



CAPE COD COMMISSION

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DATE: January 18, 2001

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PROJECT: Christy's of Cape Cod – Phase 1, CanalSide Commons
Route 28 at the Bourne Rotary
Bourne, MA

PROJECT #: CCC#TR2003

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

Book & Page
And Owner: Book 3038, Page 262 - Louis M. DeCicco, Jr.

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby **approves with conditions** the application of Christy's of Cape Cod as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (ACT), c. 716 of the Acts of 1989, as amended for the proposed project. The Decision is rendered pursuant to a vote of the Commission on January 18, 2001.



PROJECT DESCRIPTION

The project is for the development of a 2,400 s.f. convenience market and gas station. The project applicant proposes to redevelop at a new location a former 1,200 sq. ft. gasoline/service station with six/eight vehicle-fueling positions (vfps) into a 2,400 sq. ft. Christy's Market with eight vfps. The former gasoline/service station was located in the southeast quadrant of the Bourne Rotary in Bourne, Massachusetts. Site access and egress to the former gasoline/service station is provided by way of a driveway to Route 28 northbound (south of the rotary) which permits right turns in only. A second driveway, permitting entering and exiting movements is provided within the Bourne Rotary between Route 28 (northbound) and Sandwich Road Extension. The proponent's most recent access plan includes the removal of the existing gas/service station access/egress at the Bourne Rotary. Access and egress to the proposed site would be via an improved curb cut on Route 28 northbound and future access/egress located on Sandwich Road.

JURISDICTION

Commission review of the Christy's of Cape Cod site plan submitted with the prior DRI Exemption application (the Exemption request was later withdrawn) and dated April 17, 2000, shows that the Christy's project area is 59,437 sq. ft. of leased area. Given this square footage, the project falls under the category of "new construction or use changes involving as a principal use outdoor commercial space with a total project area greater than 40,000 sq. ft.," thereby, making it a mandatory Development of Regional Impact under Section 3(e) of the DRI Enabling Regulations. The revised leased project area is 72,375 square feet. The revised and approved site plan for the project is dated "November 1, 2001" (sic) (misdated; received January 2, 2001).

The Christy's proposal is also subject to Cape Cod Commission review as a Development of Regional Impact due to its location on the CanalSide Commons project site, which is currently under Cape Cod Commission review as a Development of Regional Impact under Section 12(i) of the Cape Cod Commission Act, for any project which requires the preparation of an Environmental Impact Report through MEPA. Christy's is being considered as Phase 1 of CanalSide Commons, but was reviewed as an independent project.

PROCEDURAL HISTORY

The CanalSide Commons applicant submitted an Environmental Notification Form (ENF) to the Executive Office of Environmental Affairs (EOEA), Massachusetts Environmental Policy Act (MEPA) Unit on July 15, 1998. A Draft Environmental Impact Report was submitted in early 1999 and a subsequent Supplemental Draft Environmental Impact Report (SDEIR) was required by the Secretary of Environmental Affairs.

In the interest of preserving future development options for both the MassHighway Department and the CanalSide project, and potentially improving safety at the rotary, the applicant submitted a Notice of Project Change under 310 CMR, 11.10 to relocate the former Texaco service station and proposed Christy's convenience market into the site plan for CanalSide Commons. The Notice of Project Change proposed to relocate the gas station and construct an enlarged building of 2,400 square feet to be used by Christy's for a convenience store.

A Final Record of Decision on the Phase 1 Waiver Request for Christy's was issued by the Massachusetts Secretary of Environmental Affairs on November 23, 1999. Based upon state criteria, the MEPA certificate grants the Phase 1 Waiver Request allowing Phase 1 of the CanalSide Commons project to proceed prior to the completion of review of the Environmental Impact Report required for the CanalSide Commons project. The Commission commented on the Notice of Project Change and stated that the project would be subject to DRI review, and could be considered as Phase 1 of the CanalSide Commons project proposal.

On June 6, 2000 a public hearing was held on a DRI Exemption request by Christy's of Cape Cod. There was opposition to the Exemption at the public hearing. The applicant subsequently withdrew the Exemption request and proceeded with Development of Regional Impact review. A duly noticed public hearing was conducted pursuant to Section 5 of the Act by an authorized Subcommittee of the Commission on December 5, 2000. The public hearing was continued to January 4, 2001 and the record was left open. A Subcommittee meeting was held on December 18, 2000, at which time a Subcommittee meeting was scheduled for January 4, 2001 and the hearing was continued to the full Cape Cod Commission meeting on January 18, 2001. At the Subcommittee meeting the Subcommittee voted to recommend to the full Commission approval of the DRI subject to Conditions. A public hearing was held before the full Commission on January 18, 2001. At this hearing the Commission voted fourteen to one to approve the project as a DRI with Conditions.

Materials Submitted for the Record:

From the Applicant:

Development of Regional Impact (DRI) Application
Landscape Planting Plan, March 11, 2000
Drainage Calculations, April 5, 2000
Building Elevations, May 22, 2000
Lighting Plan, September 20, 2000
Site Plan, October 20, 2000
Gullwing Lighting Catalogue
McPhilben Outdoor Lighting Information
Gullwing, Thomas Gardco Lighting Information
Letter to Paul Tilton from Jennifer Conley, P.E., September 6, 2000
Building and Canopy Elevation, Revised October 5, 2000
Trip Generation, Figures 2-24 through 2-27, CanalSide Common
Site Plan, November 28, 2000
Sign Elevations in Color, December 14, 2000
300 Line, mcPhilben Outdoor Lighting Information
Letter to Gay Wells, AICP from Patrick M. Butler, Esq., December 21, 1999
Letter to Christy Mihos from David C. Thulin, PE PLS, June 11, 2000
Memo to Cape Cod Commission from Christy's of Cape Cod, July 6, 2000
Letter (fax) to Gay Wells from Patrick M. Butler, July 10, 2000
Letter (fax) to Gay Wells from Patrick M. Butler, July 12, 2000
Letter (fax) to Gay Wells from Patrick M. Butler, July 13, 2000
Letter (fax) to Gay Wells from Patrick M. Butler, July 14, 2000
Christy's Market Trip Generation, July 24, 2000
Letter to Gay Wells from Patrick M. Butler, May 31, 2000
Letter to Gay Wells from Patrick M. Butler, June 21, 2000
Letter to Gay Wells from Patrick M. Butler, July 25, 2000
Letter to Gay Wells from Patrick M. Butler, October 18, 2000
Letter to Gay Wells from Patrick M. Butler, October 23, 2000
Site Plan, October 20, 2000
Letter to Gay Wells from Patrick M. Butler, October 25, 2000
Letter to Mathew J. Amorello from Margo Fenn, September 7, 1999

From the Cape Cod Commission:

Letter to Patrick M. Butler, Esq. from Gay Wells, AICP, December 16, 1999
Letter to Patrick M. Butler, Es. From Gay Wells, AICP, April 5, 2000
Memo to Gay Wells from Patty Daley, December 16, 1999
Inhouse email to G. Wells from Sharon Rooney, May 23, 2000
Staff Report, May 30, 2000
Fax to Patrick Butler, Esq. from Gay Wells, AICP, July 13, 2000
Memo to Gay Wells, AICP from Andrea Adams, July 17, 2000
Fax to Anna Brigham from Gay Wells, AICP, July 17, 2000

Fax to Patrick M. Butler, Esq. from Gay Wells, AICP, July 20, 2000
Fax to Pat Butler from Gay Wells, July 27, 2000
Hearing Postponement Notice, July 20, 2000
Memo to Gay Wells from Ed Eichner, July 12, 2000
Inhouse email to Gay Wells from Sharon Rooney, July 28, 2000
Letter to Patrick M. Butler, Esq. from Gay Wells, AICP, September 22, 2000
Letter to Rick Bryant from Paul S. Tilton, September 26, 2000
Fax to Anna Brigham from Gay Wells, AICP, September 27, 2000
Fax to Anna Brigham from Gay Wells, AICP, September 27, 2000
Fax to Anna Brigham from Gay Wells, AICP, September 27, 2000
Fax to David Thulin from Gay Wells, AICP, October 16, 2000
Fax to Amy from Gay Wells, AICP, October 26, 2000
Letter to Patrick M. Butler, Esq. from Gay Wells, AICP, November 27, 2000
Site Plan, November 28, 2000
Memo to Gay Wells, AICP from Andrea Adams, November 30, 2000
Staff Report, December 1, 2000
Public Hearing Agenda, December 5, 2000
List of Attendees, Public Hearing, December 5, 2000
Community Character Update, December 18, 2000
Memo to Gay Wells from Andrea Adams, December 18, 2000
Fax to Patrick Butler, Esq. from Gay Wells, AICP, December 18, 2000

From Other Agencies:

DRI Staff Referral Form (Q95) to the Cape Cod Commission from the Town of Bourne,
Development of Regional Impact (DRI) Referral Form from the Town of Bourne Planning Board, June 23, 2000
Letter to Margo L. Fenn from Kevin J. Sullivan, October 25, 1999
Letter to Stephen Hines from Therese Murray, November 2, 1999
Letter to Christy Mihos from Richard Bourre, June 1, 2000
Memo from the Association for the Preservation of Bourne, Inc., June 6, 2000
Letter to Cape Cod Commission from Kimberly Simone, June 23, 2000
Comments for Christy's of Cape Cod from Town of Bourne, December 5, 2000
Letter to Robert Durand from Richard Bourre, December 13, 2000

From the Public:

Letter to Governor Paul Cellucci from Stella A. Callagee, March 27, 2000
Letter to Margo Fenn from David Dow, December 3, 2000
Email from John & Joan Masse, December 4, 2000
Email from Lorinda Feingold, December 4, 2000
Email from Mr. & Mrs. J. A. Walters, December 4, 2000
Email from Dorothy Erickson, December 5, 2000
Letter from Shirley K. Baker
Postcard from John M. Carpenter, December 11, 2000

Letter from Russell E. and Elizabeth A. Burns, December 7, 2000
Letter from Theresa M. Rodrigues, December 6, 2000
Email from Margot Jenkins, December 5, 2000

TESTIMONY:

Public Hearing – December 5, 2000

Cape Cod Commission Subcommittee: Robert Deane, Chair; Herbert Olsen, Robert Randolph, Frank Shephard, and Jay Schlaikjer.

Patrick Butler, Esq. presented the project and updated information. Mr. Butler noted the Phase 1 Waiver from the Executive Office of Environmental Affairs, the Exemption request with the Cape Cod Commission, and the subsequent withdrawal. Mr. Butler believes they have made significant headway in meeting the Regional Policy Plan. He noted the benefits of the project to be: 1) access relocated away from the Bourne rotary, 2) aesthetic considerations, 3) water and environmental improvements, 4) conforms to town zoning, and 5) it is a permitted use. He noted that the project will need to get town permits.

Gay Wells, AICP, Commission planner, gave an overview of open space, design, and signage. Andrea Adams spoke about exterior lighting, and Ed Eichner noted that the project's anticipated nitrogen loading will be less than 5 ppm. He stated that the stormwater meets the Minimum Performance Standard.

Paul Tilton, Transportation Engineer, discussed traffic generation and the relocation of the previous Texaco station, for which credit was received. He discussed MassHighway requirements and the pass-by rate, and the need for 20% trip reduction. Mr. Tilton also discussed site access issues. He stated that he believes with site access changes, the proposed project is an improvement over the Texaco station.

Frank Shephard, Subcommittee member, noted his concern regarding traffic turning right from the project onto Route 28. Jay Schlaikjer asked about sodium vapor lights and Andrea Adams said that the lighting must take into consideration the affect on rare moths in the nearby area. Robert Randolph asked about another entrance/access through CanalSide Commons if it is approved. Mr. Tilton noted that the plans show access from CanalSide. Mr. Shephard asked if Christy's access from Route 28 would be changed to right-in-only with the right-out onto Route 28 closed if CanalSide is approved. This would be the case.

Leo Locke, Bourne Selectman and Chair for Bourne Code Enforcement noted the meeting with the applicant and the Commission staff. He stated concerns regarding the following: 1) there are existing easements with utility companies and he would like an agreement signed with Christy's to allow access, 2) signage

should be subject to town review, 3) the concern that access/egress point is too close to the Bourne Rotary. The Town believes that it must be moved south. This is a safety concern. It was noted that a December 5, 2000 letter from MassHighway does not adequately cover the concerns of the Town and the Commission.

Hayden Coggeshall, Bourne Selectman, re-emphasized that the access/egress on Route 28 must be moved to the south and that an acceleration lane should be included. He believes that eliminating access at the rotary is desirable, but they must also move the access point south on Route 28.

Public Comments:

Al Beiner asked if a Dunkin' Donuts would be included.

Kathy Lavelle, President of the Association for the Preservation of Bourne, discussed traffic and flow, location and the tie in to CanalSide Commons. She noted concerns regarding large trucks leaving the Bourne Landfill on Route 28.

Donald Keeran, Association for the Preservation of Cape Cod, asked for assurance of removal of Sandwich Road access and said that this should be a condition of any approval. He also believes that the access/egress for Christy's is too close to the Bourne rotary.

Joan Gelap, Gray Gables, stated that traffic generation is the essence of the Christy's project. She also expressed her concerns that this is the "first toehold" for CanalSide Commons.

Bill Priest, Pocasset, stated that the canopy is 25 ft. high, 40 ft. long, and 12 ft. to 16 ft. across. He believes it is visually intrusive and asked if it can be eliminated.

George Jenkins, Pocasset, spoke of recollections. The Texaco station was an asset in years past, but today is different. Is Christy's a convenience store for CanalSide Commons?

Mr. Butler made additional comments saying that Christy's should be reviewed assuming that CanalSide Commons will not be built. He said that, as the lessee of the Texaco site, Christy's could operate at the Texaco site now.

Jennifer Conley, Civil Engineer with Rizzo Associates, stated that they reviewed the access and that they believe people will be moving slower toward the rotary. The vehicles on Route 28 will be slowing down, while cars leaving the site will be accelerating. She commented that if the access is moved south on Route 28, the curve of the egress road would be tighter and traffic would have to slow down more, rather than accelerate on to Route 28.

Mr. Butler agreed to a condition to remove the Texaco building. He said there are no plans for a separate donut operation. He noted that the exit onto Route 28 would be removed if CanalSide were approved. Mr. Butler believes they have made a compelling showing for approval of the project and asked to schedule a draft decision for a Subcommittee meeting and to go to the full Commission of January 4, 2001.

Leo Locke noted that the Town requirement is that it be a minimum of 275 ft, according to the zoning bylaw. Mr. Butler cited the pre-existing non-conformity. Mr. Locke noted that the Town of Bourne would oppose the project if access/egress on Route 28 is not moved south.

Mr. Deane suggested that the engineers for the Town, applicant, and Commission should talk.

FINDINGS:

The Commission has considered the application of Christy's of Cape Cod for the proposed convenience store and gas station, and based on consideration of such application and upon the information presented at the public hearing(s) and submitted for the record, makes the following Findings pursuant to Sections 12 and 13 of the Act:

General

G1. Christy's of Cape Cod is proposed as a 2,400 s.f. convenience store and gas station, which replaces the existing Texaco gas station.

G2. Because Christy's of Cape Cod was granted a Phase 1 Waiver from MEPA, Christy's is being reviewed separately as a Development of Regional Impact as Phase 1 of CanalSide Commons.

G3. The project review was concentrated on four issue areas: 1) Water Resources, 2) Transportation, 3) Open Space, and 4) Community Character and Design.

G4. Christy's location on the CanalSide Commons site may require a change of access in the future, if CanalSide Commons is approved as a DRI.

G5. There are utility easements on the property to allow access for public services and utilities, including Bourne Water District and cable communications.

G6. The project requires a Special Permit from the Town of Bourne in order to achieve consistency with local zoning. Granting the DRI approval is in no way intended to support or oppose the grant of the Special Permit at the local level.

G7. There is a vacant, existing building on the project site, which was previously used as the Texaco gas station.

Water Resources

WR1. The proposed Christy's convenience store and gas station is located on the western edge of the proposed CanalSide project site. Groundwater flow from this portion of the site is toward the west and the Cape Cod Canal.

WR2. The proposed Christy's site is not located within any of the primary water resources areas listed in the RPP. Thus, the regional 5 ppm nitrogen loading standard applies (MPS 2.1.1.1).

WR3. Staff received nitrogen loading calculations indicating that the 2,400 sq. ft. convenience store will have a 4 island self-service gasoline pumping area. Total wastewater flow is 420 gallons per day. Nitrogen loading calculations including the state layout area show that nitrogen loading from the site will be less than the 5 ppm standard.

WR4. Stormwater from the site will be treated in a system including catch basins with deep (5 ft) sumps. The system and the maintenance schedule, which is included on submitted plans, meets MPS 2.1.1.6.

Natural Resources/Open Space

NR1. The project is not located within a Significant Natural Resource Area (SNRA) as defined on Cape Cod Regional Policy Plan maps. Portions of the site have been disturbed, associated with the present gas station development and access to the former Panorama Motel site. Portions of the site that are presently vegetated, and which may provide some habitat, are somewhat isolated from the larger complex of woodlands to the north and east.

NR2. A natural resources inventory of the project site was not provided. Based on a Commission staff site visit, pitch pine, oak, and apple trees are present, with a green briar and honeysuckle understory. Wetlands do not appear to be present on the site, or within 100 ft. of the site.

NR3. As a redevelopment project, Christy's is required to provide up to 50% of the project area, or the square foot amount of the existing undeveloped area, whichever is less, as permanently protected open space, pursuant to Minimum Performance Standard 2.5.1.4. Based on a revised leased area of 72,375 square feet, the open space requirement is 36,188 s.f. The applicant proposes meeting the open space requirement through a cash contribution to the Town of Bourne Open Space Committee. A cash contribution is permitted by MPS

2.5.1.4 of the RPP, and given the location of this project and the nature of the resources present on site, is preferable to meeting the open space requirement onsite.

Transportation

TR1. Christy's of Cape Cod convenience store and gasoline station is proposed to be located on Route 28 (MacArthur Boulevard) which is classified as an Urban Extension of a Rural Principal Arterial.

TR2. Christy's has agreed to close both curb cuts at the previous Texaco Station. This includes the curb cut at the Bourne Rotary and the curb cut on the Route 28 (MacArthur Boulevard) northbound lanes.

TR3. Christy's of Cape Cod has proposed to provide right-in, right-out access to/from the Route 28 northbound lanes, as shown in the site plan #99-093 dated April 17, 2000, latest revision dated 11/2/01 (sic) (misdated, actually received 1/2/01). This plan creates more separation between the Bourne Rotary and the site drive, compared to the previous Texaco Station access. The distance from the center of the Bourne Rotary travel lanes to the center of the site drive will measure a minimum of 275 feet, to meet the Town of Bourne's driveway spacing requirements. Christy's might have access/egress onto Sandwich road as part of subsequent development phases. Such access/egress is not proposed as part of this phase of development.

TR4. The proposed access/egress to Christy's from/to Route 28 northbound is expected to result in improved safety and traffic flow compared to the access/egress to the former Texaco site, which included driveways on both Route 28 and the Bourne Rotary.

TR5. In a letter dated December 13, 2000 from Richard Bourre of the Massachusetts Highway Department to Secretary Robert Durand of the Massachusetts Executive Office of Environmental Affairs, concerns regarding the distance between the proposed CanalSide Commons by-pass road and the Christy's site drive were raised. The letter cites the need for greater separation between the proposed by-pass road on-ramp to Route 28 northbound and the Christy's site drive. The letter stated that alternative access schemes be explored to provide access to the Christy's from the proposed by-pass road or that the by-pass road not include an on-ramp onto Route 28 northbound.

TR6. The overall safety and operations along the Route 28 northbound lanes could be adversely impacted if there is inadequate separation between the proposed CanalSide Commons by-pass road and the Christy's site drive. Current proposals show the separation as approximately 300 feet. The Massachusetts Highway Department, in the letter cited in Finding TR5, stated

that at least 1,500 feet of separation are needed for safe weave maneuvers. Therefore, approval of the Christy's project, with the site drive as currently proposed, may restrict the location and design of the by-pass road for CanalSide Commons, or for another development project on that property.

TR7. The overall safety and operations along the Route 28 northbound lanes will be re-evaluated with new curb cut proposals that may occur as part of CanalSide Commons or other development proposals on that property. This could result in a possible closure or modification of the proposed Christy's access and/or egress onto Route 28.

TR8. Based on a Traffic Access and Impact Study submitted by Christy's of Cape Cod, the proposed project is expected to generate the following additional vehicle trips during a weekday and Saturday:

<u>Time Period</u>	Additional Vehicle Trips	
	<u>Daily</u>	<u>Peak Hour</u>
Weekday	1,083	80
Saturday	1,986	97

TR9. The trip generation numbers shown in Finding TR8 assume a credit for the traffic generated by the previously operated Texaco Station. Previous trips from the Texaco Station were subtracted from the total Christy's trips resulting in the above numbers. This credit is allowed based on the assumption that the Texaco Station site will not be redeveloped by the Massachusetts Highway Department (property owner). Based on a letter dated June 1, 2000 from the Massachusetts Highway Department, there are no plans to redevelop the former Texaco site.

TR10. Minimum Performance Standard 4.1.1.1 of the RPP requires Developments of Regional Impact (DRIs) to mitigate all year-round and summer transportation impacts created by such development at all regional roadways and intersections where the project traffic is expected to add 25 or more vehicle trips during the peak hour.

Peak hour trip generation adjustments were made for pass-by trips (trips already on Route 28 passing the site) and the 20% trip reduction requirement (see Finding TR11 below). Based on the project's type of use, proximity to similar convenience stores and gasoline retailers, and the unique location that provides access only from the northbound lanes of MacArthur Boulevard, a high pass-by rate is warranted. Following these adjustments, the project traffic will be below the 25 trip threshold for regional roadways and intersections. Therefore, Minimum Performance Standard 4.1.1.1 of the RPP is met.

TR11. Minimum Performance Standard 4.1.2.1 of the RPP requires that DRIs reduce at least 20% of their projected daily traffic to and from their development. To meet this standard, Christy's has chosen to use the CCC's Technical Bulletin 96-003 which allows a monetary commitment to be made towards trip generation measures that reduce existing or project traffic on the roadway system. Using this method, the cost to reduce 20% of the project traffic is \$67,958. This money shall be used to implement trip reduction measures within the Town of Bourne. These measures include design, planning, implementation and/or operation of transit, installation and operation of devices to record traffic volumes and/or vehicle speeds and sidewalk and/or bikepath design, planning and/or construction.

Heritage Preservation/Community Character

HP1. The CanalSide Commons applicant filed a Project Notification Form with the Massachusetts Historical Commission (MHC) on July 2, 1998. On July 21, 1998 the MHC responded that the project is unlikely to affect significant historic or archaeological resources.

HP2. *Goal 6.2 of the RPP encourages redevelopment of existing structures as an alternative to new construction and seeks to ensure that future development respects the traditions and character of historic village centers and outlying rural areas so as to protect and improve, where necessary, the visual character of Cape Cod consistent with the Commission's design manual, Technical Bulletin #96-001.* The project's location at the Bourne Rotary, one of two gateways to Cape Cod, requires that the design of the facility be compatible and harmonious with surrounding development and traditional Cape Cod architecture.

HP3. *MPS 6.2.1 requires that the height and scale of a new building be compatible and harmonious with its site and existing surrounding buildings.* The proposed project consists of a 2,400 s.f. convenience market and gas station with an approximately 25' high canopy over the fuel dispensers. Signage and parking for 18 cars are also proposed with access to the site from MacArthur Boulevard. The overall scale and massing of the building and canopy are consistent with MPS 6.2.1.

HP4. *MPS 6.2.2 requires that where development is surrounded by buildings with distinctive architectural styles, building height and exterior materials shall be harmonious with the character of the surrounding area. In all cases, the mass and scale of the building, roof shape and pitch and proportions and relationships between doors and windows be harmonious among themselves and consistent with traditional Cape Cod architectural styles.* Traditional building forms and materials have been incorporated into the project design. The height of the proposed building and canopy is harmonious with the character of surrounding developments in Bourne.

HP5. *MPS 6.2.5 and 6.2.6 require the submission of a landscape plan which addresses both the functional and aesthetic aspects of landscaping.* The applicant proposes landscaping with plant materials which are suitable to the climate and location of the site.

HP6. Revised light fixtures for exterior lighting are harmonious with other project design materials as recommended by ODRP 6.2.20.

HP7. *MPS 6.2.8 prohibits the installation of billboards, offsite advertising and internally lit or flashing signs.* The proposed building sign is a wood carved sign illuminated by overhead gooseneck lighting which is consistent with MPS 6.2.8. The staff has requested a reduction in the size of the proposed free-standing sign and awaits a revised elevation.

HP8. Because alternative development scenarios for CanalSide Commons are currently under review and no decision has been reached on the project, earth removal and grading should be limited to only that which is required to construct the access drive/road, Christy's building, parking lot, and landscaped areas. This is an important matter both from a local and regional perspective, since this area is one of the two gateways to Cape Cod.

HP9. Minimum Performance Standard (MPS) 6.2.7 of the Regional Policy Plan requires that *"exterior lighting in new development or redevelopment shall comply with standards including design, light source, total light cutoff and footcandle levels as defined in the Exterior Lighting Design Standards, Technical Bulletin 95-001."*

HP10. The lighting design plan dated December 11, 2000 includes three types of lights, two pole-mount and an enclosed downlight for the gasoline island canopy. Overall, 21 fixtures are proposed, four and seven, respectively, of the pole mounts (4 + 7 = 11) and 10 canopy lights. Both the pole-mounted and canopy lights selected are metal halide, which conform to Technical Bulletin Standard 2.3.

HP11. Using metal halide lights takes into account a letter received from the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP) in connection to the CanalSide Commons project that specifies, in order to enhance the protection of rare moths on the project site, sodium vapor lighting not be used in the parking lot or other lighted areas.

HP12. Based on the type of optics and the fixture heads selected which are shown on the December 11, 2000 lighting plan, the lights proposed will conform to Technical Bulletin Standard 2.4 which requires a 90 degree cutoff for pole lights.

HP13. Standard 2.7 of the Technical Bulletin specifies a 70 degree cutoff for wall-mounted lights, but the December 11, 2000 plan submitted does not show any of these fixtures.

HP14. The December 11, 2000 lighting plan indicates the pole lights will be mounted at 18.5 feet and the canopy lights will be at 14 feet. The height of the canopy is 14 feet above grade. As such, the mounting heights for the pole and canopy lights conform to Bulletin Standard 2.6 which specifies a maximum pole height of 20 feet for "*developments which abut residential areas and/or regional vistas.*"

HP15. Standard 2.5 of the Technical Bulletin requires that "*reflectors and shielding shall provide for total cutoff of all light at the property lines of the parcel to be developed.*" The December 11, 2000 plans show the position and foot-candle levels of proposed fixtures. Based on these plans, a pole-mounted fixture will be located on a landscaped island at the front of the site, near the proposed new entrance/exit road may violate the total cutoff requirements of Standard 2.5.

HP16. Standard 2.8 states, the "*maximum horizontal foot-candle level (Initial) as measured directly below the luminaires at grade [shall be] 8.0*" and that the "*minimum horizontal foot-candle level (Maintained) as measured directly below the luminaires at grade [shall be] 1.0.*" The December 11, 2000 plans submitted show conformance with these specified foot-candle levels, both in the initial and maintained condition, for the pole-mount and canopy lights. However, this is the first time the Commission has reviewed a gas station with canopy lights, and as such, field verification of the conformance of the project's lighting design with Technical Bulletin 95-001 and MPS 6.2.7 is warranted.

CONCLUSION

The project is consistent with the Regional Policy Plan for Water Resources, Open Space, Transportation, and Community Character and Design.

Based on the Findings above, the Cape Cod Commission hereby concludes that the benefits of the proposed project outweigh the detriments resulting from the development. This conclusion is supported by the following:

- The project will remove access at the Bourne Rotary, thus increasing safety at this location.

- Traditional building forms and materials have been incorporated into the project design and the applicant proposes landscaping with plant materials which are suitable to the climate and location of the site, per ODRPs 6.2.16 and 6.2.18.

CONDITIONS

The Commission hereby approves, with Conditions, the application of Christy's of Cape Cod for the proposed convenience store and gas station as a Development of Regional Impact, subject to the following Conditions:

General

G1. This DRI Decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written Decision.

G2. Failure to comply with all Conditions stated herein and to remain in compliance herewith, shall be deemed cause to revoke or modify this Decision, at the discretion of the Cape Cod Commission. Written notice will be provided to the applicant prior to such action.

G3. The applicant shall obtain all state and local permits for the proposed project.

G4. All utility easements on the project site shall be retained to allow access for public services and utilities personnel.

G5. The existing Texaco building shall be demolished and removed prior to obtaining a Final Certificate of Compliance with the Cape Cod Commission.

G6. No development work, as the term "development" is defined in the Act, shall be undertaken until the appeal period hereunder has elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

G7. Prior to issuance of a building permit, 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 have been met.

G8. The proposed Christy's of Cape Cod convenience store and gas station shall be constructed in accordance with the following final plans:

- Site plan, dated 11/1/01 (sic) (misdated; received Jan. 2, 2001)
- Landscape plan, revised, January 13, 2001
- Building elevations, A101 and A102, December 3, 2000
- Drainage Details plan, April 4, 2000 (showing 5 ft. sump)
- Lighting plans, December 11, 2000.

G9. Prior to issuance of a building permit, the applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 6/3/99 and as amended from time to time. Revisions to final plans as approved by the Commission, which are a result of more restrictive conditions imposed by a local board shall be considered Minor Modifications #1 and shall be approved by Commission staff.

G10. Prior to receiving a temporary or final Certificate of Occupancy from the Town of Bourne, the applicant shall obtain a Certificate of Compliance from the Commission.

G11. The project shall not be open for business to the public until a Certificate of Compliance is received from the Cape Cod Commission.

G12. The applicant shall notify Commission staff of the intent to seek a Preliminary or Final Certificate of Compliance at least thirty (30) days prior to the anticipated date of receipt of such Certificate. Such notification shall include a list of key contact(s) for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition within seven (7) business days of such notification and inform the applicant in writing of any deficiencies and corrections needed. The Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. By filing a request for a Certificate of Compliance, the applicant agrees to allow Cape Cod Commission staff to enter onto the property which is the subject of this Decision for the purpose of determining whether the conditions contained in the Decision are met.

G13. The applicant shall certify that it has given a copy of this Decision to the general contractor and all tenants prior to the start of construction.

G14. DRI approval of Christy's of Cape Cod - Phase 1 of CanalSide Commons is without prejudice to the Commission in the full exercise of its discretion and statutory duties in relation to CanalSide Commons or any other DRI project or

application and does not prejudice any action that the Commission may take after completion of this Phase 1 review process relating to CanalSide Commons, or other DRI project.

G15. The Decision on Christy's of Cape Cod does not create any vested rights in reference to CanalSide Commons. In addition, this Decision does not create any expectation that the Commission will act favorably on subsequent phases of the CanalSide Commons project. Nobody should proceed with the CanalSide Commons project proposal in reliance on a favorable decision on Christy's of Cape Cod. The CanalSide Commons project will be reviewed solely on its own merits and the project proponent proceeds at his or her own risk with respect to any future development.

Water Resources

WR1. The stormwater system shall be constructed as shown on Drainage Details plan, April 4, 2000 (showing 5 ft. sump).

WR2. In order to remain under the 5 ppm nitrogen loading standard, additional Title 5 wastewater flows and increased impervious surfaces (roads, parking, or roofs) shall not be added to the site unless equivalent offsets are provided and approved by the Cape Cod Commission prior to construction.

Natural Resources/Open Space

NR1. Prior to issuance of a Final Certificate of Compliance, the applicant shall contribute \$52,834 (36,188 sq. ft. x \$1.46 sq. ft.) toward off-site open space acquisition in the town of Bourne to be permanently protected as open space. The cash contribution shall be made to the Town of Bourne or to a qualified land conservation entity approved by Commission staff, for the purpose of open space acquisition and protection.

Transportation

TR1. Prior to issuance of a Final Certificate of Compliance, Christy's shall locate their site drive in accordance with the site plan #99-093 dated April 17, 2000, latest revision dated 11/2/01 (sic) (misdated, actually received 1/2/01). The site drive on the Route 28 (MacArthur Boulevard) northbound lanes shall be right-in and right-out only.

TR2. Prior to issuance of a Final Certificate of Compliance, Christy's shall close the driveways at the previously operated Texaco Station. This includes closure of the existing curb cuts at the Bourne Rotary and at the Route 28 (MacArthur Boulevard) northbound lanes. Christy's shall also demolish and remove the existing Texaco building.

TR3. In the event that a new curb cut is located on the Route 28 (MacArthur Boulevard) northbound lanes between the Bourne Transfer Station access and the Bourne Rotary, the Cape Cod Commission will re-evaluate the safety and operations along this section of Route 28. This could result in a closure or relocation of either or both of the Christy's access/egress driveways onto Route 28. Closure or relocation of the proposed Christy's driveways will be evaluated based on the location and design of new access/egress points along Route 28 for the by-pass road and/or access/egress to CanalSide Commons or other development on that parcel. If another project should propose/require a curbcut on Route 28, any modification should not impede access to Christy's.

TR4. Prior to issuance of a Final Certificate of Compliance, Christy's shall make a one-time payment of \$67,958 to Barnstable County to be used for public transportation or other trip reduction measures in the Town of Bourne, consistent with the purposes in Finding TR11. Specific mitigation and location of the trip reduction measures shall be determined by the Cape Cod Commission in consultation with the Town of Bourne. This payment shall be held by Barnstable County/Cape Cod Commission as the Christy's commitment towards trip reduction measures for this project. Monies not expended or obligated for trip reduction measures within 10 years shall be paid to the Cape Cod Regional Transit Authority, or a similar agency providing public transportation, for transit service in the Town of Bourne.

Community Character

HP1. Prior to issuance of a Building Permit, the applicant shall submit a materials board for the proposed Christy's market and fuel canopy to the Commission staff for approval. Proposed materials for the fuel canopy, including underneath surfaces, shall be restricted to non-reflective materials and finishes.

HP2. Prior to issuance of a Final Certificate of Compliance, the applicant shall submit documentation of a maintenance contract which ensures that proposed landscaping shall be maintained for a minimum of three years from the date of the Final Certificate of Compliance.

HP3. All signs shall be down-lit and externally illuminated, and of appropriate size, consistent with MPS 6.2.8 and Technical Bulletin 95-001. Prior to issuance of a building permit, the applicant shall submit a revised sign plan/elevation for staff approval. Such plan/elevation shall include a reduction of the overall height of the sign and shall incorporate traditional and non-reflective materials. All signage shall be consistent with Town of Bourne zoning and Commission design requirements.

HP4. If all required site work and/or landscape improvements are not complete at the time a Final Certificate of Compliance is sought from the Commission, any

work which is incomplete shall be subject to an escrow agreement of a form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the cost of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The escrow agreement shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work. All site work and/or landscape improvements shall be completed within 6 months of issuance of a Final Certificate of Compliance from the Commission.

HP5. Plant materials specified by this decision may be substituted with prior written approval of Commission staff.

HP6. Earth removal and grading shall be limited to that which is required to construct the Route 28 access drive/road, Christy's building, parking lot, and landscaped areas. The portion of the access road from Christy's to Sandwich Road shall not be constructed unless and until a bypass road is constructed by CanalSide Commons or the Massachusetts Highway Department.

HP7. Prior to issuance of a Final Certificate of Compliance, the applicant shall submit final "as built" plans for the actual lighting design. Also prior to issuance of the Final Certificate of Compliance, in-the-field verification of lighting design and light levels shall be conducted by Commission staff to verify conformance with the requirements of the Technical Bulletin 95-001 and MPS 6.2.7 and Conditions HP3 and HP9. This review shall be based on the "as built" exterior lighting design plans or upon the December 11, 2000 lighting plans, whichever is most current.

HP8. Prior to issuance of a Final Certificate of Compliance, the applicant shall undertake any corrections or adjustments to the exterior lighting design as may be necessary to comply with Conditions HP3, HP7, and HP9 and the requirements of MPS 6.2.7, followed by "in the field" verification by Commission staff.

HP9. The installation of billboards, off-site advertising (excepting approved directional signs) and internally lit or flashing signs shall be prohibited. In addition, signs shall incorporate either back-lit lettering or shall be externally illuminated with down-cast fixtures in conformance with Technical Bulletin 95-001.

Based upon the Findings above, the Commission **approves with conditions** the application of Christy's of Cape Cod as a Development of Regional Impact pursuant to Sections 12 and 13 of the Act, c.716 of the Acts of 1989, as amended, for the proposed Christy's of Cape Cod convenience market and gas station located in Bourne, Massachusetts.

Frank Shephard
Frank Shephard, Chair, Cape Cod Commission

1-18-01
Date

Commonwealth of Massachusetts

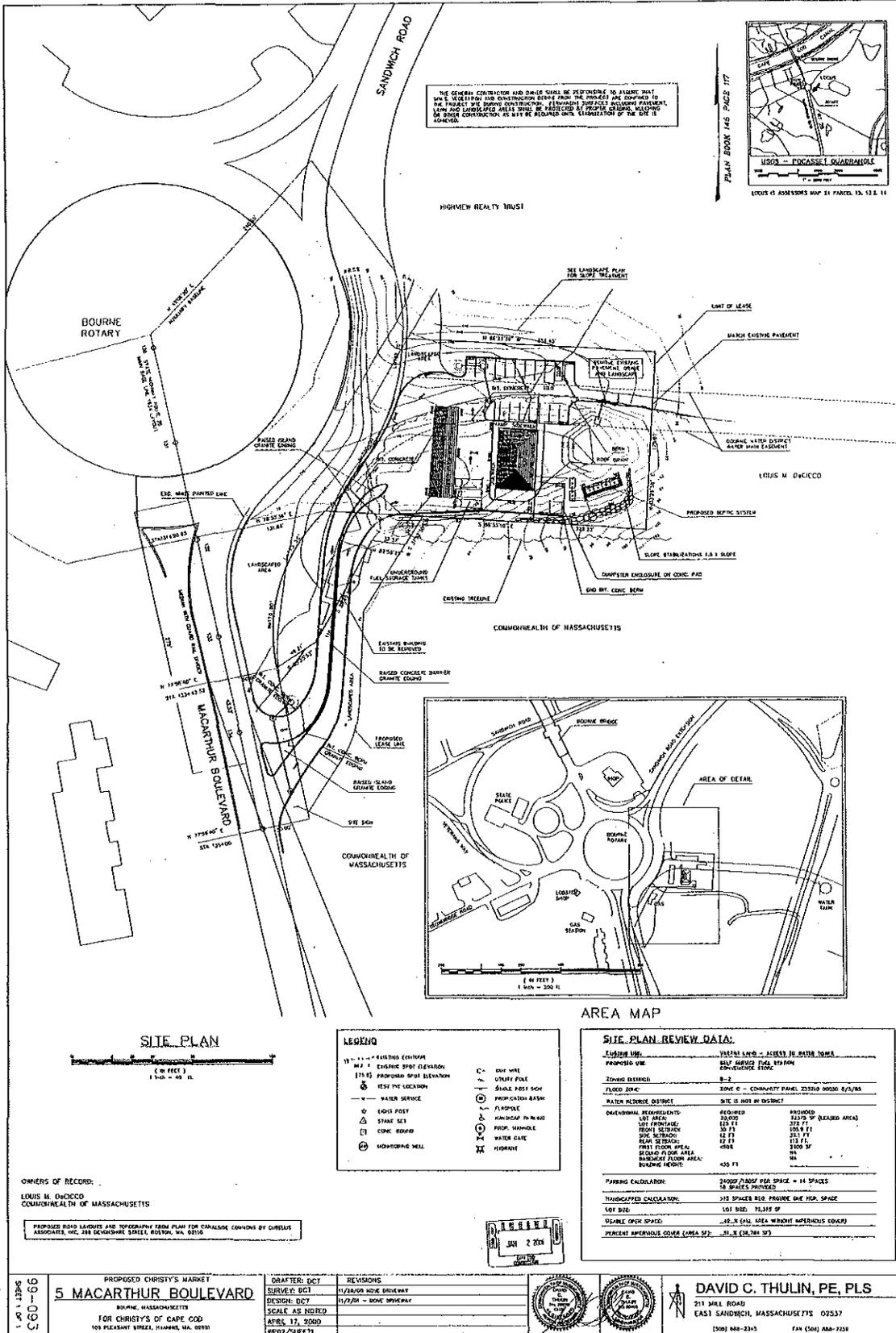
Barnstable, ss.

Subscribed and sworn to before me this 18th day of Jan, 2001.

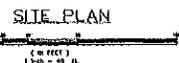
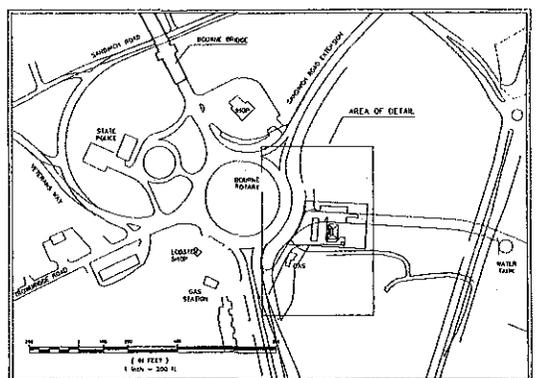
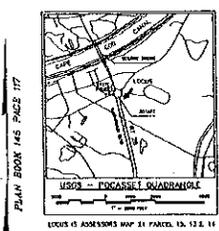
Katharine L Peters
Name, Notary Public

My commission expires:





THE GENERAL CONTRACTOR AND OWNER SHALL BE RESPONSIBLE TO ASSURE THAT THE ACCESSORY AND SUPPLEMENTARY WORK FROM THE PROJECTS ARE COMPLETED TO THE PROJECT AND CONSTRUCTION PERIOD. IT IS THE RESPONSIBILITY OF THE GENERAL CONTRACTOR AND OWNER TO PROVIDE ALL NECESSARY PERMITS, LICENSES AND LAWS. ALL AREAS SHALL BE PROTECTED BY PROPER SIGNAGE, BARRIERS OR OTHER CONSTRUCTION TO BE PROVIDED WITH REGULATION OF THE USE OF ACCESSORY.



LEGEND

11-11-11 - EXISTING CURBWAY	C - EXIST WEL
11-11-11 - EXISTING SPOT ELEVATION	U - UNDEVELOPED
(77.5) PROPOSED SPOT ELEVATION	S - SHADE TREE SIGN
--- REST PVE LOCATION	P - PROP CATCH BASIN
--- WATER SERVICE	A - ASPHALT
○ LIGHT POST	H - HANGAR IN PLACE
△ STAKE SET	P - PUMP WINDMILL
□ CONC. BOARD	W - WATER CAGE
⊕ MONITORING WELL	H - HIGHWAY

SITE PLAN REVIEW DATA:

OWNER:	CHRISTY'S MARKET - ACCESS TO BATH HOUSE
PROPOSED USE:	SELF-SERVICE FUEL STATION CONVENIENCE STORE
ZONING DISTRICT:	R-2
FLOOD ZONE:	ZONE C - COMMUNITY PANEL 23300 00000 8/4/04
WATER RESERVE DISTRICT:	SITE IS NOT IN DISTRICT
INDIVIDUAL REQUIREMENTS:	REQUIRED
LOT AREA:	22,000
LOT FRONTAGE:	272 FT
FRONT SETBACK:	105.8 FT
SPV. SETBACK:	25 FT
REAR SETBACK:	175 FT
FIRST FLOOR AREA:	4508
SECOND FLOOR AREA:	3100 SF
BASEMENT FLOOR AREA:	0
BASEMENT HEIGHT:	435 FT
PARKING CALCULATION:	30000 / 7000 PER SPACE = 43 SPACES 14 SPACES PROVIDED
HANDICAPPED CALCULATION:	212 SPACES REQ. PROVIDE ONE PER SPACE
LOT SIZE:	101,000 SQ FT
USABLE OPEN SPACE:	101,000 SQ FT (AREA WITHIN SPACED COVER)
PERCENT IMPERVIOUS COVER (AREA SPV.:	31.8 (24.7% SPV)

OWNERS OF RECORD:
LOUIS M. DUCICCO
COMMONWEALTH OF MASSACHUSETTS

PROPOSED ROAD LAYOUTS AND TOPOGRAPHY FROM PLAN FOR CAVALRY COMMONS BY CHRISTY ASSOCIATES, INC. 389 SEVENTH STREET, BOSTON, MA 02116



99-093
SHEET 1 OF 1
PROPOSED CHRISTY'S MARKET
5 MACARTHUR BOULEVARD
BOURNE, MASSACHUSETTS
FOR CHRISTY'S OF CAPE COD
105 PLEASANT STREET, HAMMAM, MA 02601

DATE	REVISIONS
11/28/00	11/28/00 - MOVE DRIVEWAY
11/27/01	11/27/01 - MOVE DRIVEWAY

DAVID C. THULIN, PE, PLS
211 SABLE ROAD
EAST SANDWICH, MASSACHUSETTS 02537
(508) 888-2345 FAX (508) 888-7238

FINAL PLAN
APPROVED
BY THE CAPE COD COMMISSION
DATE: 1/18/01