSION

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DATE: January 21, 1999

TO: T.K. Thompson, President
Boch Center for the Performing Arts, Inc.
P.O. Box 1997
Mashpee, MA 02649-1997

FROM: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Boch Center for the Performing Arts, Inc.
c/o Ament & Ament, Attorneys
P.O. Box 919
Falmouth, MA 02541

PROJECT: Boch Center for the Performing Arts

PROJECT #: TR98034

BOOK/PAGE: Book 9021, Page 275
Book 5489, Page 138
Book 3204, Page 279
Land Court Certificate of Title #111302, Lot 1 Plan 31659-B

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Boch Center for the Performing Arts, Inc. as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, for the proposed Boch Center for the Performing Arts (Boch Center) in Mashpee, MA. The decision is rendered pursuant to a vote of the Commission on January 21, 1999.

PROJECT DESCRIPTION

The proposed project involves the construction of a non-profit educational and performing arts facility on Great Neck Road South in Mashpee, MA. Proposed to be constructed in two phases over seven years, the project includes a 21,000 s.f. community arts center and summer stage with

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seating for approximately 2,000 persons, a 23,444 s.f. theater with seating for 850 persons, a 4,810 s.f. administration building, two 2,016 s.f. concession/restroom buildings, and an 11,551 s.f. design and production center. A total of 244 paved parking spaces are proposed, as well as 95-116 unpaved spaces for overflow parking. The applicant is proposing an additional 279 parking spaces which will be provided off-site. The project includes extensive landscaping and other site improvements.

The site is zoned C-1 for commercial use. The project site is located on a 10.72 acre portion of an approximately 53-acre Trout Pond property owned by Arnold B. Chace, Jr. and Mashpee Commons Limited Partnership, hereinafter referred to collectively as MCLP. Of this 10.72 acre site, 9.07 acres will be subject to a long-term ground lease with MCLP which will allow the applicant to tie into the existing Mashpee Commons wastewater treatment plant, with 1.65 acres serving the project as a non-exclusive easement area.

The project site is largely undeveloped and wooded, with the exception of the Mashpee Commons wastewater treatment plant which lies immediately east of the proposed performing arts facility, and a 210'-wide Commonwealth Electric utility easement, which runs along the southern property boundary. The proposed development area contains gently rolling topography. Beyond the limit of proposed work the land slopes sharply down to Trout Pond.

PROCEDURAL HISTORY

The project was referred by F. Thomas Fudala for the Mashpee Planning Board on July 2, 1998. A duly noticed subcommittee hearing was held in the Mashpee Town Hall on August 26, 1998. The August 26, 1998 public hearing was continued to September 23, 1998 in the Mashpee Town Hall. The September 23, 1998 hearing was continued without testimony by a hearing officer of the Commission to October 8, 1998. The October 8, 1998 public hearing was held in the Mashpee Town Hall and continued to November 5, 1998. The November 5, 1998 public hearing was held in the Cape Cod Commission office and continued to November 12, 1998. The November 12, 1998 public hearing was held in the Mashpee Town Hall. The public hearing was closed on November 12, 1998.

Subcommittee meetings were held on November 20, 1998 and January 4, 1999. On January 4, 1999 the subcommittee voted unanimously to recommend approval of the project with conditions to the full Commission. A final public hearing was held before the full Commission on January 21, 1999. The public hearing and record were closed on this date. On January 21, 1999, the Commission voted fourteen in favor and one opposed to approve the project with conditions and as amended at the final public hearing.

Materials submitted for the Record

From the Applicant:

- Boch Center concept drawings received August 26, 1998
- Boch Center for the Performing Arts Permit Plan Set, Graham Gund Architects, Inc. dated February 20, 1998, revised October 18, 1998
- DRI application dated June 29, 1998
- DRI cover letter and fee waiver request dated July 23, 1998

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- letter from Ament & Ament re: receipt of special permit application by Mashpee Planning Board dated August 10, 1998
- facsimile from Ament & Ament dated July 22, 1998
- letter from Ament & Ament re: response to July 23, 1998 staff meeting dated August 21, 1998
- Boch Center for the Performing Arts Phase 1 & 2 Layout Plans, Graham Gund Architects, Inc. dated September 14, 1998, 2 sheets L2.1 and L2.2, Scale 1"=40'
- Boch Center for the Performing Arts Phase 1 Planting Plan, Horiuchi & Solien Landscape Architects dated September 14, 1998 sheet L4.1
- letter from Ament & Ament re: response to August 20, 1998 staff report dated September 15, 1998
- letter from Graham Gund Architects re: fly lot dated September 23, 1998
- facsimiles from Duncan Wood, Sanborn Head Associates re: nitrogen loading dated September 30, 1998 and October 23, 1998, and December 16, 1998
- letter from Duncan Wood, Sanborn Head Associates re: water use data dated September 30, 1998
- McDonough & Scully traffic analysis update dated September 29, 1998 and November 3, 1998
- Horiuchi & Solien progress report on landscaping dated September 25, 1998
- McDonough & Scully draft memo on traffic dated October 8, 1998
- Memo from T.K. Thompson re: Theater Communications Group Survey dated October 29, 1998
- memo from Horiuchi & Solien re: open space dated October 21, 1998
- letter from Ament & Ament w/memo from T.K. Thompson dated October 30, 1998
- letter from Duncan Wood, Sanborn Head Associates re: Tanglewood data dated November 5, 1998
- facsimile from T.K. Thompson re: nitrogen loading dated November 10, 1998
- letter from Mashpee Commons Ltd. Partnership re: lease information dated November 11, 1998
- letter from Ament & Ament re: title information dated November 12, 1998
- facsimile from Duncan Wood, Sanborn Head Associates re: nitrogen loading dated December 16, 1998
- copy of letter from T.K. Thompson to Gus Frederick, town of Mashpee Leisure Services dated February 19, 1997, received December 21, 1998
- copy of letter from Gus Frederick, town of Mashpee Leisure Services to T.K. Thompson dated May 30, 1997, received December 21, 1998
- facsimile from T.K. Thompson re: draft findings/conditions dated December 21, 1998
- facsimile from Douglas S. Storrs, Mashpee Commons Limited Partnership re: draft decision dated December 28, 1998
- facsimile from attorney Robert Ament re: draft decision dated January 5, 1999 and January 6, 1999
- letter from McDonough & Scully, Inc. re: site drive analysis dated January 8, 1999

Cape Cod Commission:

- subcommittee notice dated July 8, 1998
- town officials notice dated July 8, 1998
- letter to town officials re: meeting to discuss project dated August 7, 1998
- notes from meeting with Mashpee town officials dated August 25, 1998
- staff reports dated August 20, 1998 and October 7, 1998
- room reservation confirmations dated August 6, 1998, August 27, 1998, September 22, 1998, November 5, 1998
- letter to applicant re: water resources dated November 6, 1998

- letter to Ament & Ament re: water resources dated August 31, 1998
- memo to Berg Howland re: lighting issues dated October 19, 1998
- letter to T.K. Thompson re: traffic dated October 19, 1998
- traffic comments dated November 12, 1998
- water resources tables re: water usage dated October 17, 1998 and October 18, 1998
- memo to subcommittee dated December 29, 1998

State/local officials:

- DRI Referral Form received from F. Thomas Fudala for the Mashpee Planning Board on July 2, 1998
- letter of support from Mashpee Economic Development Office dated August 12, 1998
- letter from Kopelman and Paige, P.C. dated August 24, 1998
- letter of support from Mashpee Chamber of Commerce dated August 25, 1998
- letter of support from Mashpee Board of Selectmen dated August 26, 1998
- letter from Massachusetts Historical Commission recommending archaeological survey dated December 14, 1998
- letter in opposition from Joan Avant Tavares, Director of Indian Education, Mashpee Public Schools dated January 21, 1999

From the public:

- e-mail in opposition to project from Carol DeLuca dated August 25, 1998
- letter of support from Windchime Condominium Association dated August 26, 1998
- letters from Edward A. Baker re: water resources issues dated August 26, 1998 (w/attachment), October 12, 1998
- copy of letter from Samuel L. Rodriguez, attorney re: title issues dated July 7, 1995, received on August 26, 1998
- letter from Wynn & Wynn, attorneys dated August 28, 1998
- e-mail received from Edward A. Baker re: water resources issues on September 4, 1998
- letter from Mashpee Environmental Coalition w/concerns for Mashpee River dated September 16, 1998
- letter from Mary M. Scanlan re: screening of parking lot and Mashpee River concerns dated October 2, 1998
- letters in opposition from Mashpee Wampanoag Tribal Council dated October 8, 1998, October 29, 1998, November 9, 1998, and November 16, 1998
- resolution in opposition to project from Mashpee Wampanoag Tribal Council received November 12, 1998
- letter from Mashpee Environmental Coalition in opposition to project dated November 12, 1998
- letters in opposition from Mashpee Wampanoag Tribal Council received January 5, and January 21, 1999
- e-mail received in opposition from Thomas A. Analetto, D.M.D. dated January 14, 1999

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

Testimony received at the August 26, 1998 public hearing included Mr. T.K. Thompson, President of Boch Center for the Performing Arts, Inc. who described the proposed project. Attorney Laura Moynihan from attorneys Ament & Ament responded to issues raised in the staff report. Mr. Duncan Wood, Sanborn Head Associates discussed nitrogen loading issues. Mr. Joe Bromel described proposed stormwater management for the project. Mr. William Scully described the applicant's traffic study. Attorney Robert Ament discussed open space requirements of the Commission.

Planner Sharon Rooney provided an overview of the Commission staff report which included natural resources/open space, economic development, solid/hazardous waste management, and heritage preservation/community character issues. Ed Eichner, Water Resources scientist, discussed the project's location in the Mashpee River watershed which has been identified as a nitrogen overloaded embayment. Transportation engineer Paul Tilton noted key traffic issues, and stated that appropriate mitigation for this type of episodic use should focus on implementation of a detailed traffic management plan and scheduling performances to avoid congested time periods.

Comments from local officials included John Ferguson, member of the Mashpee Commons Advisory Committee, who stated that the project is a benefit to the town and should be approved if it meets regulatory requirements. Anita Peters-Little, member of the Mashpee Tribal Council Board believed that the applicant did not have clear title to the land and submitted a letter for the record. Beverly Kane of the Mashpee Environmental Coalition expressed concern for excessive nitrogen loading to the Mashpee River and noted that the town of Mashpee has contracted with a consultant to do a two-year study to come up with ways to remove nitrogen loading to the river. Tom Fudala, Mashpee town planner, spoke in favor of the project and noted the use does not require a special permit as it is exempt under local zoning as an educational use. He therefore noted that the DRI review would provide the only regulatory review of the project.

Comments from the public included Edward Baker, who expressed concern for the condition of the Mashpee River and noted that the solution is to move effluent to a less sensitive area. Melinda Galant, manager of retail operations for Mashpee Commons, spoke in favor of the project as beneficial to the entire Cape economically. Ethel Zimmerman spoke in support of the proposal. Jamie Regan, past president of the Mashpee Chamber of Commerce spoke in support of the project. Myrna Nuey of the Mashpee Tribal Council spoke against the project and its potential impacts.

Testimony received at the continued October 8, 1998 public hearing included Mr. Robert Ament, attorney for the applicant, who described progress on the project review since the last public hearing. Mr. Ament submitted additional traffic information in response to staff comments and summarized the consultant's findings. Mr. Ament also described efforts to resolve nitrogen loading and stormwater runoff issues. Mr. Ament also asked that approval of signage be postponed until construction drawings are prepared. Dan Solien, project landscape architect, discussed revisions to the site plan and two alternative stormwater management designs for parking lot runoff to meet the RPP 25-year, 24-hour storm requirement. T.K. Thompson responded to various comments received at the hearing. Mr. James Weaver stated that ComElectric's position is to protect the easement and expressed a willingness to work with the applicant to come up with an acceptable solution to stormwater drainage within the easement. Duncan Wood discussed

wastewater issues, noting that the project is a challenge in that there is no similar center to compare the project to in terms of wastewater flows.

Sharon Rooney provided an update on progress since the last hearing. Ed Eichner noted that the key issue is the quantity of wastewater and described assumptions used in calculating nitrogen loading. Paul Tilton discussed a supplemental traffic memo received at the hearing. He noted that the two major areas of disagreement are traffic generation and proposed mitigation.

Comments from the public included Glen Marshall, a member of the Board of Directors of the Mashpee Tribal Council. Mr. Marshall read a letter from the Tribal Council which strongly opposed the project due to concerns for the Mashpee River. He also questioned the benefit to Cape Cod construction workers and lack of commitment to hire these workers. Myrna Nuey stated she was opposed to the project for the same reasons as Mr. Marshall. Ed Baker disagreed with assumptions made by staff concerning operation of the Mashpee Commons wastewater treatment plant. Gail Robertson, a resident of Falmouth and a Director of the Boch Center, expressed that all are rightfully concerned about nitrogen loading and impacts to the Mashpee River, but that the Boch Center is working towards mitigation of that impact and should not be stopped from development.

Testimony received at the November 5, 1998 public hearing included planner Sharon Rooney, who gave an update on discussion with the applicant to resolve outstanding issues on the project, in particular traffic issues and water resources/wastewater issues. Paul Tilton of the Commission staff commented on traffic issues. He also noted a shuttle for the three developments in the area (Boch Center, Mashpee Commons and Talanian) should be provided. Ed Eichner discussed remaining water resources issues, including a disagreement on wastewater flow. He said discussion revolved around using annual water usage figures from a similar facility on the North Shore of Boston. He said there had been tentative discussions of using the phasing inherent in the project to get a better idea of actual flows by metering wastewater flows after Phase 1 was open.

Mr. T. K. Thompson, project applicant, discussed the frequency of the shuttle service and scheduling of performances to avoid peak traffic periods. Mr. Dan Solien questioned staff requirements for police details. Mr. Duncan Wood, Sanborn Head Associates discussed nitrogen loading issues. Mr. Wood said the difficulty was there was no other facility exactly like the Boch Center to compare it to. Attorney Ament said there was no problem with identifying the actual location of open space before issuance of the building permit. Concerning stormwater management, Mr. Solien noted there had been discussions with Commonwealth Electric to use 3/4 acre of the power easement for stormwater management.

The subcommittee discussed the coordination between Mashpee projects and phasing. Deputy Director Margo Fenn noted that if the Mashpee Commons treatment discharge location changed, this could change required mitigation for the Boch Center.

Comments from the public included Beverly Kane of the Mashpee Environmental Coalition, who said the group was concerned about nitrogen loading to the Mashpee River watershed. She said the organization was opposed to piping effluent into Popponessett Bay. She suggested that the Mashpee River could tolerate no more nitrogen impacts and that the standard should be zero parts per million.

Myrna Nuey, representing the Mashpee Tribal Council said the Council's main concerns were for impacts to the Mashpee River and the Bay. She also requested that the issue of title to the project site be addressed by the applicant. Ms. Rooney asked whether the subcommittee would consider holding an additional public hearing in Mashpee to update the public about the project. This additional hearing was agreed to by the subcommittee.

Testimony received at the November 12, 1998 public hearing included Mr. Thompson, project applicant, who noted there had been a number of meetings since the last public hearing with the Commission staff to discuss traffic and water resources issues. He thought the DRI process was rigorous but also fruitful.

Mr. Kaufman asked about the status of the land ownership and Wampanoag claims to the site. Mr. Ament noted information on deeds had been part of the DRI application. He said the deeds run to either Fields Point Limited Partnership or Arnold Chace. He said the owners have a Land Court Certificate of Title showing ownership as Fields Point and title insurance policy issued in June, 1986. Ms. Anita Peters Little testified concerning title issues. Mr. Deane and Mr. Ernst suggested staff counsel review the title issue. Ms. Myrna Nuey believed that the Commission could not issue a decision before the title matter is investigated.

Ms. Rooney summarized revisions to the site plan. Mr. Eichner described discussions with the applicant concerning nitrogen loading calculations for the site. He noted the staff and applicant had reached a general consensus on the factors which went into the nitrogen loading calculations but that there was a difference of opinion concerning the calculation of wastewater flow. He said the applicant's estimate was an annual average wastewater flow of approximately 1975 gallons per day. He said the staff's estimates ranged from 2100 and 2900 gallons per day. He said the difference between these figures resulted from different approaches used by the applicant and staff. He noted discussions had also taken place related to phasing the project.

The subcommittee asked questions concerning the capacity and the level of treatment of the Mashpee Commons treatment facility. Paul Tilton provided an update on traffic issues. He noted traffic impacts for daily traffic, daily peak traffic, average weekday commuter traffic and amphitheater performance traffic needed to be mitigated. He described the applicant's plan to mitigate the various traffic impacts.

Comments from the public included Ms. Jessie Fermino, who asked how many parts per million would be added to the Mashpee River with completion of the project. She also questioned if the open space would include land under the power lines. She questioned how the monitoring would work if the project was phased and what steps would be taken to address negative impacts revealed by the monitoring. Commission staff responded to these questions.

Rita Lopez asked what the long-term effects would be on the watershed and water supply. Beverly Kane questioned the 2.7 kg/day standard set by the Commission for the Mashpee River. She believed that the standard which should be used was zero additional parts per million of nitrogen. Mr. Ray Bowman, President of the Mashpee Environmental Coalition, agreed with Ms. Kane and said the discharge should be relocated to avoid impacts to the Mashpee River. Mr. Bowman read a letter he submitted into the record from the coalition. The letter said the loading standard should be zero parts per million. Mr. Russell Peters, Jr. said he was concerned about the large lawns and the drainage from the two parking lots. Mr. Leonard Pocknett questioned the traffic generation and its impacts. Mr. Earl Cash noted the traffic impacts from the Melody Tent,

which is not open year-round.

Ed Baker questioned the comparison by Attorney Ament between the Boch Center and residential Title 5 flows and objected to phasing the project. He noted the River was already overloaded. Ms. Myrna Nuey said the Tribal Council had taken a stance in opposition to the project. Ms. Lopez was concerned about additional nitrogen to an already overloaded river. She said the project would negatively impact wildlife. She questioned whether the information on traffic impacts accounted for seasonal fluctuations, particularly the summer peak conditions. Daniel Wixson expressed concerns for the displacement of the area's wildlife. He suggested the Commission meet with the Wampanoag elders and come up with a solution to address their concerns. He expressed concern for water quality. Ramona Peters said she was concerned about water supply impacts. Mr. Robert Whritenour, Mashpee Town Administrator, noted that Commission staff sends copies of correspondence on DRIs to the Selectmen's office.

JURISDICTION

The proposed project qualifies as a DRI under Section 3(e) of Chapter A, Cape Cod Commission DRI Enabling Regulations as "commercial development with a gross floor area greater than 10,000 s.f."

FINDINGS

The Commission has considered the application of Boch Center for the Performing Arts, Inc. in Mashpee, 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 Sections 12 and 13 of the Act:

GENERAL

G1. The Boch Center is proposed to be constructed in two phases, unless fundraising efforts allow the entire project to be built at one time. Phase 1 involves the construction of a 21,000 s.f. Community Arts Center with Meadow Summer Stage with a seating capacity of up to 2,000 persons. Phase 2 involves the construction of an indoor theater with 850 seats, administration building, and a design and production center.

G2. The applicant estimates a total of 100-150 performances will take place annually. Proposed programming includes music, theater, dance, drama, special events and benefits, and festivals. Educational programs are also proposed for youth orchestra and chorus, drama, music theater and theater production. A total of fifty performances are proposed to take place annually on the Meadow Summer Stage during the months of June-August. Phase 2 would present 100 performances annually. The applicant estimates that patrons will be 40% year-round, 40% seasonal, and 20% tourists.

G3. The project site consists of 10.72 acres and is made up of a portion of four separate parcels of an approximately 53-acre Trout Pond property owned by MCLP. Of this 10.72 acre site, 9.07 acres will be subject to a long-term ground lease with MCLP in favor of the Boch Center for the Performing Arts, Inc., with 1.65 acres serving the project as a non-exclusive easement area. An issue has been raised by the public as to the title of parcels subject to this application. Based on

information provided by the applicant, the applicant is presumed to have or will have under the proposed ground lease a valid property interest in the project site.

G4. The project is located in a regional growth center in the Mashpee Local Comprehensive Plan which was certified by the Commission on July 30, 1998.

G5. The Mashpee Town Counsel has indicated that the proposed project qualifies as a non-profit educational use and as such the Town may not require a special permit nor prohibit that protected use. The Town may impose Plan Review as a means to ensure compliance with reasonable dimensional requirements, so long as such requirements do not either result in de facto prohibition of the use or impose an unreasonable burden on the protected use.

WATER RESOURCES

WR1. The site of the proposed Boch Center is located within the watershed to the Mashpee River, which is a subwatershed to the Popponeset Bay coastal embayment system and a Marine Water Quality Area as defined under MPS 2.1.1.2. of the RPP.

WR2. As a result of analysis completed under the Commission's Coastal Embayment Project, the Mashpee River has been identified as a nitrogen sensitive coastal embayment. Embayment Project findings indicate that annual nitrogen loads from existing development within the Mashpee River watershed are 5.6 kilograms of nitrogen per acre (kg/ac). This loading rate exceeds the identified critical loading standard of the River (2.7 kg/ac). In addition, water quality analyses within the Mashpee River and Popponeset Bay by University of Massachusetts-Dartmouth, Center for Marine Science and Technology (UMASS-D/CMAST) have documented marine water quality problems in these waters and are conducting additional analyses of the embayment system.

WR3. MPS 2.1.1.2.C.1 of the RPP requires nitrogen loads from development within Marine Water Quality Areas to be less than or equal to identified critical nitrogen loading standards. This Performance Standard also states that Developments of Regional Impact may be required to make a monetary contribution towards the development or implementation of appropriate nitrogen management strategies. MPS 2.1.1.2.C.2 states that where existing development exceeds the identified critical nitrogen loading standard or where there are documented water quality problems, development shall maintain or improve existing levels of nitrogen loading.

WR4. The Boch Center proposes to treat its wastewater at the Mashpee Commons wastewater treatment plant.

WR5. Although the estimated Title 5 wastewater flow for the Boch Center is 12,123 gallons per day (gpd), it has been determined using water use information for available facilities that the annual average water use for the Boch Center will be 2,512 gpd, with the first phase generating 437 gpd on an annual basis. Based on the results of monitoring required in condition #WR1, this number of 2,512 gpd may be reduced after completion of both phases of the project.

WR6. Phase 1 of the proposed Boch Center will generate 43 kg of nitrogen annually, while the complete project with Phases 1 & 2 will generate 65 kg/yr. These nitrogen loads include consideration of the flow rates in finding #WR5, treatment of this flow in the Mashpee Commons

wastewater treatment facility, the proposed lawn area and fertilizer application rates, and the proposed stormwater treatment system.

WR7. Since MPS 2.1.1.2.C.2 requires no additional nitrogen loading within the Mashpee River watershed, 43 kg/yr. must be offset to complete Phase 1 and an additional 22 kg/yr. must be offset to complete the entire project.

NATURAL RESOURCES/OPEN SPACE

NR1. The proposed project is located on a 10.72 acre site on the approximately 53-acre Trout Pond property. The entire Trout Pond property has been designated as a Significant Natural Resource Area as mapped by the Cape Cod Commission, due to the presence of unfragmented forest habitat and rare and endangered species habitat. A portion of the Trout Pond property east of the Boch Center site, but not the Boch Center site itself, has been identified by the Natural Heritage and Endangered Species Program as an "estimated habitat for rare wetlands wildlife" and a "priority site of rare species habitats and exemplary natural communities."

NR2. A natural resources inventory completed for the DRI application indicated that no state-listed plants or animals were found on the proposed Boch Center site. With the exception of a stormwater drainage overflow for a 100-year storm, the limit of development work is approximately 400' from Trout Pond, which is adequate to avoid disturbance to the resources associated with the Pond.

NR3. MPS 2.5.1.3 of the RPP requires 65% of the site be set aside as open space, or 6.97 acres of the 10.72 acre site. The applicant proposes to meet the open space requirement through the purchase or permanent restriction of off-site open space. Technical Bulletin #94-001 recommends that off-site open space be provided within a Significant Natural Resource Area, contiguous with existing open space, and of equivalent or greater habitat value to that on the Boch Center site. The applicant is encouraged to provide an additional benefit by providing the open space within the Mashpee River watershed to reduce future nitrogen loading potential.

NR4. Project plans were revised October 18, 1998 to relocate the 100-year stormwater outfall pipe outside of the 100 foot-buffer to wetlands as required by MPS 2.3.1.4.

ECONOMIC DEVELOPMENT

ED1. The RPP encourages the development of facilities that enhance the cultural qualities of Cape Cod and that promote year-round activity. Of those responding to the 1995 Residents Survey for the 1996 RPP, 79% supported such a facility. In addition, the Mashpee LCP supports the construction of the Boch Center as a major enhancement to the community.

ED2. The applicant estimates that 38 full-time equivalent positions will be created in Phase 1 and up to 70 positions in total will be created with the completion of Phase 2. The applicant estimates that salaries will be \$497,000 for year-round staff by Phase 2, with pay ranging from \$10 per hour to \$65,000 annually.

ED3. Based on a National Assembly of Local Arts Agencies (NALAA) study, Arts in the Local Economy submitted by the applicant, the total economic impact of cultural events on the

community is 3-5 times the amount of the organization's operating budget. The applicant estimated that the annual operating budget would be \$3.5-4 million. Therefore, this could translate to a total economic impact of \$10.5 - \$20 million.

ED4. The applicant estimates that the project will cost \$13 million to construct. The applicant is unable at this time to estimate the number of jobs that might be created by the \$13 million construction project. Once plans are completed, the project will be put out to bid and at that time the applicant will be able to report how many jobs and contractors come from Cape Cod and what the full economic impact of construction will be.

TRANSPORTATION

TR1. The Boch Center is proposed to be located on Great Neck Road South which is classified as an Urban Minor Arterial roadway. The project will have three curb cuts onto this road. The proposed site drives serve both the Boch Center and the remainder of the Trout Pond property. The southernmost site drive will be gated and opened only during amphitheater performances and to provide necessary access to the MCLP wastewater treatment plant. The middle site drive will be for two-way traffic; such site drive would provide access not only to the Boch Center but also for future development, if any, within the area between the Boch Center parking area and Great Neck Road South. The northern site drive will be an exit only, for right turns only, for so long as there is no additional development on the Trout Pond property other than the Boch Center. If and when additional development is proposed on the Trout Pond property, the northern site drive can be modified for two-way traffic if shown to be consistent with the Act and the Regional Policy Plan (RPP) in effect at the time such additional development is proposed. The location and design of that site drive may also be required to be altered upon review by the Cape Cod Commission.

TR2. The Boch Center's level of service analysis (LOS) shows that the site drives will operate at LOS B during an average weekday peak hour (5 PM to 6 PM). This complies with Minimum Performance Standard 4.1.1.6 which requires site drives to operate at LOS D or better in certified growth centers. During the amphitheater performance peak hour the site drive will operate at LOS F. The provision of police details during amphitheater performances will improve operations at the site drive to LOS B.

TR3. The proposed project is expected to generate 436 daily trips and 181 PM peak hour trips during an average weekday. During days with amphitheater performances the project is expected to generate 1,342 daily vehicle trips and 444 peak hour trips.

TR4. Assuming a 20% trip reduction credit based on Minimum Performance Standard 4.1.2.1, the project will generate 145 peak hour trips on an average weekday and 356 peak hour trips during amphitheater performances. These trips were distributed on the roadway system surrounding the site to identify traffic impacts on roadways and at intersections.

TR5. Study area locations were identified based on the 25 peak hour threshold (50 trips in certified growth centers) according to Minimum Performance Standard 4.1.1.1. Since the site is located in a certified growth center many locations were below the 50 trip threshold and therefore not required for study.

TR6. Based on the Minimum Performance Standard 4.1.1.1 as discussed in finding TR5 above, the study area includes the following intersections and roadway segments:

Intersections

- Route 151/Old Barnstable Road
- Route 28/Asher's Path
- Route 28/Route 130
- Route 28/Main Street

Roadway Segments

- Route 151 (Job's Fishing Road to Old Barnstable Road)
- Route 28 (Rotary to Asher's Path)
- Route 28 (Cape Drive to Main Street)

TR7. In addition to the study area intersections listed in finding TR6, the Boch Center has studied project impacts at ten other intersections in Mashpee. These intersections include the following:

- Great Neck Road North/Old Barnstable Road
- Great Neck Road North/Route 130
- Job's Fishing Road/Route 151
- Mashpee Rotary/Route 28/Route 151/Great Neck Road
- Quinaquisset Avenue/Route 28
- Route 28/Steeple Street
- Great Neck Road North/Lowell Road
- Route 28/Job's Fishing Road/Donna's Lane
- Great Neck Road South/Donna's Lane/Windchime Drive
- Route 151/Market Street

TR8. The Boch Center has developed a mitigation plan to alleviate project impacts during the average daily peak hour and during the peak amphitheater performance periods.

TR9. Based on MPS 4.1.2.1, the applicant is required to offset 20% of daily project traffic. Therefore, the applicant must reduce project traffic by 36 daily trips (20% x 181) during an average weekday and 268 daily trips (20% x 1,342) during the amphitheater performance days. The Boch Center has developed a trip reduction plan to comply with the 20% trip reduction requirement.

TR10. The Boch Center has collected accident data and performed an accident analysis at the study area intersections. Based on this analysis, the Boch Center has identified the intersection of Route 151/Old Barnstable Road as a high accident location. The Boch Center will provide a police detail at this location during peak amphitheater performance periods to address this safety problem. In addition, mitigation funds could be used to address safety concerns at this location. This location is proposed to be signalized by the Town of Mashpee.

TR11. The Boch Center has performed sight distance measurements to ensure that adequate stopping sight distance is provided at the site drives. Based on these measurements, the site drives will meet stopping sight distances according to the American Association of Transportation and Highway Officials (AASHTO) standards.

SOLID & HAZARDOUS WASTE MANAGEMENT

SW1. Goal 4.2.1. of the Regional Policy Plan is to manage solid waste using an integrated solid waste management system that includes waste reduction, recycling, composting, incineration and landfilling, and to divert 30% of municipal solid waste from incinerator and landfill facilities through recycling and composting by 2000, and 40% by 2005.

SW2. The applicant indicated that recycling bins will be located within the buildings and a dumpster provided near the loading dock adjacent to the summer stage. The applicant should also develop an educational program concerning recycling for students, performers and patrons. Waste from land clearing activities should be recycled either on or off-site.

SW3. The project site is not located in an existing Zone of Contribution or a Potential Public Water Supply Area according to maps developed for the 1996 Regional Policy Plan. As such, Minimum Performance Standard (MPS) 4.2.2.3 of the RPP does not apply to this project.

SW4. The DRI application states the project will be heated with natural gas. It also states that water-based paints may be used in set design but that they will be used and stored in household quantities within the production center. The applicant has also stated they will strive to use least-toxic products and prevent the use of lead and asbestos products.

SW5. Based on previous project reviews, construction of the Boch Center is likely to involve on-site storage and handling of paints, solvents and similar products. MPS 4.2.2.1 requires development and redevelopment to make reasonable efforts to minimize their hazardous waste generation through source reduction, reuse, material substitution, employee education and recycling. MPS 4.2.2.2 requires that development and redevelopment be in conformance with the Massachusetts Hazardous Waste Regulations, 310 CMR 30.00.

HERITAGE PRESERVATION/COMMUNITY CHARACTER

HP1. The Massachusetts Historical Commission (MHC) submitted comments on December 11, 1998 requesting an intensive archaeological survey be completed prior to construction of the proposed project.

HP2. The Boch Center is proposed to be constructed in two phases. Phase 1 involves the construction of a 21,000 s.f. Community Arts Center, a two-story three level building totaling 48 feet in height, and a Meadow Summer Stage. Phase 2 involves the construction of an indoor theater, administration building, and a design and production center. The proposed project consists of a series of structures with pitched roofs which resemble the additive massing of traditional Cape Cod buildings, consistent with the Commission's Design Manual.

HP3. The proposed indoor theater is a two-story 23,444 s.f. building with the stage portion totaling 84 feet in height. Due to the siting and design of the facility, the height will not have an adverse regional impact. The theater is sited with stepped roofs leading to it, which minimize its visual impact. The applicant submitted documentation supporting the need for the height of the theater building to accommodate a fly loft to contain and operate scenery, lighting, sound and set equipment.

HP4. The site will be extensively landscaped with both native and ornamental trees, evergreens, shrubs and perennials to create an attractive setting for patrons. Ten-foot wide planting islands have also been provided within the paved parking lot to break up the expanse of parking and to provide shade.

HP5. Site lighting plans have been revised to meet the requirements of Technical Bulletin #96-001 and the RPP.

HP6. No information concerning proposed signage was submitted during DRI review. The applicant has requested that review of signage be deferred until construction documents are prepared.

CONCLUSION

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

The probable benefits from the proposed development are greater than the probable detriments. This conclusion is supported by the educational and cultural benefits to the Town of Mashpee and Barnstable County; Economic Development findings #ED1 - ED5 concerning the direct and indirect economic benefits of the proposed project; and Community Character findings #HP3 and #HP6 concerning the architectural and landscape design consistent with the Regional Policy Plan and Design Manual. These probable benefits outweigh the probable detriments of increased traffic and nitrogen loading impacts to the Mashpee River which will be mitigated through measures described in conditions WR2 and TR1 - TR20.

As conditioned, the project is consistent with the Minimum Performance Standards of the 1996 Regional Policy Plan. The Mashpee Town Counsel has indicated that the project qualifies as a non-profit educational institution and as such the Town may not require a special permit nor prohibit that protected use. The Town may impose Plan Review as a means to ensure compliance with reasonable dimensional requirements, so long as such requirements do not either result in de facto prohibition of the use or impose an unreasonable burden on the protected use. The project is consistent with the Mashpee Local Comprehensive Plan, which was certified by the Commission on July 30, 1998.

The Commission hereby approves with conditions the application of Boch Center for the Performing Arts, Inc., provided the following conditions are met:

CONDITIONS

GENERAL

G1. The applicant shall obtain all applicable state and local permits for the project.

G2. Prior to issuance of a building permit for each phase of construction, the applicant shall obtain a preliminary Certificate of Compliance from the Commission which states that all conditions in this decision pertaining to issuance of a building permit for such phase have been met. The applicant shall notify Commission staff of the intent to seek a preliminary Certificate of Compliance

at least 30 days prior to the anticipated date of application for a building permit for each phase of the project. Prior to receiving a permanent or temporary Certificate of Occupancy for any phase of the proposed project, the applicant shall obtain a Certificate of Compliance from the Cape Cod Commission for such phase. 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 relating to a particular phase shall be met prior to issuance of a Certificate of Compliance for such phase of the proposed project. No new building area within a phase shall be open for business to the public until a Certificate of Compliance is received from the Cape Cod Commission for such phase. For the purposes of this decision, a Phase 2 Certificate of Compliance shall be considered a final Certificate of Compliance. If the project is not constructed in phases, all conditions shall be met prior to issuance of a final Certificate of Compliance unless otherwise indicated.

G3. For each phase of the proposed project, the applicant shall notify Commission staff of the intent to seek a Certificate of Compliance at least thirty (30) days prior to the anticipated date of occupancy. 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.

G4. The project shall be constructed in accordance with the Boch Center for the Performing Arts Permit Plan Set, dated February 20, 1998 and revised October 18, 1998. Prior to issuance of a building permit for each phase of proposed construction, the applicant shall submit construction documents for that particular phase based on the October 18, 1998 permit plan set for review by Commission staff to determine their consistency with Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 5/12/97.

G5. If any traffic mitigation or trip reduction measure is not completed in accordance with these conditions, no Certificate of Compliance shall thereafter be issued until such measure is completed as determined by Commission staff. The applicant hereby agrees that the Cape Cod Commission is under no obligation to issue a partial or final Certificate of Compliance due to the failure of the applicant to complete any traffic mitigation or trip reduction measure as identified in this decision.

G6. Nothing in this decision shall prohibit the MCLP from seeking a DRI approval to further develop the approximately 1.65 acre easement area known as "Theater Square" as shown on the plans entitled Boch Center for the Performing Arts Permit Plan Set, Existing Conditions and Clearing Plan sheet L1.1, dated February 20, 1998 and revised October 18, 1998.

WATER RESOURCES

WR1. Wastewater generation, tickets sold, seats occupied, and seats available shall be monitored on a daily basis following the completion of Phase 1 for a period of three (3) years or application for a building permit for Phase 2, whichever occurs first. Starting from the date of issuance of a Certificate of Compliance for Phase 1, annual monitoring reports shall be provided to the Commission. If average flow per seat over the monitoring period is more or less than the 3.28 gallons/seat used in the calculations described in the Water Resources findings above, the required amount of nitrogen offset mitigation shall be adjusted accordingly. If three (3) years of data is not available prior to issuance of a building permit for Phase 2, nitrogen loading calculations for the

entire project shall be based on 65 kg/yr.

WR2. Prior to issuance of a Certificate of Compliance for Phase 1, the applicant shall contribute a payment of \$72,000 to the Town of Mashpee to be held in a designated escrow fund by the Commission for the development or implementation of appropriate nitrogen management strategies for the Mashpee River, or the applicant shall implement measures approved by Commission staff to reduce the annual nitrogen load to the Mashpee River watershed by 43 kilograms. The escrow fund shall be of a form and content satisfactory to Commission counsel. This contribution is based on the number of existing houses which would need to be equipped with denitrifying septic systems (at \$8,000 per house) to offset the additional nitrogen from Phase 1 of the Boch Center. Prior to issuance of a final Certificate of Compliance, the applicant shall contribute an additional payment of \$32,000 to the Town of Mashpee, to be held in a designated escrow fund by the Commission for the development or implementation of appropriate nitrogen management strategies for the Mashpee River, or the applicant shall implement measures approved by Commission staff to reduce the annual nitrogen load to the Mashpee River watershed by an additional 22 kilograms unless the nitrogen loads are modified under the provisions of conditions WR1 and WR3.

WR3. If a community wastewater system is constructed that removes wastewater from the Mashpee River watershed and is available to the Boch Center, wastewater flows from the Boch Center shall be incorporated into the system. In the event this connection occurs prior to issuance of a Certificate of Compliance for either Phase 1 or Phase 2, the requirements of WR2 above shall be reduced or eliminated accordingly.

WR4. Operation and maintenance of the stormwater system on the Boch Center site shall be the responsibility of the Boch Center. The system shall be inspected by a qualified firm on a monthly basis during the first six (6) months of operation and annually thereafter.

NATURAL RESOURCES/OPEN SPACE

NR1. At least six (6) months prior to an anticipated application for a building permit for Phase 1 of the proposed project, the applicant shall submit a proposal for 6.97 acres of land to be dedicated as permanent open space for review and approval by Commission staff. Open space provided under this condition shall include 6.97 upland acres of open space located within a Significant Natural Resource Area within the town of Mashpee, of comparable habitat value to that which is found on the Boch Center site, and if possible contiguous with existing open space. To assist the Commission staff in its review of this proposal, a plant and wildlife assessment shall be completed for the off-site parcel(s). The applicant is encouraged to provide an additional benefit by providing the open space within the Mashpee River watershed to reduce future nitrogen loading potential.

NR2. Prior to receiving a Phase 1 building permit, the applicant shall provide the Cape Cod Commission with a conservation restriction consistent with Massachusetts General Laws Chapter 184, Sections 31-33 or donation for 6.97 acres of upland open space and accompanying plan to be approved by Commission counsel and recorded at the Registry of Deeds or Land Court which provides that the 6.97 upland acres of open space shown on the plan shall remain as permanent open space. The restriction and site plan shall be executed and recorded and proof of recording shall be provided to the Commission prior to issuance of a building permit for Phase 1.

TRANSPORTATION

TR1. The Boch Center shall designate a transportation coordinator to oversee the mitigation plan described in this decision. The transportation coordinator shall be the contact for the Cape Cod Commission and shall be responsible for providing all transportation reports as described below to the Cape Cod Commission.

TR2. The southern site drive shall be gated and remain closed except during amphitheater performances and to provide necessary access to the MCLP wastewater treatment plant. The middle site drive shall be for two-way traffic. The northern site drive shall be an exit only, for right turns only, for so long as there is no additional development on the Trout Pond property other than the Boch Center. If and when additional development is proposed on the Trout Pond property, the northern site drive can be modified for two-way traffic if shown to be consistent with the Act and the Regional Policy Plan (RPP) in effect at the time such additional development is proposed. The location and design of that site drive may also be required to be altered upon review by the Cape Cod Commission.

TR3. Prior to issuance of a Certificate of Compliance for Phase 1, the Boch Center shall contribute a one-time payment of \$21,400, to be held in a designated escrow fund by the Commission, as mitigation to alleviate project impacts at the following intersections and roadways:

Intersections

- Route 151/Old Barnstable Road
- Route 28/Asher's Path
- Route 28/Route 130
- Route 28/Main Street

Roadway Segments

- Route 151 (Job's Fishing Road to Old Barnstable Road)
- Route 28 (Rotary to Asher's Path)
- Route 28 (Cape Drive to Main Street)

Mitigation funds shall be used by the Town of Mashpee in conjunction with mitigation funds from other projects to evaluate and implement the most appropriate transportation improvements at the study area roadways and intersections. Monies not expended within ten (10) years of the date of deposit shall revert to the Cape Cod Regional Transit Authority (RTA) or successor transportation agency for general transit service expenses in the Town of Mashpee. The escrow fund shall be of a form and content satisfactory to Commission counsel.

TR4. Prior to issuance of a final Certificate of Compliance, the Boch Center shall inspect and re-analyze the signal at Route 28/Route 130. This evaluation shall entail determining whether the signal requires upgrading to accommodate future traffic. A report on any recommended upgrades to this signal shall be submitted to Commission staff and MHD prior to issuance of a final Certificate of Compliance. The Boch Center shall not be responsible for the cost of upgrading, except as provided from the mitigation funds defined in condition TR3 above.

TR5. Prior to issuance of a Certificate of Compliance for Phase 1, the Boch Center shall install permanent counting stations on Route 28 east of the Mashpee Rotary and on Great Neck Road

South near the Boch Center site. Installation shall include all equipment necessary for the operation of the counting stations. The installation and specifications shall be in accordance with Massachusetts Highway Department guidelines for permanent counting stations. The traffic counting stations shall be solar powered, unless satisfactory arrangements are made for electrical service. Appropriate landscaping shall be provided to screen the control cabinets. The exact location of the stations shall be determined through coordination with the Commission staff, MHD and the Town of Mashpee.

TR6. Prior to issuance of a Certificate of Compliance for Phase 1, the Boch Center shall make a payment of \$23,969 to the Cape Cod Commission to be used for public transportation in the Mashpee area. This payment shall be held in escrow by the Commission as the Boch Center's contribution towards necessary trip reduction measures for Phase 1. The escrow fund shall be of a form and content satisfactory to Commission counsel. Prior to issuance of a Certificate of Compliance for Phase 2, the Boch Center shall make a payment of \$49,059 to the Cape Cod Commission to be used for public transportation in the Mashpee area. This payment shall be held in escrow by the Commission as the Boch Center's contribution towards necessary trip reduction measures for Phase 2. As an alternative to the Phase 1 and Phase 2 payments, prior to issuance of a Certificate of Compliance for Phase 1 the Boch Center shall make an annual payment of \$4,503 to be held in escrow by the Commission as the Boch Center's contribution towards necessary trip reduction measures. This annual payment shall commence prior to issuance of a Certificate of Compliance for Phase 1 and shall continue for a period of twenty-three (23) years, including the initial payment year. Funds collected under this condition may be used by the RTA or successor transportation agency for general transit service expenses in the Town of Mashpee or to fund the shuttle service described in condition TR7 below.

TR7. The applicant may elect to meet the requirements of TR6 above through a commitment to a proportional share of the cost of operating a shuttle bus service for the Mashpee Rotary area. This cost shall be shared among the Boch Center for the Performing Arts, Inc., MCLP, and C. Talanian Realty Co., Inc. (Talanian), and/or other such development(s) in the Mashpee Rotary area as may be appropriate. The Boch Center's cost for the transit service shall be based on its proportional share of the number of average daily vehicle trips generated by all participating developments and the number of performance days/hours that the Boch Center is open to the public. Coordination of the service (e.g., public or private transit) shall be the responsibility of the participating developments. The shuttle shall provide service to the three developments as well as the Southport community, New Seabury and other activity areas deemed appropriate. Prior to issuance of a Certificate of Compliance for Phase 1, the Boch Center shall execute a written agreement with the MCLP and Talanian to provide this service. Prior to execution of the agreement, this contract shall be provided to the Cape Cod Commission staff for approval and shall include details discussing the transit service related to routing, scheduling and shuttle bus specifications.

Documentation that the shuttle service is available to the public in accordance with the written agreement shall satisfy the requirement of condition TR6 above. The annual payment alternative described in TR6 above may be satisfied in any year by the applicant's commitment to participate in such area shuttle service as described in condition TR7 above or payment of the balance required by the lump-sum payments for Phase 1 and Phase 2 required in condition TR6 above, without penalty of interest or inflation percentages for early payment.

TR8. The amphitheater performances shall be restricted to the following hours to avoid peak congestion periods in Mashpee:

- Weekdays - Performances shall start after 8 PM
- Saturdays - Performances shall start after 8 PM
- Sundays - Performances shall start after 3 PM

TR9. No amphitheater performances shall be scheduled during the annual Pops' performances at Mashpee Commons.

TR10. The Boch Center shall provide police details at the locations shown below during amphitheater performance arrivals and departures. The times and durations of these police details shall be determined in consultation with the Mashpee Chief of Police or his/her representative.

- Great Neck Road at the site drives (includes vehicle and pedestrian control)
- Mashpee High School remote parking lot site drive
- Route 28 at Quinaquisset Avenue
- Route 28 at Steeple Street
- Route 28 at Job's Fishing Road
- Route 151 at Old Barnstable Road

Prior to issuance of a Certificate of Compliance for Phase 1, the Boch Center shall execute a written agreement with the Town of Mashpee Police Department to perform these police details.

TR11. The Boch Center shall conduct a annual monitoring plan for five (5) years following occupancy of the site. Starting one (1) year from the date of issuance of a Certificate of Compliance for Phase 1 of the project, a report shall be provided to the Town of Mashpee and the Cape Cod Commission which includes the following:

- Traffic counts performed at the site drives.
- Results of the traffic management plan implemented during amphitheater performances.
- Results of the Transportation Demand Management/trip reduction program (see Condition 14).
- Utilization of alternate modes (e.g., transit, pedestrian and bicycles) for average weekday and amphitheater performances.
- Vehicle occupancy rates during amphitheater performances.
- Origin information on patrons attending amphitheater performances.
- Updates on the effect of the police details and the need to provide additional details. This update shall be coordinated with the Mashpee Chief of Police and the Director of Public Works.
- Schedule of performances to review traffic control plan during amphitheater performances.
- Information (schedule, routes) on the transit service provided by the Boch Center, MCLP and Talanian.

TR12. Following review of the monitoring program as described in condition TR11, the Boch Center shall meet with Mashpee town officials (Director of Public Works and Chief of Police) to discuss the need for additional or fewer police details. If warranted, the Boch Center will provide additional police details or relocate existing details where appropriate.

TR13. The Boch Center shall coordinate traffic control with both State and local officials during amphitheater performance periods.

TR14. Prior to issuance of a Certificate of Compliance for Phase 1, the Boch Center shall begin providing the following Transportation Demand Management measures which shall continue every year for the life of the project:

- Encourage ridesharing, bicycling and walking.
- Advertise Boch Center activities with the regional and local transit service.
- Provide public transportation information on ticket sales and at Boch Center.
- Allow flexible work hours for employees.
- Inform Boch Center patrons of parking program with ticket information.
- Encourage bus charters and group sales for amphitheater performances.
- Provide discounted tickets or other incentives for public transportation.
- Coordinate with the Cape Cod Regional Transit Authority (or successor transportation agency) regarding public transportation to the Boch Center and a connection to shuttle service provided by the Boch Center.
- Provide at least two bicycle parking areas with parking racks.

TR15. Prior to issuance of a building permit for Phase 1, the Boch Center shall designate a bus drop off/pick up area on the project site based on specifications and location approved by the Cape Cod Regional Transit Authority. Construction of the bus drop off/pick up area shall be completed prior to issuance of a Certificate of Compliance for Phase 1.

TR16. The Boch Center shall construct a sidewalk on the eastern side of Great Neck Road adjacent to the project site from the northern site drive to the southerly side of Donna's Lane. The design of the sidewalk shall be in accordance with the Town of Mashpee standards and shall be approved by the Town of Mashpee prior to issuance of a building permit for Phase 1. The Boch Center shall construct the sidewalk prior to issuance of a Certificate of Compliance for Phase 1.

TR17. The Boch Center shall construct two crosswalks on Great Neck Road South in accordance with Town of Mashpee requirements. These crosswalks shall be installed once other sidewalk connections are constructed by adjacent developments or by the Town of Mashpee. The Boch Center shall maintain these crosswalks throughout the life of the project. Alternatively, the Boch Center can provide funds to the Town of Mashpee for the construction and maintenance of these crosswalks. In the event that other sidewalk connections are not in place at the time a final Certificate of Compliance is sought from the Commission, the Boch Center shall contribute a one-time payment of \$4,028 to be held in a designated escrow fund by the Commission which may be used by the Town of Mashpee to construct crosswalks on Great Neck Road South.

TR18. Prior to issuance of a Certificate of Compliance for Phase 1, the Boch Center shall implement traffic guide signs to inform motorists of on-site and remote parking areas for amphitheater performances.

TR19. The Boch Center shall provide a remote parking lot at the Mashpee High School to accommodate traffic during peak amphitheater performances. The Boch Center shall provide shuttle bus service from the remote parking lot to the Boch Center during peak amphitheater performances.

TR20. The Boch Center shall coordinate with the Town of Mashpee and the MHD regarding the proper routing of trucks during construction of the Boch Center.

SOLID & HAZARDOUS WASTE MANAGEMENT

SW1. No stumps shall be buried on the project site. Stumps and brush generated from land-clearing operations shall be chipped for reuse on-site or sent to a designated off-site facility for processing. Prior to issuance of a building permit for the first phase of construction, the applicant shall submit documentation which identifies the disposal or reuse method for solid waste generated during construction.

SW2. Dumpsters or storage bins for cardboard, office paper, and glass and metal containers shall be provided by the Boch Center. Prior to issuance of a building permit for each phase of construction, the applicant shall submit floor plans indicating locations of such recycling equipment.

SW3. Adequate collection containers shall be provided within the project site to accommodate a recycling program. This shall include receptacles in common areas designed to separate recyclable bottles and cans from trash. Prior to issuance of a Certificate of Compliance for each phase of construction, Commission staff shall complete an inspection of the Boch Center to ensure receptacles are installed.

SW4. Prior to issuance of a Certificate of Compliance for Phase 1, a Boch Center staff person shall be designated as recycling coordinator to coordinate hauler pickups, educate Center users and employees, particularly custodial staff, ensure product quality and monitor recycling equipment for needed maintenance.

SW5. Prior to issuance of a building permit for each phase of the project, the applicant shall provide the Commission with a report which describes the reasonable efforts to minimize the project's hazardous materials use and hazardous waste generation through source reduction, reuse, material substitution and use of least-toxic products in building design and construction.

SW6. Prior to issuance of a building permit for each phase of the project, the applicant shall submit for Commission staff review and approval a plan which indicates the steps to be taken to ensure contractors are aware of their obligations to properly manage hazardous materials and wastes at the construction site. This shall include a plan for fueling of construction equipment relative to condition #SW7 below.

SW7. Heavy construction equipment, if fueled on-site, shall be fueled according to a set schedule and at a designated area of the site and on an impervious surface. Equipment shall be serviced off-site with the exception of minor greasing of joints and fittings. On-site major servicing or repair of construction equipment, particularly heavy construction equipment, is prohibited.

ECONOMIC DEVELOPMENT

ED1. Commencing one year from the date of this decision, the applicant shall submit annual reports regarding the numbers of Cape Cod construction companies/workers employed as a result of the project. This condition shall lapse upon issuance of the final Certificate of Compliance for

the project.

HERITAGE PRESERVATION/COMMUNITY CHARACTER

HP1. Prior to any construction activity including site preparation work or excavation on any portion of the project site, 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, the Massachusetts Historical Commission (MHC) and the Mashpee Wampanoag Tribal Council or its designee regarding ways to avoid or mitigate any adverse effects to significant archaeological resources. The scope of the investigation shall be determined in conjunction with the staff of the State Archaeologist at MHC.

HP2. Prior to issuance of a building permit for the first phase of construction, the applicant shall submit final landscape plans for approval by Commission staff based on landscape plans included with the submittal titled Boch Center for the Performing Arts Permit Plan Set, Graham Gund Architects, Inc. dated February 20, 1998, revised October 18, 1998. Final landscape plans shall include the quantity of all plant materials to be installed.

HP3. If all required site work and/or landscape improvements related to each phase of construction are not complete at the time a partial Certificate of Compliance is sought from the Commission, any work which is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the contracted cost of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow agreement shall be payable to the Cape Cod Commission with the work approved by Commission staff prior to release of the escrow agreement.

HP4. Proposed site lighting shall be constructed in accordance with the submittal titled Boch Center for the Performing Arts Permit Plan Set, Graham Gund Architects, Inc. dated February 20, 1998, revised October 18, 1998. Parking lot luminaires shall maintain a maximum of 8 footcandles measured on the ground beneath the light source. Prior to issuance of a final Certificate of Compliance, footcandle readings of installed luminaires shall be taken by Commission staff to verify compliance with this condition.

HP5. Prior to issuance of a building permit for the first phase of construction, the applicant shall submit plans for proposed building, directional and/or site signage for approval by Commission staff. Internally illuminated building, directional or site signs are prohibited.

The Cape Cod Commission hereby approves with conditions the application of Boch Center for the Performing Arts, Inc. as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended for the proposed Boch Center for the Performing Arts in Mashpee, MA.

Herbert Olsen
Herbert Olsen, Chair

1/21/99
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 21st day of January 1999

Katharine L. Peters
Name, Notary Public

My commission expires:

