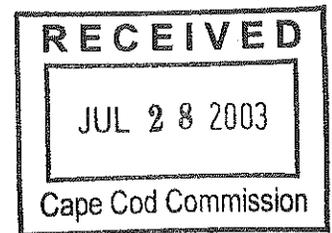




CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MA 02630
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E-mail: frontdesk@capecodcommission.org



DATE: June 25, 2003

TO: Paul de Ruyter
Mashpee Industrial Park Trust

FROM: Cape Cod Commission

RE: Amendment to Development Agreement entered into
in April 1997 and modified in April 1998

APPLICANT: Benjamin and Paul de Ruyter
Mashpee Industrial Park Trust
P.O. Box 377
Brewster, MA 02631

COMMISSION'S PROJECT NUMBER: DA - 96001

AMENDMENT TO DEVELOPMENT AGREEMENT

The Mashpee Industrial Park Development Agreement (Development Agreement) entered into by the Mashpee Industrial Park Trust and the Cape Cod Commission (Commission) on April 17, 1997 and modified in a decision dated April 22, 1998 is hereby amended by a vote of the Commission. All conditions attached to and incorporated into the Development Agreement as entered into on April 17, 1997 and as modified in a decision dated April 22, 1998 shall continue to apply except as modified herein.

AMENDED CONDITIONS

1. The following changes shall be made to condition TR-4(e) of the Development Agreement:

(e) Site Drive Mitigation

~~(i) The MIPT agrees to mitigate impacts from the development of the Property at the Park's site drive. The site drive currently operates at LOS E. Therefore, mitigation is necessary for any development which may occur within the Property. Current problems include poor sight distance on the southbound~~

approach and delays for vehicles turning left out of the site. Costs of improvements at the site drive shall be the responsibility of the MIPT.

(ii) The MIPT agrees to conduct a signal warrant study each year in which additional square footage is constructed within the Property up to Maximum Buildout and to conduct such a study one year after Maximum Buildout to determine the need for signalization and other mitigation which may be required at the site drive to meet the minimum performance standards of the Regional Policy Plan, provided, however, that said signal warrant studies shall not be required after the Massachusetts Highway Department (the "MHD") formally approves signal installation or other mitigation to satisfy the RPP. The MIPT agrees to work with the Town and the MHD to determine when such mitigation shall be implemented. Site Drive mitigation shall be approved by the MHD, if necessary, and may include but shall not be limited to: a peak period detail officer, alignment and/or grade changes, signalization, turn restrictions, and provision for a left turn lane on Route 28.

(iii) The MIPT agrees to initiate temporary traffic control measures (such as providing a police detail at the site drive at peak hours if approved by the Town) until the site drive is signalized or otherwise mitigated to ensure that the site drive operates at no build levels, based upon permissible mitigation strategies as identified in the Minimum Performance Standards of the Regional Policy Plan and, when necessary, as approved by the MHD.

(i) The MIPT agrees to make a one-time payment of \$25,000 to be used to advance the planning, permitting, design and/or construction of a traffic signal at the intersection of Route 28 and the main access/egress to the Industrial Park (Industrial Drive). This payment shall be made prior to the commencement of Phase 3 of the development of the MIPT but not later than July 1, 2004. Payment shall be made to the Barnstable County Treasurer, to be held by the Cape Cod Commission for this purpose. Any funds remaining after the traffic signal is constructed may be used for any other transportation-related purpose in the Town of Mashpee.

(ii) The MIPT agrees to allow the construction of Commercial Street (also known as the Connector Road) to join the existing roads within the Mashpee Industrial Park and further agrees to allow, in perpetuity, the public and the owners of the properties served by Commercial Street to pass and re-pass over all roads within the Mashpee Industrial Park for all purposes roads are typically used in the town of Mashpee.

2. The following amendments as shown shall be made to condition OS1 of the Development Agreement:

OS1. Reservation of Open Space

(e) **(c)(1)** The remainder of the Open Space shall be provided on-site. No more than half of the Open Space shall consist of lawn/landscaped area. Landscaped areas shall contain only native species. The other half of the Open Space shall consist of existing vegetated land left in an undisturbed, natural state. Prior to the commencement of construction within each phase, as set forth in Section TR2 of this Agreement, the MIPT agrees to submit an open space plan for each phase for Commission review to determine conformance herewith, provided, however, that the open space plan submitted for the final phase shall provide open space sufficient to meet the total 40% requirement. The MIPT shall make a good faith attempt, to the greatest extent feasible, to locate open space within the "Habitat Protection Area" depicted by diagonal hatching on Exhibit F and shall make a good faith attempt, to the greatest extent feasible, to maintain reasonable wildlife habitat and travel corridors. The MIPT shall make a good faith attempt, to the greatest extent feasible, to ensure that all fencing within the Park will not impede wildlife movement within the Habitat Protection Area. The MIPT shall make a good faith attempt, to the greatest extent feasible, to preserve as open space the naturally occurring kettle hole on Lot 28.

(c)(2) As an alternative to OS1(c)(1), the applicant shall provide all or a portion of the 40% required open space remaining following the preservation of the buffer areas as identified in OS1(b) through the provision of an offsite parcel. An offsite parcel shall be approved by the Regulatory Committee of the Cape Cod Commission, in consultation with the town of Mashpee, and shall contain natural resource values equivalent to or greater than those found within the Industrial Park prior to its development. The provision of an offsite parcel shall further the goals of open space protection within the town of Mashpee as identified in the Mashpee Local Comprehensive Plan. Said parcel shall be permanently protected either through donation to the town under the care, custody and control of its conservation commission, or through a MGL Ch. 184, Section 31-33 conservation restriction held by a conservation entity. Commission counsel shall approve the form and content of either conservation instrument. If open space is also provided onsite, a best effort shall be made to configure it in such a way as to maximize contiguity with existing open space on and off the Industrial Park site.

Signature Page

Robert D. Deane

Robert D. Deane, Chair
Cape Cod Commission

6/30/03

Date

Commonwealth of Massachusetts

County of Barnstable, ss

On this 30th day of June, 2003, before me personally appeared

Robert Deane, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Katharine L. Peters

Notary
Commonwealth of Massachusetts

My Commission Expires:



J. Bruce Macgregor
Representative of Mashpee Industrial Park Trust

7-11-03

Date

Commonwealth of Massachusetts

County of Barnstable, ss

On this 11TH day of July, 2003, before me personally appeared

J. Bruce Macgregor, to me known to be the person described in and who

executed the foregoing instrument, and acknowledged that He

executed the same as his free act and deed.

[Signature]

Notary
Commonwealth of Massachusetts

My Commission Expires: 9/11/2003