



# CAPE COD COMMISSION

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DATE: April 10, 2003

APPLICANT: C. Talanian Realty Co., Inc.  
176 Newbury Street  
Boston, MA 02116

PROJECT: SouthCape Village/Phase I Modification  
Route 28 & Donna's Lane  
Mashpee, MA

PROJECT #: CCC #MOD02030

RE: Modification of Development of Regional Impact Decision dated 12/14/00  
Cape Cod Commission Act, Sections 12 & 13

Lot/Certificate/Book & Page:  
Lot 3- 32122c, 33848, 475431, 1164450  
Lot 2- 32122c, 33848 475432 116540  
Lot 1- 33792, 3866, 035

Owner: Lots 3 & 2 Chatal Realty Trust  
Lot 1 Chatal Associates

Former Drew Property:  
Lot 2- 11696, page 144, Charles Talanian  
Lot 3- 11696, page 142, Charles Talanian

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## MODIFICATION TO DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of C. Talanian Realty for a Major Modification to the Development of Regional Impact (DRI) decision for the SouthCape Village project pursuant to Sections 12 and 13 of the Cape Cod Commission

SouthCape Village Modification MOD02030  
Phase I Modification Decision  
April 10, 2003  
Page 1



Act (Act), c. 716 of the Acts of 1989, as amended, and Section 9(n) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12.

### **PROJECT DESCRIPTION**

The SouthCapeVillage Outlet Mall DRI as approved by the Cape Cod Commission in December 2000 consisted of an Outlet Center/Shopping Mall of 160,000 square feet (s.f.) located on an approximately 25 acre site on Route 28 in Mashpee. The project was approved for nine buildings ranging in size from 5,000 to 25,000 s.f., providing for up to 35 stores.

The proposed modification to the SouthCape Village DRI consists of the construction of a 42,000 s.f. supermarket (Building A) and 14,000 s.f. of retail space (Building B), hereinafter referred to as "Phase I Modification" and includes changes in traffic mitigation, building design, landscaping, and site work. The applicant intends to proceed in the future with the full 160,000 s.f. build-out of the project as approved but is seeking a "Phase I" modification approval that would allow for construction of the supermarket/retail use (only) and would provide the associated mitigation requirements for that portion of the project. Prior to the proceeding with the remaining 104,000 s.f. (or any portion thereof) the applicant will need to obtain a "Phase II" modification approval from the Cape Cod Commission to address potential impacts and the required mitigation associated with the project's build-out.

### **PROCEDURAL HISTORY**

The Commission's Regulatory Committee determined on October 7, 2002 that the proposed changes to the SouthCape Village DRI decision constitute a Major Modification under Section 7(d)(iii) of the Cape Cod Commission Administrative Regulations. A completed DRI modification application was submitted in January 2003. A public hearing was conducted by a duly authorized subcommittee of the Commission at Mashpee Town Hall on February 12, 2003. The hearing was continued to March 20, 2003, and continued by a hearing officer to April 10, 2003 at the Cape Cod Commission meeting at the 1<sup>st</sup> District Courthouse, Assembly of Delegates chambers in Barnstable Village.

The subcommittee held a public meeting on March 7, 2003 after the close of the public hearing to deliberate on this project. At this subcommittee meeting, the subcommittee voted unanimously to recommend to the full Commission that the Phase I Modification be approved, subject to conditions. A final public hearing was held before the full Commission on April 10, 2003. At this hearing, the Commission voted to approve, with one abstention, the Phase I Modification, subject to conditions.

Materials submitted for the record:

*From the applicant:*

- Letter to MEPA re: project change
- Letters from Jeffrey Dirk of Vanasse Associates re: trip generation
- Letter from Donald Megathlin re: modification issues
- Letter from Don Megathlin re: water usage
- Roadway detail Connector Road (dated 9/10/02)
- Trip generation summary
- Letter from Jeffrey Dirk re: trip generation
- Traffic analysis/driveway operations
- Letter from Laura Moynihan re: modification request
- Landscape plans (12/10/02 L6, L7, L8, L9) & plant list
- DRI modification application
- Revised site plans and phasing plans
- Reduced site plans dated 12/10/02
- Copy of 1/24/03 MassHighway filing
- Letter from Don Megathlin re: project issues
- Letter from Laura Moynihan re: project description
- Cover letter from Mary LeBlanc and Landscape plan L10  
(revegetation plan)
- Plants and planting cost estimate
- Notice of Project Change
- Copy of memo from MassHighway re: signal warrant
- Connector Road/assessors parcels
- Letter from Don Megathlin re: transportation conditions
- Memo from Jeffrey Dirk with driveway plans
- Cover letter and revised Shellback Way driveway plan
- Right-in/Right-out plan
- Revised Donna's Lane access plans
- Site drive analysis
- Revised site plans L1-L3, Bldg D, and sign elevations,
- Revised site work phase plan (L4)
- Letter from Robert Ament re: decision
- Cover letter from Don Megathlin and revised site plans
- Letter from Robert Ament re: decision

*Date Received:*

August 6, 2002  
September 9, 12 & 16, 2003  
September 20, 2003  
October 4, 2003  
October 21, 2002  
October 30, 2003  
November 14, 2002  
December 11, 2002  
December 27, 2003  
January 9, 2003  
January 13, 2003  
January 17, 2003  
January 29, 2003  
January 31, 2003  
February 3, 2003  
February 6, 2003  
  
February 6, 2003  
February 7, 2003  
February 12, 2003  
February 12, 2003  
February 18, 2003  
February 18, 2003  
February 24, 2003  
February 25, 2003  
February 26, 2003  
February 27, 2003  
February 28, 2003  
March 6, 2003  
March 11, 2003  
March 31, 2003  
April 4, 2003  
April 7, 2003

*From Cape Cod Commission:*

- Letter to Don Megathlin re: information needed
- Memo to Regulatory Committee
- Memo to Joyce Mason and Tom Fudala re: major modification

*Date:*

September 5, 2002  
October 2, 2002  
October 16, 2002

SouthCape Village Modification MOD02030

Phase I Modification Decision

April 10, 2003

Page 3

- Letter to Laura Moynihan re: information needed January 8, 2003
- Memo to subcommittee re: hearing January 22, 2003
- Staff Report and cover memo to subcommittee March 5, 2003
- Letter to Robert Ament re: decision April 9, 2003
- Modification decision April 10, 2003

*From State and Municipal Officials:*

- Copy of May 2001 MassHighway Section 61 finding Date received: November 14, 2002
- Letter from Town Administrator in support of project February 11, 2003
- Certificate on the Notice of Project Change April 2, 2003

*From the public:*

- R. & M. Goodale of Mashpee recommending “major mod.” Date received: October 7, 2002
- W. Kastner of Mashpee recommending “major modification” October 7, 2002
- A. Aristide of Mashpee opposed to supermarket October 7, 2002
- L. Thompson of Mashpee recommending major modification determination and opposed to supermarket October 7, 2002
- Form letter recommending Regulatory Committee determine “major modification” from J.Gaye, M. Scanlon, T. Cantarr, L. Ludwig, G.W. Rogers, J. Hall, M Brosnihan, D.P.Guffuay, C. Kerrigan, , A. Traczyk W. Brosnihan, E. Frome, P.Falesner, W. Hood October, 11, 2002

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

**TESTIMONY**

A public hearing was held at Mashpee Town Hall in Mashpee, MA on February 12, 2003. Donald Megathlin, representing the applicant, described the proposed changes in building design and explained that the supermarket and Building B would be completed in the first phase of the modification. Jeffrey Dirk of Vanasse discussed the traffic impacts of the Phase I modification and addressed the recommendations in the Commission staff report. Attorney Laura Moynihan further discussed the modifications to the original decision and said that the applicant would like to meet with staff to address any unresolved issues.

The subcommittee asked questions concerning the trip generation and the TDM parcel.

Martha Hevenor introduced the staff report and community character issues as provided in the report. Glenn Cannon presented the transportation issues as provided in the staff report.

Mashpee Town Planner Tom Fudala suggested that a portion of the Drew parcel (the Route 28 portion) be deeded now, with the rest of it held in escrow until a later date. He said he thinks the portion along Route 28 shouldn't be developed.

Norm Glenner from the Windchime development said that he doesn't think a large building would be attractive or fit in with the surrounding area. He also expressed concern about the Great Neck Road/Donna's Lane intersection.

Martin O'Malley, President of the Board of Trustees for Windchime, said that Windchime supports the development but supports staff comments as well. He noted traffic concerns and concerns about the large building mass, recommending breaking down the mass and the provision of adequate buffering.

Staff and the applicant agreed to address the remaining issues in a working meeting right away so that a subcommittee meeting could be held as soon as possible and a recommendation made to the full Commission.

### **JURISDICTION**

The SouthCape Village project (TR97007) qualifies as a Development of Regional Impact (DRI) under Section 3(e) of the DRI Enabling Regulations as commercial development that involves "new construction with a gross floor area greater than 10,000 square feet. The Commission's Regulatory Committee determined on October 7, 2002 that the proposed changes to the SouthCape Village DRI decision constitute a Major Modification under Section 7(d)(iii) of the Cape Cod Commission Administrative Regulations.

The Commission has considered the application of C. Talanian Realty for the proposed Major Modification to the SouthCape Village DRI decision (TR97007, December 14, 2000), and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

## FINDINGS

### General

*The General findings G1 and G2 of the original SouthCape Village DRI decision (TR97007, December 14, 2000) remain in effect. The following finding is added to that decision:*

G3. The proposed modification to the SouthCape DRI presents new impacts in the areas of transportation and community character. These issue areas were reviewed for consistency with the 2002 Regional Policy Plan. The proposed modification does not present additional impacts in the areas of open space, water resources, economic development, and hazardous materials.

### Transportation

*The following transportation findings replace findings TR1-TR20 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):*

TR1. SouthCape Village was approved on December 14, 2000 as a Development of Regional Impact allowing the construction of 160,000 square feet for Factory Outlet Center retail use. The proposed Phase I Modification is to allow the construction of a 42,000 square foot (s.f.) supermarket (Building A) and 14,000 square feet of retail space (Building B). The applicant intends to proceed in the future with the full 160,000 s.f. build-out. For the purposes of identifying transportation impacts and mitigation, as outlined in Findings TR2 through TR5, the construction of a 42,000 s.f. supermarket and a 14,000 s.f. retail store replaces the 160,000 s.f. factory outlet center retail space.

TR2. The expected trip generation of the proposed Phase I Modification results in 414 more trips on an average weekday (81 more trips during the weekday peak hour) and 646 more trips on an average Saturday (28 fewer trips during the Saturday peak hour) than the originally approved project. The highest peak hour of traffic generation (the Saturday peak hour) was used to define the study area and analysis of impacts for Buildings A and B.

TR3. Supermarket and general retail uses typically serve a smaller market area than Factory Outlet Center retail uses. Therefore, supermarket and general retail trips typically are shorter length trips (fewer vehicle miles of travel) than those associated with Factory Outlet Centers.

TR4. The review of the original project as a Factory Outlet Center, with longer trip lengths and higher Saturday Peak Hour traffic than the Phase I Modification offsets the stricter study area requirements of MPS 4.1.3.4 of the 2002 Regional Policy Plan. In addition, consistent with MPS

4.1.3.3 of the 2002 RPP, a 10% reduction in trip generation is allowed because of the project's location in a Growth/Activity Center. Therefore, the proposed Phase I Modification for construction of Buildings A and B does not require additional analysis of peak hour impacts under the 2002 RPP.

TR5. The transportation analyses and related submittals for the original DRI were used as the basis for assessing the traffic impacts of the proposed Phase I Modification and the necessary mitigation to comply with the transportation Minimum Performance Standards of the 2002 RPP.

TR6. The applicant plans to construct an additional 104,000 square feet of retail space in the future. This additional development will be subject to traffic impact analysis and mitigation requirements in compliance with the Regional Policy Plan then in effect at the time of the first public hearing. Additional development on the site (beyond what is approved in this Phase I Modification) will require DRI modification approval by the Cape Cod Commission.

TR7. MPS 4.1.2.1 of the 2002 RPP, requires DRIs to reduce or offset their expected daily and peak hour traffic by at least 25%. Based on expected trip generation, SouthCape Village is required to reduce approximately 1,300 daily vehicle trips. The applicant has committed to a Travel Demand Management (TDM) program consisting of an employee based trip reduction plan, a payment of \$317,000 and conservation of land (as allowed by MPS 4.1.2.7) that is sufficient to meet this requirement.

TR8. To comply with MPS 4.1.1.1 (safety) and MPS 4.1.1.3 (access management), the proposed Donna's Lane driveways will allow for a right-turn entrance only at the South Street site drive and two-way traffic at the Commercial Street site drive.

TR9. To comply with MPS 4.1.1.1 (safety) and MPS 4.1.3.2 (driveway LOS), the project's site drive on Route 28 opposite Shellback Way is proposed to be signalized with geometric changes consistent with the plan titled "Transportation Improvement Project Route 28 (Falmouth Rd.) at Shellback Way" 75% submission dated January 2003 by Vanasse & Associates, Inc.. Pending approval by MassHighway, these plans shall be revised to incorporate ornamental mast arms and/or ornamental signal post, ornamental signal heads, and related ornamental signal equipment in compliance with MPS 4.1.3.13. As an interim plan, the applicant has proposed a right-turn-in/right-turn-out access and egress for the Route 28 site drive as shown in a conceptual plan by Vanasse & Associates, Inc. titled "Route 28 at Shellback Way Right In/Right Out Site Drive Option" dated February 25, 2003 (Interim Access Plan). This interim plan will be constructed if

the traffic signal cannot be completed at the time the Partial Certificate of Compliance is requested for the Phase I Modification.

TR10. Level of Service (LOS) analysis shows that the project's site drives will operate at LOS C or better during the peak hours. This complies with MPS 4.1.3.2.

TR11. Per MPS 4.1.1.7, the Applicant has performed sight distance measurements to ensure that adequate stopping sight distance will be met at the proposed site drives. Based on these measurements, the site drives will meet safe stopping sight distances according to Massachusetts Highway Department and the American Association of State Highway and Transportation Officials design standards.

TR12. To comply with MPS 4.1.3.4 (congestion), to minimize the impacts created by the signal proposed at the Route 28 and Shellback Way site drive, the Applicant has committed to improving two areas adjacent to this intersection. The applicant will consolidate the curb cuts on Route 28 accessing the Liquor Warehouse and the Peters Insurance Agency to form no more than two driveways. SouthCape Village will also reconstruct Shellback Way and the access/egress to the Deer Crossing commercial site to improve traffic flow through this area, as shown on the concept plans dated October 7, 1999. C. Talanian Realty Co., Inc. does not have legal control of these parcels. In addition, the applicant has agreed to consider a vehicular and/or pedestrian connection between the Liquor Warehouse property and SouthCape Village as part of Phase II.

TR13. The Applicant has committed to the construction of a Connector Road located east of Route 28 from Industrial Drive (Mashpee Industrial Park) to Donna's Lane. Construction of the Connector Road will offset the delay to regional traffic on Route 28 caused by the signal at the Route 28 Site Drive at Shellback Way. This complies with MPS 4.1.3.4 of the 2002 RPP, which requires DRIs to mitigate their project traffic and minimize impacts on the adjacent roadway system. The Town of Mashpee, Shirley M. Rogers, and Mashpee Industrial Park are the owners of the parcels through which the connector road will be constructed. C. Talanian Realty Co., Inc. does not have legal control of these parcels.

TR14. Based on MPS 4.1.1.1 of the 2002 RPP, there shall be no degradation in public safety as a result of DRIs. SouthCape Village previously identified the three high accident locations in the study area:

- Route 130 at Great Neck Road North
- The Pine Tree Corners Rotary



- Route 28 at Shellback Way

The applicant identified mitigation and proposed a monetary commitment towards mitigation at these locations. In addition, to address the concerns of Town of Mashpee officials and town residents regarding safety at the Route 28/Shellback Way location, SouthCape Village agreed to fully fund and install a traffic signal at this location.

TR15. To comply with MPS 4.1.3.4, the applicant has committed to a payment of \$373,200 to mitigate the remaining off-site impacts associated with traffic generated by the Phase I Modification. This money can be used to mitigate their off-site study area locations as well as constructing the traffic signal and related improvements at the proposed Route 28/Site Drive/Shellback Way intersection (including Deer Crossing commercial access improvements) in accordance with the concept plans dated March 25, 1999 and October 7, 1999. Based on testimony regarding safety at Route 28 and Shellback Way, a reallocation of mitigation funds is appropriate and provides a public benefit.

TR16. The Interim Access Plan on Route 28 (right-turn-in/right-turn-out) will operate in compliance with the 2002 RPP MPS for safety and operations. It does not provide a public benefit. Therefore, the full cost of constructing and removing the interim access/egress shall be the applicant's responsibility and shall not be paid for using traffic mitigation funds.

TR17. To mitigate project traffic impacts at towns bordering Mashpee and comply with MPS 4.1.3.4 (congestion), SouthCape Village has committed to a fair-share payment of \$18,100. These funds may be used for transportation planning, design, advertising, operation, or construction in the Towns of Falmouth, Barnstable, and Sandwich. The cost breakdown for each town is as follows: Falmouth - \$11,900; Barnstable - \$4,800; and Sandwich - \$1,400.

#### Heritage Preservation/Community Character

*The following findings are added to the findings HP1-HP15 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):*

HP16. MPS 6.2.1 requires in part that *new development preserve the distinctive boundary between village centers and less densely developed areas by focusing on redevelopment/reuse of existing structures or developed sites.* The proposed Phase I Modification consists of redevelopment of a previously disturbed site, which is consistent with MPS 6.2.1. of the 2002 RPP.

HP17. MPS 6.2.5 requires in part that *where an individual structure exceeds a building footprint of 10,000 s.f., the massing, façade and roof configuration shall be varied in order to reduce the apparent mass of the building and shall include a minimum of 10' of set back or projection in the façade footprint for every 50' of façade length.* The proposed Phase I modification consists of a 42,000 s.f. supermarket and 14,000 s.f. of retail stores. The proposed buildings are one to two-stories in height and incorporate significant variation in their roofline, architectural style, and materials. The applicant submitted revised elevations for the proposed supermarket (Building A) and Building D on 3/6/03 which are consistent with this MPS. Building D is not part of the Phase I Modification and will only be constructed if the applicant receives a subsequent modification approval. The overall scale and massing of the buildings are consistent with MPS 6.2.5.

HP18. MPS 6.2.8 requires that *redevelopment of existing strip development provide adequate buffers between parking areas and the street, and significant improvements to interior parking lot landscaping, as well as façade improvements and frontage buildings, as necessary, to improve the visual character of the site.* The proposed Phase I Modification consists of the redevelopment of a site, which was previously disturbed by seasonal flea market use. The modification provides buffers between parking areas and the street, and significant interior parking lot landscaping, consistent with MPS 6.2.8. Traditional building materials have been incorporated into the project design. Traditionally scaled frontage buildings, which are proposed for the full-build proposal, will not be constructed in Phase 1 of the project. The frontage buildings will only be constructed if the applicant receives a subsequent modification. Therefore, the applicant has prepared an interim landscape plan ("Phase I" L-10, dated 1/31/02) and Phase 1 site plan (Site Work Phase I, dated 3/10/03) as part of the Phase I Modification request to ensure that additional buffers and revegetation of areas disturbed by construction of stormwater and other utilities will be provided in the event that construction of the frontage buildings is delayed or not completed. The applicant has also agreed to execute an escrow agreement to cover the cost of completing the interim landscape plan if the full-build proposal is not constructed by December 31, 2005.

HP19. MPS 6.2.9 requires the applicant *to implement a landscape plan that addresses the functional aspects of landscaping. A maintenance agreement or irrigation system as appropriate shall be provided by all development.* The applicant proposes substantial landscaping with plant materials which are suitable to the climate and location of the site. The applicant has agreed to maintain all landscaped areas for the Phase I Modification for a minimum of three (3) years. Proposed screening for supermarket truck loading consists of a wall with compatible building

materials and a 10 foot high decorative wooden fence which will extend along the majority of the loading zone.

HP20. MPS 6.2.7 requires in part that *parking be located to the rear or side of a building or commercial complex in order to promote traditional village design in commercial areas unless such location would have an adverse or detrimental impact on environmental or visual features on the site, or is infeasible... The use of shared parking, on-street parking, and community parking lots in Growth/Activity Centers and Growth Incentive Zones shall be provided, where feasible, in order to reduce the amount of land devoted to parking.* The majority of proposed parking for the Phase I Modification is located to the side or rear of proposed buildings, consistent with MPS 6.2.7. On-street parking is also proposed to reduce the size of parking lots and promote a village-style design. The Phase I modification includes a revision from one 64 car parking lot along Route 28 into two smaller lots (of 27 and 48 parking spaces). The two parking lots are heavily screened from the roadway and are visually separated by proposed topography. These parking lots will be constructed only if a subsequent modification is approved.

HP21. MPS 6.2.11 prohibits *the installation of billboards, offsite advertising and internally lit or flashing signs.* Signage for the supermarket and proposed retail associated with Phase I are proposed to be down-lit and externally illuminated, and consisting of materials that are consistent with the design guidelines in the FEIR dated February 2000 and MPS 6.2.11.

HP22. MPS 6.2.2 requires that *new development proposed on local and regional roadways be sized such that it can be accommodated without significant changes to the existing character of the roadway. Any necessary structural improvements shall be consistent with the existing character of the roadway, unless the Commission and the community deem alternatives appropriate within the boundaries of Growth/Activity Centers and Growth Incentive Zones.* The proposed modification includes an interim plan for Route 28 access to the site which incorporates a right-turn-in/right-turn-out design. This design is consistent with MPS 6.2.2. Pending MassHighway approval, proposed plans for signalization on Route 28 at Shellback Way shall be revised to incorporate ornamental mast arms and/or signal ornamental signal post, ornamental signal heads and related ornamental signal equipment in compliance with MPS 6.2.2 of the RPP.

#### Water Resources

*Water Resources findings WR1, WR3, WR4, and WR9 of original SouthCape Village DRI decision (TR97007, December 14, 2000) remain in effect.*

*The following findings replace findings WR2, WR5, WR6, WR7, and WR 8 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):*

WR2. For the Phase I Modification, the applicant is proposing to build a 42,000 s.f. Roche Brothers supermarket plus 14,000 s.f retail space on a site with a previous Commission approval for 160,000 s.f. of retail and restaurant use. In order to accommodate the Phase I Modification into the build-out proposal and maintain the nitrogen loading requirements of the original decision, the applicant is altering the overall (originally approved) project by reducing retail usage from 148,000 s.f. to 115,000 s.f. and reducing the number of restaurant seats from 356 to 225. The proposed change in restaurant seats includes the elimination of 150 fast food seats and the addition of 19 full service seats. This change in use will reduce the overall (full build) estimated wastewater flow from 15,273 gallons per day (gpd) to 15,001 gpd. Lawn areas and impervious surfaces remain largely the same as originally proposed.

WR5. The existing uses on the project site have an annual nitrogen load of 63.8 kilograms (kg). The proposed project (Phase I Modification) plus the remaining 104,000 s.f., without mitigation, would have an annual nitrogen load of 247.1 kg.

WR6. As a result of the previous review, the applicant nearly met the no net nitrogen loading minimum standard by: a) connecting all proposed development on the site, the Life at Mashpee residential development, the Liquor Warehouse, and Peter's Insurance Agency to the proposed Southcape wastewater treatment facility; b) treating stormwater from 4.69 acres of pavement using a constructed wetland system; c) treating stormwater from 1.57 acres of pavement using a vegetated swale system; and d) using an on-site well within the anticipated wastewater treatment facility plume for irrigating lawn and landscaped areas. These measures reduced the annual nitrogen load to 65.7 kg. The remaining load above the original existing load (1.8 kg/yr) was to be addressed under a condition requiring the applicant to provide \$2,480 in offset funds. These activities allowed the proposed nitrogen load to be slightly less than the existing loads from Dick and Ellie's Flea Market and the existing mini-golf.

WR7. By meeting Condition WR1, MPS 2.1.1.2.C.2 of the RPP will be met for the Phase I Modification. By meeting Condition WR2, MPS 2.1.1.2.C.2 would be met for the full-build proposal as described in finding WR2 above.

WR8. Modelling of nitrogen concentrations expected in the wastewater groundwater plume suggests that concentrations should be less than 5ppm total nitrogen concentration at the property boundary required by MPS 2.1.2.2.

*The following finding is added to the original SouthCape Village DRI decision:*

WR10. The current proposal to construct the supermarket and 14,000 s.f. of retail space is estimated to generate 4,277 gpd of wastewater or 29% of the estimated wastewater flow for the entire revised project. Since the site must meet the no net nitrogen load standard in Minimum Performance Standard 2.1.1.2.C.2, the applicant must offset the nitrogen load associated with this wastewater.

Open Space/Natural Resources

*OS/NR1. The findings of the original SouthCapeVillage DRI decision (TR97007, December 14, 2000) remain in effect.*

Economic Development

*The findings of the original SouthCapeVillage DRI decision (TR97007, December 14, 2000) remain in effect.*

Hazardous Materials

*The findings of the original SouthCapeVillage DRI decision (TR97007, December 14, 2000) remain in effect.*

Noise

*The finding of the original SouthCapeVillage DRI decision (TR97007, December 14, 2000) decision remains in effect.*

Land Use

*The findings in the original SouthCapeVillage DRI decision (TR97007, December 14, 2000) remain in effect*

**CONCLUSION**

Based on the findings above, the Cape Cod Commission hereby approves the Phase I Modification to the SouthCape Village DRI decision provided the conditions set forth below are met.

## CONDITIONS

### General

*General Conditions G1-G4, G6, G9 and G13 of the original SouthCape Village DRI decision (TR97007, December 14, 2000) remain in effect. The following conditions replace conditions G5,G7, G8,G10, G11, G12, and G14.*

G5. Prior to issuance of a building permit for the Phase I Modification (Buildings A and B), the applicant shall obtain the Preliminary Certificate of Compliance from the Commission which states that all conditions in this decision pertaining to issuance of the Preliminary Certificate of Compliance for Phase I modification (Buildings A and B) have been met.

G7. The proposed SouthCape Village Phase I Modification shall be constructed in accordance with the following final plans:

- Site Plans L1-L3, revised 3/5/03, Site Work Phase I Plan L4 revised 3/10/03
- Proposed elevations, sheets A1, A-5, revised 3/5/03, Prellwitz/Chilinski Architects
- Areas 1-3 Landscaping Planting Plan, dated 12/10/02, prepared by Mary LeBlanc Landscape Design, 4 sheets, L4-L9.
- Layout, Grading & Drainage, and Utility Plans by Coler & Colantonio, dated 12/2/02 and 12/11/02.
- Permissible Building Area, prepared by Prellwitz/Chilinski, dated October 15, 1999.
- Site Plan date 1/28/00 (approved for original DRI decision)
- Concept plans – 10/7/99 Liquor Warehouse page 1, Deer Crossing page 2
- Map 4.1 Conceptual Improvement Plan, Full Access/Egress, with Signal, Figure 26, 3/25/99

G8. Prior to issuance of the Preliminary Certificate of Compliance for the Phase I Modification (Buildings A and B), 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 Certificate of Occupancy for the Phase I Modification (Buildings A and B) from the Town of Mashpee, the applicant shall obtain the Partial Certificate of Compliance for the Phase I Modification from the Commission.

G11. The project shall not be open for business until the Partial Certificate of Compliance for the Phase I Modification is received from the Commission.

G12. The applicant shall notify Commission staff of the intent to seek the Preliminary or Partial 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.

G14. As set forth under Section 7(g) of the Cape Cod Commission Administrative Regulations, the approval of the DRI modification shall not extend the seven year time period of validity of the originally issued DRI approval.

#### Transportation

*The transportation conditions of the SouthCape Village DRI decision (TR97007, December 14, 2000) are replaced with the following conditions (TR1 through TR16):*

TR1. The Donna's Lane access and egress for Buildings A and B of the SouthCape Village modification shall be constructed in accordance with the site plan dated January 28, 2000. This allows for the Donna's Lane/South Street access to be right-turn entrance only into the project site. The Donna's Lane/Commercial Street driveway shall be full access and egress. The design and/or directional flow at the Donna's Lane/South Street intersection may be reconsidered as part of the DRI modification request for Phase II.

TR2. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, SouthCape Village shall construct the intersection of the Route 28 site drive at Shellback Way with either (a) a signal (including pedestrian phase) and geometric changes in accordance with the plan titled "Transportation Improvement Project Route 28 (Falmouth Rd.) at Shellback Way" 75 % submission dated January 2003 by Vanasse & Associates, Inc.. Pending approval by MassHighway, these plans shall be revised to incorporate ornamental mast arms and/or ornamental signal post, ornamental signal heads, etc. or (b) a right-turn-in/right-turn-out

driveway consistent with the Interim Access Plan by Vanasse & Associates dated February 25, 2003. The signal shall be coordinated with the proposed signal at Route 28/Job's Fishing Road/Donna's Lane. The intersection and signal design shall include pedestrian crosswalks and, pending Massachusetts Highway Department approval, a pedestrian signal countdown device to warn pedestrians how much time they have left to cross the road. If required by the Town of Mashpee Police or Fire Departments, the signal shall also include a fire preemption device to allow emergency vehicles to control the signal during a response. The right-turn-in/right-turn-out driveway shall be considered an interim plan until the signal is constructed and shall not be funded using off-site mitigation funds.

TR3. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, the Applicant shall reconstruct the curb cuts on Route 28 accessing the Liquor Warehouse and the Peters Agency to form no more than two driveways. As part of any Phase II modification, the applicant shall consider the construction of a vehicular and/or pedestrian connection between this plaza and SouthCape Village.

TR4. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, the Applicant shall reconstruct Shellback Way and the Deer Crossing commercial site drive in accordance with the conceptual plan dated October 7, 1999. This plan includes closing two driveways on Shellback Way, providing a curb cut into the Canning property and widening the Deer Crossing commercial to Shellback Way interconnection. A sidewalk shall also be constructed on Shellback Way from Route 28 to the Deer Crossing residential neighborhood.

TR5. Prior to the issuance of the Partial Certificate of Compliance for the Phase I Modification, SouthCape Village shall make a payment to the County of Barnstable/Cape Cod Commission for traffic mitigation to be held in an escrow account and subject to an escrow agreement of a form and content satisfactory to Commission Counsel. The amount of the payment shall be \$373,200 less any amounts expended to satisfy conditions TR2, TR3, and TR4 except for costs related to the Interim Access Plan, with the amount approved by Commission staff. If any portion of the money is used to satisfy Conditions TR2, TR3, and TR4 prior to the Partial Certificate of Compliance for the Phase I modification, SouthCape Village shall provide the Commission with (an) invoice(s) showing the costs related to construction of these improvements. If the signalization and related improvements at Route 28 and Shellback Way cost more than \$373,200, SouthCape Village shall be responsible for the excess costs. Any funds received by Barnstable County/Cape Cod Commission shall be held in escrow for the purposes of TR2, TR3, and TR4 until December 31, 2005 or until the completion of any subsequent phase of SouthCape



Village development, whichever occurs sooner. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The work shall be approved by Commission staff prior to release of the escrow funds. After December 31, 2005, any remaining funds may be used for any transportation improvements within the Town of Mashpee.

TR6. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, SouthCape Village shall construct the Connector Road located east of Route 28 from Industrial Drive (Mashpee Industrial Park) to Donna's Lane. Construction of this traffic mitigation measure shall be completed in accordance with SouthCape Village's January 28, 2000 site plan and Mashpee's Local Comprehensive Plan (see Map 7-1 and Five Year Plan). This condition recognizes that (1) the applicant does not have control of Industrial Drive, and (2) the extension of the Connector Road to and through Industrial Drive may require a modification of the Development Agreement between the Cape Cod Commission and the Mashpee Industrial Park Trust. The applicant shall, however, provide permanent public access across the SouthCape Village property to access the Connector Road. Furthermore, should the applicant be unable to construct the portion of the Connector Road within the Mashpee Industrial Park Trust property, the applicant shall place 150% of the estimated public cost of completing the Connector Road in an escrow with Barnstable County/Cape Cod Commission. The terms of the escrow agreement shall be subject to Cape Cod Commission approval and allow for the applicant or the Town of Mashpee or their designee to complete the construction. The escrow agreement shall allow for a partial release of escrow funds upon partial completion of work. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work. If the Connector Road is not completed within five (5) years after the date of the Partial Certificate of Compliance for Phase I, the remaining escrow funds and interest shall be used for any transportation improvements in the Town of Mashpee.

TR7. If any traffic mitigation measure is not functionally completed consistent with the Trip Reduction/Traffic Mitigation Schedule due to the applicant's not having legal control of certain parcels, so long as the applicant demonstrates that the failure to complete such measure could not be avoided by the exercise of great diligence, the applicant may seek a modification to this decision pursuant to Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 6/3/99, as amended from time to time. The applicant shall be required to demonstrate to the satisfaction of the Commission that an alternative trip reduction/traffic mitigation measure exists, permanent or temporary, and can be completed prior to issuance of the Partial Certificate of Compliance for the Phase I Modification.

TR8. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, SouthCape Village shall make a one-time payment of \$317,000 to Barnstable County/Cape Cod Commission to be used for public transportation or other trip reduction measures in the Town of Mashpee. This payment shall be held by Barnstable County/Cape Cod Commission as the SouthCape Village commitment towards necessary trip reduction measures for this project. The amount of the payment, however, may be reduced by funds spent by the applicant on engineering or construction of a sidewalk along Great Neck Road between the Mashpee Rotary and New Seabury prior to the time a Partial Certificate of Compliance for Phase I is sought by the applicant. The applicant shall be required to submit receipts and engineering documents to substantiate expenditures that reduce the required payment. Any funds received by the County of Barnstable/Cape Cod Commission to meet this condition shall be held until December 31, 2005 for the specific purpose of reimbursing the Town of Mashpee and/or the applicant for costs related to engineering and/or construction of a sidewalk along Great Neck Road. Funds remaining after that date may be used for any trip reduction measures in the Town of Mashpee. Measures shall include, but are not limited to, bus service operation or advertising or planning, design and construction of bicycle paths or sidewalks or quantitative evaluation of trip reduction or travel demand management strategies as recommended by the Cape Cod Commission and the Town of Mashpee. Monies not expended or obligated for the design and/or construction of trip reduction measures within 10 years shall be paid to the Cape Cod Regional Transit Authority, or a similar agency providing public transportation, for general transit service expenses in the Town of Mashpee.

TR9. As allowed by MPS 4.1.2.7(a) (land donations), prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, 6.96 acres of land from the adjacent Drew parcel, Lots 2 & 3, on Plan of Land in Mashpee, MA for John A. Drew, Heirs of Elise M. Otis and Heirs of Marion Hinckley, as revised on August 5, 1998, by Baxter & Nye, Inc., Osterville, MA, (previous owner, John Drew, Lots 2 & 3, Plan Book 533, Page 44; as now recorded, Lot 2 Plan Book 11696, Page 144, & Lot 3, Plan Book 11696, Page 142) on Route 28 in Mashpee shall be deeded to the Town of Mashpee to be placed under the care, custody and control of the Conservation Commission pursuant to Chapter 40, Section 8C, in order to remove future development and associated traffic impacts from the parcel, in compliance with MPS 4.1.3.4 (congestion), MPS 4.1.2.7(a), and MPS 4.1.2.1 (trip reduction).

TR10. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, SouthCape Village shall provide a transportation coordinator to oversee the implementation of

the Transportation Demand Management (TDM) program. The TDM program shall include the following techniques:

- Update information on transit schedules (service and times)
- Employee ridesharing (carpooling)
- Staggered work hours
- Provide bicycle racks throughout the development
- Guaranteed ride home program
- Employee incentives for trip reduction

SouthCape Village shall contact other area-wide developers (e.g., Mashpee Commons and BOCH Center) to share information and coordinate TDM programs.

TR11. The transportation coordinator shall monitor the effect of the TDM program and alter/upgrade trip reduction measures, where necessary, to evaluate the effectiveness of TR10. Starting one (1) year from the date of issuance of the Partial Certificate of Compliance for the Phase I modification, an annual report shall be provided to the Cape Cod Commission. This report shall be provided for a period of five (5) years.

TR12. Prior to issuance of the Partial Certificate of Compliance for Phase I Modification (Buildings A and B), SouthCape Village shall make a monetary payment of \$18,100 to Barnstable County/Cape Cod Commission to be used for transportation planning, design, advertising, operation, or construction in the Towns of Falmouth, Barnstable, and Sandwich. The money for each town shall be allocated as follows: Falmouth - \$11,900; Barnstable - \$4,800; and Sandwich - \$1,400. Monies not expended or obligated by the Cape Cod Commission for these purposes within 10 years shall be transferred to the Cape Cod Regional Transit Authority, or similar agency providing public transportation, for general transit service expenses in the designated towns.

TR13. Design plans for the proposed signalization of Route 28/Shellback Way shall be provided to Cape Cod Commission staff at the 25% and 75% design phases for review and comment.

TR14. Final design plans shall be provided to the Cape Cod Commission for any proposed transportation improvements at least thirty (30) days prior to implementation of each plan. Modifications made during the development of final design plans for transportation improvements that are consistent with the projected development impacts shall be considered as minor modifications and may be approved by Cape Cod Commission staff.

TR15. The Applicant shall notify Commission staff when proposed transportation improvements are 75% and 95% complete.

TR 16. No additional development beyond the 42,000 s.f. supermarket and the 14,000 s.f. of retail shall be allowed until a traffic impact analysis and mitigation plan are developed consistent with the RPP in effect at the time of opening the public hearing.

Heritage Preservation/Community Character

*Heritage Preservation/Community Character conditions HP1-HP8 of the original SouthCape Village DRI decision (TR97007, December 14, 2000) remain in effect. The following condition replaces condition HP9 of the DRI decision:*

HP9. As required by Minimum Performance Standards 4.1.18 and 6.2.2, proposed signalization of Route 28 and Shellback Way shall be designed to ensure that community character impacts are minimized. The applicant shall submit proposed signalization plans and associated improvements during the 25% and 75% design phases to the Cape Cod Commission staff and the Town of Mashpee for review and comment. Pending approval by MassHighway, the proposed signalization plans shall incorporate ornamental mast arms and/or ornamental signal post and ornamental signal heads.

*The following Heritage Preservation/Community Character conditions are added to the original SouthCape Village DRI decision (TR97007, December 14, 2000):*

HP10. Prior to issuance of the Preliminary Certificate of Compliance for the Phase I Modification, the Applicant shall obtain approval of a materials board from Commission staff.

HP11. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification , the applicant shall submit documentation of an executed maintenance contract, which incorporates specifications described in the Landscape and Maintenance Guide as described in the Final Environmental Impact Report (FEIR) dated February, 2000, and which ensures that proposed landscaping shall be maintained for a minimum of three years from the date of issuance of the Partial Certificate of Compliance for Phase I Modification. The maintenance contract and/or final landscape plans shall provide for Loft's Seed Ecology Mix or equivalent for lawn areas associated with the project.

HP12. Project and individual tenant signage for the supermarket and associated retail buildings shall be constructed in accordance with signage guidelines described in the FEIR dated February, 2000. All signs shall be down-lit and externally illuminated, consistent with MPS 6.2.11 and Technical Bulletin 95-001.

HP13. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, the applicant shall install an irrigation system for all setbacks, building areas and parking areas as shown on the Phase I Site Plan, prepared by Prellwitz/Chilinski dated 12/10/03 and Phase I Site Work Plan prepared by Prellwitz/Chilinski dated 3/10/03. The proposed irrigation system shall be installed as proposed in the FEIR dated February, 2000. Prior to issuance of the Partial Certificate of Compliance for Phase 1, Commission staff shall complete an inspection of the irrigation system.

HP14. Plant materials specified by this decision may be substituted with prior written approval of Commission staff.

HP15. All site work and/or landscape improvements as shown on the Landscape Plan prepared by Mary LeBlanc dated 12/10/03 shall be completed prior to issuance of the Partial Certificate of Compliance from the Commission for the Phase I Modification. If all required site work and/or landscape improvements are not complete at the time that the Partial Certificate of Compliance for Phase 1 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 that portion 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 check 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.

HP16. In the event the applicant fails to receive a subsequent modification for the full-build proposal by December 31, 2005, the applicant shall implement the interim Landscape Plan (L-10) prepared by Mary LeBlanc dated January 31, 2003. In order to ensure completion of planting as described on this plan and preparation of a final landscape plan based on the Interim Landscape Plan, the applicant shall execute an escrow agreement in the amount of \$287,027.00 (or such amount as may be necessary to complete the planting contemplated by the L-10 plan if a portion of such planting has been installed) of a form and content satisfactory to Commission

counsel prior to issuance of the Partial Certificate of Compliance for Phase I Modification. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The check 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.

HP17. Prior to issuance of the Partial Certificate of Compliance for Phase I Modification, the applicant shall submit a copy of "as built" lighting plans to be used in connection with condition HP18 below.

HP18. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, Commission staff shall verify in the field the types, mounting heights and light levels of exterior fixtures. If, based on in-the-field verification, the light levels, fixture types and/or mounting heights are found not to be in compliance with MPS 6.2.10 and/or Technical Bulletin 95-001, the applicant shall modify the exterior lighting to conform to Technical Bulletin 95-001. Such modification shall take place prior to issuance of the Partial Certificate of Compliance for the Phase I Modification. The Applicant shall also submit plans and/or other technical information relative to the modification requirements as needed to bring the exterior lighting design into conformance with MPS 6.2.10, MPS 6.2.11 and Technical Bulletin 95-001 prior to issuance of the Partial Certificate of Compliance for the Phase I Modification.

#### Natural Resources and Open Space

*Natural Resources and Open Space Condition NROS1 of the original SouthCape Village DRI decision (TR97007, December 14, 2000) remains in effect. Condition NROS2 of the original SouthCape Village DRI decision (TR97007, December 14, 2000) is replaced by the following condition:*

NROS2: Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, the applicant shall provide the sum of \$68,920 to the Town of Mashpee's Conservation Commission to be placed in the Town's Conservation Fund. These funds shall be used only to acquire open space within the Mashpee River watershed. Prior to the expenditure of these funds, the Conservation Commission shall consult with and reach agreement with the Cape Cod Commission or its designee regarding the intended use of the funds to ensure that the parcel meets the requirements of this condition.

Water Resources

*Water Resources condition WR4 of the original SouthCape Village DRI decision (TR97007, December 14, 2000) remains in effect. Water Resources conditions WR1, WR2, WR3, and WR5 of the original decision are replaced by the following conditions:*

WR1. In order to meet MPS 2.1.1.2.C.2 of the RPP for the supermarket and 14,000 s.f of retail proposed in the Phase I Modification, the Applicant shall connect and begin treating treat wastewater from the Life at Mashpee development at the Southcape wastewater treatment facility prior to the issuance of the Partial Certificate of Compliance.

WR2. The applicant shall submit the final Groundwater Discharge Permit and any subsequent modifications to the Commission within 30 days following approval by DEP. The applicant or subsequent property owners shall submit copies of any reporting or monitoring information required in the Groundwater Discharge Permit to the Commission.

WR3. After one calendar year of monitoring required under the Groundwater Discharge Permit has been completed, the applicant shall review the performance of the wastewater treatment facility and provide findings and all relevant materials to the Commission. If the average annual wastewater flow at the wastewater treatment facility exceeds 19,512 gpd or if the average annual total nitrogen concentration from the plant exceeds 10 ppm, the person or entity then owning the property shall permanently reduce nitrogen loads to address the amount of excess nitrogen load. Excess loads could be addressed, for example, by: 1) reducing wastewater flows; 2) improving stormwater treatment of paved surfaces; or, 3) a combination of these activities. An annual review of wastewater treatment performance shall be provided to the Commission within 30 days of subsequent anniversaries of this first review. Identified excess nitrogen loads shall be appropriately addressed prior to Commission approval of any project modifications Any excess nitrogen loads shall be addressed through modification of the Groundwater Discharge Permit.

WR5. In no case shall the total annual nitrogen load for the site exceed 63.8 kg.

*The following Water Resources condition is added to the original SouthCape Village DRI decision:*

WR7: In order to meet Minimum Performance Standard 2.1.1.2.C.2 of the Regional Policy Plan for the remainder of the proposed overall project, the applicant shall: a) connect and treat wastewater from the Liquor Warehouse and Peter's Insurance Agency, b) treat stormwater from

4.69 acres of pavement using a constructed wetland system, c) treat stormwater from 1.57 acres of pavement using a vegetated swale system and d) use the on-site well within the anticipated wastewater treatment facility plume for irrigating lawn, but not landscaped areas. Use of the on-site well for irrigation of landscaped areas is not necessary to meet the MPS, but is encouraged.

#### Economic Development

*The following Economic Development conditions are added to conditions of the original SouthCape Village DRI decision (TR97007, December 14, 2003):*

ED5. Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, the Applicant shall report to the Commission the number of Cape Cod contractors and laborers involved with the project: types of jobs, wages earned, and benefits received.

ED6: Prior to issuance of the Partial Certificate of Compliance for the Phase I Modification, the applicant shall report to the Commission where all contracting employees reside.

ED7: Within six (6) months of issuance of a Partial Certificate of Compliance for the Phase I Modification, the Applicant shall report to the Commission the number of Cape Cod residents employed: types of jobs (full or part-time, sales, management, etc.), wages earned, and benefits received.

ED8. After six months of occupancy of the supermarket and Building B, the Applicant shall report to the Commission in which towns employees of these businesses reside.

#### Hazardous Materials

*Hazardous Materials conditions HZ1 and HZ4 of the original SouthCape Village DRI decision (TR97007, December 14, 2000) remain in effect. Conditions HZ2 and HZ3 of the original decision are replaced by the following conditions:*

HZ2 Prior to issuance of the Preliminary Certificate of Compliance for the Phase I Modification, the applicant shall submit plans for the wastewater treatment system for Commission review and approval which detail storage and containment methods for chemicals used in the facility.

HZ3. Prior to issuance of the Preliminary Certificate of Compliance for Phase I Modification, the applicant shall submit to the Commission a copy of the pre-demolition asbestos survey. Prior to

SouthCape Village Modification MOD02030

Phase I Modification Decision

April 10, 2003

Page 24



issuance of the Partial Certificate of Compliance, the applicant shall submit evidence that any asbestos-containing material was appropriately disposed of.

*The following condition is added to the original SouthCape Village DRI decision (TR97007, December 14, 2000):*

HZ5. The project shall include reasonable efforts to incorporate material substitution, including natural wood siding, rubber membrane roofing, energy conserving HVAC fixtures, recycling of HVAC freon and water-based paints and stains. Prior to issuance of the Preliminary Certificate of Compliance, the applicant shall submit to the Commission a description of what alternative building materials, including those noted above, have been incorporated into the project.

Noise

*The Noise condition of the original SouthCape Village DRI decision (TR97007, December 14, 2000) remains in effect.*

The Cape Cod Commission hereby approves with conditions the application of C. Talanian Realty for a Major Modification to 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 located in Mashpee MA.

*Robert H. Deane*  
Name, Chair

*4/22/03*  
Date

Commonwealth of Massachusetts

Barnstable, ss.

On this *22<sup>nd</sup>* day of *April*, 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 Public

Commonwealth of Massachusetts

My Commission expires:



SouthCape Village Modification MOD02030

Phase I Modification Decision

April 10, 2003

Page 25