



# CAPE COD COMMISSION

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DATE: January 9, 2003

TO: Joshua Zuckerman, President  
Pleasant Bay Nursing Home and Rehabilitation, Inc.

FROM: Cape Cod Commission

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

APPLICANT: Pleasant Bay Health & Living Centers, LLC  
C/o Joshua Zuckerman  
383 South Orleans Road  
Brewster, MA

PROJECT #: TR-20075

PROJECT: Pleasant Bay Assisted Living Facility  
South Orleans Road, Brewster, MA

BOOK/PAGE: Book 10930 Page 75  
Book 09773 Page 341  
Book 8660 Page 197

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Pleasant Bay Health & Living Centers, LLC, as represented by Joshua Zuckerman, as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), chapter 716 of the Acts of 1989, as amended, for the proposed Pleasant Bay Assisted Living Facility. The decision is rendered pursuant to a vote of the Commission on January 9, 2003.

### PROJECT DESCRIPTION

The project site consists of 13.03 acres (567,587 square feet) of vacant, forested land adjacent to but separate from the existing Pleasant Bay Nursing Home in Brewster. The zoning on the proposed site is RM (Residential Medium Density) and RR (Rural Residential). The proposed assisted living facility consists of a single building with four residential wings that are either two or three stories in height. Building elevations show that the facility will have three floors: one below grade, and two above grade. The plans also include a two-story athletic building/aquatics center that will be accessed via an enclosed corridor from the residential portion of the complex. A two-story garage and wastewater treatment building are also proposed on the site. Site development also includes exterior lighting and landscaping.



## PROCEDURAL HISTORY

The Brewster Building Inspector and Chair of the Development Plan Review Committee, David Thyng, referred the project to the Commission on September 26, 2001. The Commission received the referral on September 27, 2001. An initial DRI application and a traffic report and drainage report were received on October 10, 2001. On November 19, 2001 and February 13, 2002, the Commission procedurally opened and closed hearings via a hearing officer. On March 4, 2002, the Commission's Regulatory Committee granted the applicant an extension of the DRI review timeframe to August 23, 2002. The DRI application was deemed technically complete on July 3, 2002. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized Subcommittee of the Commission on July 17, 2002 at the Brewster Ladies Library. The Subcommittee voted to authorize a 6-month extension of the DRI review timeframe until January, 2003. The public hearing was closed on July 17, 2002 and the record was left open for submission of written materials.

The subcommittee held public meetings after the close of the public hearing to deliberate on this project on November 13, 2002. At the November 13, 2002 Subcommittee meeting, the Subcommittee voted unanimously to recommend to the full Commission that the project be approved as a DRI, subject to conditions.

A final public hearing was held before the full Commission on January 9, 2003. At this hearing, the Commission voted unanimously to approve the project as a DRI, subject to conditions.

### Materials submitted for the record

#### From the Applicant

DRI application with attachments	10/10/01
Drainage Report, Rizzo (8/20/01)	
Traffic Impact Study, Rizzo (9/21/01)	
Memo, Rizzo, transportation issues	12/6/01
Drainage Report, Rizzo, revised 4/5/02	4/17/02
Memo, Rizzo, various issues	4/17/02
Letter, Nutter, Attorney Cox	4/17/02
Letter, Nutter, Attorney Cox, lighting information	4/22/02
Letter, Nutter, Attorney Cox, nitrogen loading	5/22/02
Fax, Nutter, directions to site for site visit	5/23/02
E-Mail, Nutter, Attorney Cox	6/14/02
E-Mail, Nutter, Attorney Cox	6/19/02
Memo, Rizzo	6/24/02
Letter, Nutter, Attorney Cox	6/24/02
Nutter, copy of <i>Times</i> articles	6/25/02
E-Mail, Rizzo, lighting information	6/26/02
Memo, Nutter, affordable housing	6/27/02
Memo, Nutter, various issues	6/27/02
Originals of Memos received on 6/27/02	7/1/02
Packets for hearing, Nutter	7/3/02
Fax, Extension Agreement, Nutter	7/22/02
Check, fee for Extension	8/29/02
Letter, Nutter, Extension and fee	9/5/02
Fax, Nutter, Attorney Cox, affordable housing	10/3/02
Letter, Stericycle, medical waste	10/3/02
Rizzo, plan, treatment plant	10/4/02
Rizzo, plan, open space	10/4/02

Rizzo, Memo, transportation issues	10/4/02
Letter, Waste Management	10/4/02
Sign plans	10/4/02
Rizzo, Memo, phosphorous	10/7/02
Rizzo, signage and lighting information	10/9/02
Rizzo, E-mail with attachments on hazardous materials	10/9/02
Sign plans	10/11/02
Nutter, cover letter, articles and information on exterior design	10/23/02
Nutter, Attorney Cox, cover letter on package of info. for hearing	11/1/02
Nutter, fax, Attorney Cox, waste management issues	11/7/02
Rizzo, Memo, transportation information	11/11/02
Rizzo, Memo, transportation information	11/12/02
Nutter, Memo, matrix of issues	11/13/02
Nutter, Memo, land use issues	11/13/02
Rizzo, Memo, transportation issues	11/27/02
Nutter, Memo, fax, solid waste information	11/27/02
Nutter, Memo, suggested affordable housing language	No date
<u>From Cape Cod Commission staff</u>	
Letter, Attorney Landreth, DRI referral	10/3/01
Letter, Attorney Butler, Nutter, application incomplete	11/8/01
Distribution form to Commission staff of new DRI	10/12/01
Memo, transportation issues	11/7/01
Notice, hearing officer	11/19/01
Minutes, hearing officer	11/19/01
Letter, Attorney Butler, Nutter, possible procedural denial	2/11/02
Notice, hearing officer	2/13/02
Minutes, hearing officer	2/13/02
Agenda, Regulatory Committee	3/4/02
Extension Agreement	3/4/02
Letter, correction regarding hearing officer	3/13/02
Distribution form to Commission staff	4/30/02
E-mail, to Nutter, on affordable housing	5/7/02
E-mail, to Nutter, on affordable housing	6/6/02
E-mail, to Rizzo, on lighting	6/12/02
E-mail, to Nutter, on project	6/13/02
E-mail, on project	6/17/02
Letter, to Ladies Library, Brewster, use for hearing	6/18/02
E-mail, on project	6/20/02
Letter, to Nutter, possible procedural denial	6/24/02
Letter, application substantively complete	7/3/02
Staff Report	7/10/02
Notice, public hearing	7/17/02
Sign-in sheet, public hearing	7/17/02
Minutes, public hearing	7/17/02
Cover letter, Extension Agreement	7/18/02
E-mail, to Nutter, on project and extension of timeframe	8/14/02
Extension Agreement	8/19/02
Letter, speed study to Brewster Police Department	10/7/02
E-mail, on waste management	10/15/02
E-mail, on affordable housing	10/11/02
E-mail, on affordable housing	10/17/02
Staff Report	11/6/02
Memo, to staff, additional information from applicant	11/7/02
Notice, public meeting	11/13/02
Minutes, public meeting	11/13/02
E-mail, on waste management	11/14/02
E-mail, on waste and hazardous materials	11/19/02

E-mail, on waste management	11/19/02
E-mail, on project	11/19/02
Memo, to Commission Chair, continuance of hearing	12/19/02
Memo, to Subcommittee, draft decision	12/19/02
E-mail, to Brewster Town Administrator	12/19/02
E-mail, Attorney Cox, draft decision	12/19/02
E-mail, to George Meservey, Orleans, draft decision	1/2/03
Fax, Attorney Butler, Nutter, draft affordable housing language	1/3/03
E-mail, to Brewster Town Administrator, draft decision	1/3/03
E-mail, to Brewster DRI Liaison, draft decision	1/6/03
E-mail, to Subcommittee, meeting to discuss draft decision	1/6/03
Notice, public meeting	1/9/03
Minutes, public meeting	1/9/03
Memo, to Subcommittee, selection for DRI project	No date
Memo, to Subcommittee, site visit	No date
Memo, to Town officials, public hearing	No date
Memo, to Subcommittee, letter submitted for the record	No date

From state/local officials

DRI referral form	9/27/01
Letter, Natural Heritage program, no impact	11/13/01
Letter, Representative Gomes, in support	7/16/02
Letter, Representative George, in support	7/16/02
Letter, Brewster Water Department, future well site	7/22/02
E-mail, George Meservey, Orleans DRI Liaison, draft decision	1/2/03
E-mail, Brewster DRI Liaison, draft decision	1/6/03

From the public

Letter, Chatham Council on Aging, in support	7/17/02
Letter, William Stowell, in support	7/17/02

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 the Commission's proceedings are incorporated into the record by reference.

TESTIMONY

**July 17, 2002 Subcommittee Hearing**

Attorney Patrick M. Butler, of Nutter, McClennen & Fish, representing the applicant, submitted comment letters for the record from Representatives Shirley Gomes and Tom George. He also submitted a comment letter from the Chatham Council on Aging and Bill Stowell of Orleans. He described the project.

David Albrecht from Rizzo Associates, the applicant's architect, discussed site planning considerations included finding a feasible location. He also discussed views, landscaping, buffers to adjacent parcels, grading and drainage. He described the proposed exterior lighting and site signage.

Jim Podeschi of the architect's team commented on the shape of the building, exterior cladding and finish. He described the facility's proposed interior layout. Attorney Butler noted the project would seek a variance on parking.

Attorney Eliza Cox of Nutter, McClennen & Fish addresses siting issues.

Ian Catlow of Rizzo Associates addressed wastewater issues. He described the proposed wastewater treatment plant.

Mike Hall of Rizzo Associates addressed transportation issues. He described the applicant's traffic study. He said the analysis had also used more conservative data. He described the existing and proposed Level of Service.

Attorney Butler addressed open space. He said the applicant understood that 65% was required per the 1996 RPP, and said it would be addressed via a variety of methods, including at least 2.06 acres on site in the area of the Wellhead Protection District/Zone II.

Attorney Butler said affordable housing was a significant issue. He noted the applicant had proposed four methods of addressing the 1996 RPP's requirements.

Ms. Adams, the Commission's project manager for the project, noted it was being reviewed subject to the 1996 Regional Policy Plan. Ms. Adams described the criteria for a DRI approval.

Ms. McElroy addressed the open space and natural resources issues. Ms. McElroy noted the applicant had submitted a Natural Resources Inventory consistent with the 1996 RPP's requirements. She noted that while the project maintains approximately 80% of the open space on the site, the proponent is considering providing off-site open space. She said it may be appropriate to meet a portion of the open space requirement, particularly the Zone II area.

Ms. Adams addressed community character, site design and building design issues. She noted that natural resources, land use and site planning were all related issues on the project. She noted the Commission's Design Manual recommended that siting respect the horizon line so as not to dominate the landscape. She said staff recommended the building architecture provide more variation in the massing, façade, and roof.

Ms. Adams described the exterior lighting for the site and buildings relative to Technical Bulletin 95-001 which contains the Commission's exterior lighting standards.

Ms. Belfit addressed water resources. She noted the water resources that had been mapped by the Commission. She noted the key issue was phosphorous loading to Uncle Seth's Pond and meeting the RPP's nitrogen loading standards. She complimented the applicant on the stormwater design.

Mr. Boesch addressed transportation issues. He said that if the aquatics center was open to outside users, the project's transportation impacts would have to be re-analyzed. He noted Level of Service C met the 1996 RPP, but also suggested that the applicant look at the driveway of the existing facility. He noted that the Pleasant Bay Road/Route 39 intersection was a high-crash location. He suggested a speed study be conducted.

Mr. Ruchinkas addressed affordable housing. He noted the applicant had not determined how the project would meet this standard and provided staff with possible alternative approaches. Mr. Ruchinkas also noted that the applicant would be required to submit an affirmative, fair marketing/selection plan, subject to Commission approval, that described how the lots/units will be made available to, and purchased/rented by, eligible households.

Ms. Adams ended the Staff Report by covering solid and hazardous waste management. She said staff has recommended that the applicant provide additional detail on the facility's proposed recycling programs. On hazardous materials and wastes, Ms. Adams noted that

based on maps produced for the 1996 Regional Policy Plan, the project site is partially within an existing Wellhead Protection District/Zone II.

Mr. Roy Jones, the Brewster Fire Chief, said that the applicant had met with his Department concerning the placement of the facility on the site prior to the project being referred to the Cape Cod Commission. Chief Jones said the current interior configuration of the proposed building would assist in potential fire suppression.

Mr. John Mitchell of the Brewster Board of Selectmen, noted personal experiences with a number of nursing homes. He said the Subcommittee needed to take into account the human factors in considering the building siting.

Mr. David Thyng, Brewster Building Inspector, noted he also chaired the Development Plan Committee. He said the current access configuration had been asked for by the Fire and Police Chiefs. Mr. Thyng said the Development Plan Committee was fully in support of the project.

Jillian Douglass, Brewster Town Planner, said she supported the need for the facility. She noted the tax revenue would be positive.

Mr. Henry Welsch of the Chatham Affordable Housing Committee spoke in favor of the project.

Ms. Valerie Foster of the Chatham Affordable Housing Authority spoke in support of the project.

Ms. Joyce Jenkins said she lived next to the existing nursing home. She said there was a need for adequate buffers to the proposed project. She questioned whether deliveries to the nursing home's existing service area (closest to her house) would be increased as a result of the new project. She was concerned about noise from trucks and odors from the proposed new wastewater treatment facility.

Attorney Butler addressed Ms. Jenkins concerns by noting where the service area for the proposed Pleasant Bay Assisted Living facility would be. He suggested that there would be no increased service to the existing facility because of the new project. He also said he doubted whether the wastewater plant would produce odors.

Ms. Cindy Grover commented that her property (a tree farm) abutted the project site on three sides. She noted that the existing facility had cleared the land when it was built to the property line and recommended that bigger buffers be retained for the proposed project.

Dr. Arthur Bickford spoke in favor of the project because there was a need for an assisted care facility.

Mr. Virgilio noted the site was a difficult one to develop and posed challenges in terms of construction and grading. He asked that the distance to the infiltration basin and Uncle Seth's Pond be documented. He also noted that a perimeter fire access road around the facility is critical. He said the Commission and staff needed more time to review this proposal.

Mr. Crowell asked about the expected area of draw of the facility in terms of its potential residents. He also asked about the typical length of stay at the facility.

Mr. Zuckermann, the applicant, suggested the majority of the residents would come from the immediate area: Brewster, Orleans and Chatham. He also noted the typical length of stay was 2 years, given the average residents' age of 86 years old.

Mr. Hogan asked what the existing facility's occupancy rate is.

Mr. Zuckermann said he thought the occupancy rate was 86-90+ percent.

Mr. Hogan asked what the use would be of the proposed garage, and whether vehicle or equipment maintenance would be done on site. He expressed a concern relative to hazardous materials.

Mr. Zuckermann said the garage would be used to house a pickup truck with a plow. He said he did not intend that there would be vehicle or equipment maintenance, such as oil changes, conducted on site.

Ms. Taylor asked if the water in the proposed pool would be changed, and if so, how often it would be changed.

Mr. Zuckermann said he was not an expert in this, but also noted the existing nursing home had a therapy pool. Based on this, he suggested the water would be changed, but did not have an estimate as to how often.

Mr. Virgilio moved to support a 6 month extension of the DRI timeframe with the understanding that during that time, the applicant and staff would work to resolve the project issues. Mr. Crowell seconded the motion, and the Subcommittee voted all in favor of the motion.

Mr. Virgilio moved to close the public hearing and leave the record open. Ms. Taylor seconded the motion. The Subcommittee voted all in favor of the motion.

## JURISDICTION

The proposed Pleasant Bay Assisted Living Facility qualifies as a Development of Regional Impact (DRI) under Section 3(g) of the DRI *Enabling Regulations* governing review of Developments of Regional Impact, as "any proposed development, including the expansion of existing developments, that is planned to create or add thirty or more residential dwelling units."

## FINDINGS

The Commission has considered the application of Joshua Zuckerman for the proposed Pleasant Bay Assisted Living Facility 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. According to information in the DRI file, the project is consistent with local development bylaws except that the project may require a variance with respect to the applicant's proposal to provide less than the amount of parking required by the Town of Brewster, and as to building height. The granting of a DRI approval, with conditions, for this proposed project by the Commission is in no way intended to support or oppose the grant of these mentioned or other waiver(s) at the local level.

G2. The Town of Brewster does not have a certified Local Comprehensive Plan, so consistency with the local LCP is not applicable in this case.

G3. The project site does not occur within or border on any District of Critical Planning Concern (DCPC), so consistency with DCPC implementing regulations is not applicable in this case.

G4. The project was reviewed for consistency and conformance with the 1996 Regional Policy Plan (RPP). Further findings (below) describe in detail how the project is or is not consistency and in conformance with the 1996 RPP.

### **Land Use**

LU1. MPS 1.1.1 *encourages compact forms of development such as cluster development, redevelopment within certified growth/activity centers, and mixed-use residential/commercial development in order to minimize land consumption and protect open space.* Further, MPS 1.1.4 *requires development to be directed away from Significant Natural Resource Areas (SNRA).* The proposed assisted living facility would augment services offered by the existing Pleasant Bay nursing home located just north of the proposed project. The applicant proposes to provide a substantial portion of the Significant Natural Resources Area on the site as permanently protected open space, consistent with MPS 1.1.1 and 1.1.4.

### **Heritage Preservation/Community Character**

CC1. The applicant submitted materials to the Massachusetts Historical Commission (MHC) that were received by MHC on October 11, 2001. The MHC responded in a letter dated November 13, 2001 that the project is unlikely to affect significant historic or archaeological resources:

CC2. Goal 6.2 of the RPP 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 is proposed on undeveloped land outside of a certified growth center. Therefore, the project should be designed to retain the wooded character of the roadway. The proposed assisted living facility is located to the rear of the site, at a distance of approximately 750' from Route 39 and over 500' from Freeman's Way. The location of the facility allows for a generous wooded buffer of existing vegetation to be retained between the building and these roadways.

CC3. MPS 6.2.3 requires that *all new development provide adequate landscaped buffers in order to limit adverse visual impacts on the surrounding community. Preservation of existing natural vegetation in these buffer areas is preferred.* Due to the rolling nature of existing topography, the distance from the roadway, and the wooded buffer to be retained on site, the applicant was able to demonstrate that the facility will be well screened from adjacent roadways. In addition, clearing and grading associated with the proposed site drive, building and parking area is proposed to be treated with a generous amount of landscaping, thereby limiting visual impacts to the rear and sides of the site.

CC4. MPS 6.2.1 *requires a building to be compatible with its site and existing surrounding buildings.* MPS 6.2.2 *requires in part that where new buildings are proposed, the mass and scale roof shape and pitch shall be harmonious with traditional Cape Cod architectural styles.* The proposed facility consists of four residential wings that are either two or three stories in height. The plans also include a two-story athletic building that will be accessed

via an enclosed corridor from the residential portion of the complex. A two-story garage and wastewater treatment building are also proposed on the site. Proposed materials consist of wood or cement fiber siding and shakes, and asphalt shingle roofing. Proposed forms and materials of these buildings are consistent with MPS 6.2.1.

CC5. MPS 6.2.5 *requires landscaping that integrates buildings with their environment, enhances architectural features and provides amenities for pedestrians.* The proposed landscaping plan includes generous quantities of plant materials that will offer residents year-round color and interest, such as perennial and annual flower beds as well as wildflowers. Plant materials are generally suitable to the climate and location of the site.

CC6. The applicant has agreed to execute a landscape maintenance contract for three full growing seasons to ensure the viability of proposed plantings.

CC7. MPS 6.2.8 *prohibits the installation of internally illuminated signs.* In addition, the Commission's design manual recommends the use of carved, wooden signs. The renderings submitted with the DRI application propose carved wooden signs with lighting of the sign directed downward, consistent with MPS 6.2.8.

CC8. MPS 6.2.10 requires parking to be located to the side or rear of a building unless such location would have an adverse environmental or visual impact. The applicant proposes parking to the side of the assisted living facility, in conformance with MPS 6.2.10. Further, the applicant will be requesting a waiver from local parking requirements to reduce the amount of parking on the site from a proposed 105 spaces (including 53 in reserve) to a total of 52 spaces (which include designated disabled spaces) to accommodate average use, which is recommended by ODRP 6.2.15.

CC9. MPS 6.2.7 of the 1996 RPP stipulates that exterior lighting in developments shall comply with Technical Bulletin 95-001. On February 21, 2001, Technical Bulletin 95-001 was revised and updated. The proposed assisted living facility has been reviewed for consistency with this revised Technical Bulletin. All selected fixtures for which catalog cuts have been submitted to date consist of metal halide lights of the Candela series by Lumec. Metal halide is an acceptable light source type under Standard 2.1 of Technical Bulletin 95-001.

CC10. The project's lighting scheme consists of pole mounted and bollard-style lights. The pole-mount lights are decorative, consistent with Technical Bulletin Standard 2.2. The applicant has also clarified that the black triangles shown on the point-to-point plans at various locations along the proposed building are on-building mounted lights by exit doors. According to the October 9, 2002 technical cuts, these lights should meet Technical Bulletin Standards 2.1, 2.2 and 2.3.

CC11. The pole-mount lights selected appear to conform to Technical Bulletin Standard 2.3 that requires that "all [lights], regardless of their intended use or mounting configuration shall have a total cutoff of all light at less than 90 degrees from vertical...". October 9, 2002 revised lighting information from the applicant shows that the bollard lights selected meet the required 90 degree cutoff specified by Technical Bulletin Standard 2.3.

CC12. Point-to-point foot-candle plans received by the Commission on October 11, 2002, include the lights mounted over the exit doors. Based on this, the project should comply with Technical Bulletin Standard 2.4 that requires total cutoff of all light at the property lines of the parcel to be developed.

CC13. The pole-mounted lights also meet the height requirement set by Technical Bulletin Standard 2.5 that requires that developments that abut residential areas use lights of not more than 20 feet in height.

CC14. Technical Bulletin Standard 2.6 stipulates that all exterior lights, with the exception of landscape and safety accent lights, shall have a maximum foot-candle level of 8.0. Based on the information submitted as part of the DRI review, the bollards do not have to meet the foot-candle maximum. Also, the point-to-point plans submitted on October 11, 2002 show that the other exterior lights for the proposed project, including those over the exit doors, will meet the 8.0 foot-candle maximum.

### **Hazardous Materials/Wastes**

Haz-1. Based on information submitted, including maps produced for the 1996 Regional Policy Plan, the project site is partially within an existing Wellhead Protection District/Zone II. At the same time, all proposed structures, including the assisted living facility, pool building and on-site wastewater treatment plant, are located outside of the Wellhead Protection District/Zone II area.

Haz-2. According to new maps produced for the 2001 RPP, the rest of the site outside the existing Wellhead Protection District/Zone II is classified as a Potential Public Water Supply Area. On July 22, 2002, the Commission received a letter from Paul V. Hicks, Superintendent of the Brewster Water Department that the Pleasant Bay Assisted Living facility site "is not of interest for development of a future public supply well."

Haz-3. MPS 4.2.2.1 requires that *development and redevelopment shall make reasonable efforts to minimize their hazardous waste generation through source reduction, reuse, material substitution, employee education and recycling.* On October 9, 2002, the Commission received three documents via E-mail from Rizzo Associates consisting of a spill response plan for facility employees, and a list of organizations to contact in the event of a release or other emergency. Given the nature of the project under review, including the fact that the wastewater facility will be maintained by a third party contractor, and that hazardous materials attributable to the assisted living facility are anticipated to be limited to those in the beauty salon, sharps and medications used by residents, these documents adequately address MPS 4.2.2.1 for the facility.

Haz-4. MPS 4.2.2.2 requires that *development and redevelopment shall be in compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.00.* On October 3, 2002, the applicant provided a copy of a letter from Stericycle that indicated that Stericycle would be willing to handle the facility's medical and bio-hazard waste. Assuming that a final contract is put in place with Stericycle, the spill response plan submitted on October 9, 2002 can also address hazardous waste management so long as the only hazardous wastes generated by the proposed Pleasant Bay Assisted Living facility are used sharps, unusable medicines and waste methanol or hydrated lime.

Haz-5. On October 9, 2002, Rizzo Associates provided an E-mail version of a hazard communications plan for construction activities addressing how land clearing and construction firms would address hazardous materials use, handling and storage, vehicle maintenance and hazardous waste management during these phases of the project, consistent with MPS 4.2.2.1 and 4.2.2.2. Given the nature of the project, this document sufficiently addresses these concerns.

## **Solid Waste**

SW1. MPS 4.2.1.2 states that *development and redevelopment shall allocate adequate storage space for interim storage of materials to be recycled*. According to information obtained from the applicant, cardboard will be the primary waste product to be recycled on site. According to the "Partial First Floor Plan" dated November 26<sup>th</sup>, 2002 a cardboard recycling storage vessel will be located in the trash/recycling room on the first floor.

SW2. To further conform with MPS 4.2.1.2, the applicant has provided a signed agreement between the facility's administrative office and Superior Services for the safe handling and recycling of fluorescent light tubes. The tubes will be collected and taken off site by a licensed operator at the time that the lights are changed, thereby not requiring a specific storage area be constructed or recycling plan be submitted for the collection, storage and recycling of fluorescent light tubes.

SW3. MPS 4.2.1.3 requires that *construction and demolition debris from development and redevelopment shall be removed from construction sites and disposed of in accordance with the integrated solid waste management system in Section 4.2.1.1*. The applicant has provided a narrative detailing those building materials that will be generated as a by-product of the construction process, as well as outlined the manner by which those materials will be separated and stored on site. However, the applicant has not yet selected a general contractor and cannot specify the licensed landfill where all construction wastes will be disposed.

## **Water Resources**

WR1. The proposed assisted living project is located in several water resource classification areas according to the 1996 Regional Policy Plan and plan maps, including a nitrogen sensitive marine embayment to Pleasant Bay, a wellhead protection area for Orleans #7 public supply well, a future public water supply area and a contributing area to a fresh water body - Uncle Seth's Pond.

WR2. The project will be constructed adjacent to an existing nursing home. The wastewater discharge from the existing nursing home and the proposed assisted living facility will be combined utilizing an advanced treatment system. The new system will utilize an Amphidrome wastewater treatment system to be located next to the nursing home and outside of the identified wellhead protection area. A groundwater discharge permit was approved for the project by the Massachusetts Department of Environmental Protection setting the effluent limit for total nitrogen at 10 mg/liter.

WR3. Uncle Seth's Pond is located approximately 1,000 feet southwesterly from the site, downgradient from the proposed wastewater treatment plant. The pond is approximately 5 acres in size, 9-10 feet deep and demonstrates seasonally low dissolved oxygen levels and enriched nutrient conditions, according to data obtained by the Orleans Water Quality Task force during the summer of 2001. The pond is also considered an Area of Critical Environmental Concern as established by the Massachusetts Department of Environmental Protection.

WR4. MPS 2.1.1.1 states that *all development and redevelopment shall not exceed a 5 ppm nitrogen loading standard*. Calculations submitted by the applicant's project consultant based on the total design flow of 26,500 gallons per day (gpd) and the permitted effluent concentration of 10 mg/liter result in a nitrogen load of 4.89 ppm, which is consistent with this MPS.

WR5. MPS 2.1.1.C.2 states that nitrogen loading shall be maintained or improved where there are documented water quality problems in the associated marine embayment. No problems are currently documented in the area of Pleasant Bay impacted by the project, and nitrogen loading will be improved with the addition of the wastewater treatment facility adequately addressing this MPS.

WR6. MPS 2.1.1.B.2 states that *developments of regional impact that generate over 2000 gallons per day (gpd) of sewage effluent may be required to delineate the groundwater recharge area to potentially affected freshwater ponds and conduct a phosphorous loading assessment in order to identify and mitigate adverse impacts.* If a typical Amphidrome wastewater treatment system is used, phosphorus loading to Uncle Seth's Pond will increase by approximately 100 pounds per year. To reduce the phosphorous load, the applicant has proposed additional wastewater treatment with alum. Modification of the Department of Environmental Protection groundwater discharge permit to include an appropriate phosphorous discharge standard has been suggested by the applicant. Additional monitoring, reporting, and contingency planning is required to assure that MPS 2.1.1.B.2 is met and that phosphorus impacts are reduced.

WR7. Based on information submitted, including maps produced for the 1996 Regional Policy Plan, the project site is partially within an existing Wellhead Protection District/Zone II. However, all proposed structures, including the assisted living facility, pool building and on-site wastewater treatment plant, are located outside of the Wellhead Protection District/Zone II area. As such, MPS 2.1.1.A.2. would not apply to this project.

WR8. MPS 2.1.1.6. requires that all stormwater shall be managed and disposed of on site. It also requires that *development and redevelopment shall use best management practices such as vegetated swales to minimize runoff and maximize water quality treatment. A maintenance schedule shall be developed for all drainage structures.* Site plans provided by the applicant show that runoff from roadway and parking areas will be disposed of through well-designed vegetated retention basins. Roof runoff will be disposed of via an infiltration trench. A detailed operation and maintenance plan was provided as part of the drainage report submitted by the applicant, and adequately addresses this MPS.

## **Transportation**

T1. The proposed development is an assisted living facility in Brewster. The facility will have a main access drive on Freemans Way near the intersection of Freemans Way and Route 39 (Orleans Road). The facility will also have an internal access drive to the parking lot of the existing Pleasant Bay Nursing Home and Rehabilitation Center which has its own main entrance on Route 39. Freemans Way and Route 39 are both Regional Roadways as defined by MPS 4.1.1.2.

T2. The proposed development is expected to generate new vehicle trips (without adjustments) as follows:

- Morning Peak Hour 22 New Trips
- Evening Peak Hour 26 New Trips
- Weekday Daily 210 New Trips

T3. MPS 4.1.1.1 requires analysis and mitigation of traffic if the expected peak hour trip generation from a development results in 25 or more new trips on regional roadways. Any split of the 26 peak hour trips expected to be generated by this project to the east and

west at the site driveway up to 92% in either direction will result in fewer than 25 trips affecting roadway links and intersections. Given the location of the facility, the split is expected to fall well within this range. Thus, the project complies with MPS 4.1.1.1.

T4. MPS 4.1.1.5 requires all DRIs, regardless of trip generation, to have safe sight distances at site access driveways. The applicant has provided a letter from a professional engineer stating sight lines at the proposed driveway location on Freemans Way meet the required sight distances based on AASHTO guidelines.

T5. MPS 4.1.1.6 requires all new site driveways to operate at Level-of-Service (LOS) C or better. The applicant has provided year 2006 LOS analysis showing both the proposed Freemans Way site driveway and the Route 39 site driveway will operate at LOS C or better.

T6. MPS 4.1.1.7 requires that there be no degradation of public safety. Both CCC research and the applicant's research have shown accident rates at Route 39 / Freemans Way and Route 39 / Tar Kiln Road are lower than statewide averages.

The intersection of Route 39 and Route 137 in East Harwich is a high accident location showing 34 crashes in the years 1998 through 2000. Recently, the town has taken steps to improve safety at this intersection including intersection widening, turning lanes, and signal improvements. Considering the level of traffic generation of the proposed development and these improvements, no further safety mitigation is required as part of this development.

The intersection of Route 39 and Pleasant Bay Road in East Harwich is also a high accident location showing 19 crashes in the years 1998 through 2000. The applicant conducted a speed study on Route 39 in the area of Pleasant Bay Road to assist the town in improving safety at this location. In consideration of conducting the speed study, the level of traffic generation of the proposed development, and town improvements, no further safety mitigation is required as part of this development.

T7. MPS 4.1.1.14 requires developments to provide adequate parking. MPS 4.1.1.15 requires parking to be limited to the needs identified in a Commission approved traffic study or the requirements of local communities, whichever is greater. The applicant has proposed a smaller number of parking spaces than required by the town of Brewster based on experience with other such facilities, and will be seeking a variance for the smaller number of spaces.

T8. MPS 4.1.1.16 requires adjacent commercial uses to share access points and provide connections between parcels where appropriate. MPS 4.1.1.17 requires internal site circulation and access/egress to minimize impact on the adjacent road system. The development plans include a connection to the existing nursing facility on-site thereby allowing more convenient access to both facilities and between facilities without using the Route 39 and Freemans Way intersection.

T9. MPS 4.1.2.1 requires all DRIs to reduce expected weekday trips by 20%. For the estimated 210 weekday trips, this amounts to 42 trips. The applicant has proposed a comprehensive trip reduction plan with a financial incentive to be applied to both the existing nursing facility and the proposed assisted living facility. The two facilities will have a total of 120 employees and the trip reduction program will be across both facilities. It is estimated at least 12% of the employees will participate in the program reducing at least 42 daily trips, and thus meeting the requirements of MPS 4.1.2.1.

## **Natural Resources/Open Space**

NR/OS-1. The project site is located within a Significant Natural Resource Area as mapped by the RPP due to the presence of unfragmented forest habitat and potential public water supply area. The site is not mapped for state listed rare species habitat, nor does it contain any wetlands. The site is adjacent to the ComElectric easement which abuts a large sand pit/stump dump operation located to the west.

NR/OS-2. The applicant has submitted a Natural Resources Inventory (NRI) consistent with the requirements of MPS 2.4.1.1. According to this inventory the site is largely comprised of an upland mixed oak/pine forest typical of Cape Cod. No state listed species or unusual natural communities were observed onsite.

NR/OS-3. Based on a site area of 13.1 acres and its location within a significant natural resource area, this project is required to provide 8.52 acres of open space. The applicant proposes meeting the open space requirement partially onsite (Parcel A) and partially on the adjoining Parcel B. The plan prepared by Rizzo Associates and dated 10/2/03 (*sic*) includes 5.57 acres within the Zone II area on both Parcels A & B, and an additional 2.94 acres located around both the proposed and existing facilities, for a total of 8.51 acres. The open space configuration ensures the protection of the Zone II area, consistent with the requirements of 2.5.1.1 to protect the most sensitive portions of a site. The chair of the Brewster Board of Selectmen indicated the town's satisfaction with the open space proposal.

## **Affordable Housing**

AH1. MPS 5.1.2 states that any *residential construction and redevelopment project of 10 units or more shall provide at least 10% of the units as affordable units*. The applicant agreed at the November 13, 2002 Subcommittee meeting to meet MPS 5.1.2 by setting aside six (6) units within the facility for low income tenants. Consistent with the stated purpose of this MPS and the definition of *affordable housing* in the RPP, the Commission has established income limits, rent limits and limits on the charges for services for the assisted living housing units.

AH2. MPS 5.1.8 states that the *development of on-site affordable housing shall take place at a rate and time frame to be defined by the Commission and shall be secured as a condition of approval. Every effort will be made to phase in the affordable units in a manner compatible with the project's overall development schedule*. Consistent with this MPS, the applicant has agreed that any six (6) units may be designated as the "affordable units" at any point in time so long as six (6) units are maintained as affordable in perpetuity to conform to the requirements of the RPP and this decision.

AH3. MPS 5.1.10 states that *the units created through this section shall remain affordable year-round through the use of deed restrictions that require the units to remain affordable for 40 years*. The applicant in an October 3, 2002 letter agreed to dedicate the affordable units as permanently affordable.

AH4. MPS 5.1.11 states that affordable units within a market rate development *shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. Location of the affordable units and construction specifications are to be approved by the Commission prior to the start of construction*. Consistent with this MPS, the applicant has agreed that the affordable units will be randomly scattered within the facility and shall provide studio and one bedroom units in proportion to the overall ratio of such units within the facility at any time.

AH5. MPS 5.1.12 states that the applicant shall *submit a marketing plan...to the Commission for its approval* which describes how the affordable units will be marketed. Conditions of this decision require submission of such a plan.

### CONCLUSION

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

1. The benefits of the proposed project outweigh the detriments resulting from the development. This conclusion is supported by the facts that the project as proposed, including that the proposed project will provide a needed service to the community, and to Cape Cod, particularly aged residents. The proposed project also provides a benefit because the effluent from the existing Nursing Home (not under Commission review) will be treated by the proposed project's advanced nitrogen removal system which includes a phosphorous removal component. It is also supported by finding CC8.
2. The Town of Brewster does not have a certified Local Comprehensive Plan, so consistency with the local LCP is not applicable in this case.
3. The project site does not occur within or border on any District of Critical Planning Concern (DCPC), so consistency with DCPC implementing regulations is not applicable in this case.
4. The project, as conditioned, is consistent with the 1996 Cape Cod Regional Policy Plan. This conclusion is supported by the Land Use finding, and by findings CC4, CC5, CC7, CC9, CC10, CC11, CC12, CC13, CC14, Haz-3, Haz-4, Haz-5, SW-1, SW-2, WR4, WR5, WR8, T3, T5, T9, NR/OS2, NR-OS-3, AH1, AH2, AH3, AH4 and AH5.
5. According to information in the project file, the project as proposed is consistent with local Brewster development by-laws, except with respect to the need for a variance for less than the number of parking spaces stipulated by local development by-laws, and with respect to building height. Reducing the amount of parking to accommodate the facility's average use is recommended by the Regional Policy Plan in Other Development Review Policy 6.2.15. This is supported by finding CC8.

The Commission hereby approves, with conditions, the application of Joshua Zuckerman for the proposed Pleasant Bay Assisted Living Facility as a Development of Regional Impact, provided the following conditions are met:

### CONDITIONS

#### **General**

- G1. This DRI decision is valid for 7 years, unless otherwise extended by the Commission, 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 with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision, following notice to the applicant, and an opportunity to be heard.
- G3. The applicant shall obtain all necessary state and local permits for the proposed project, including but not limited to a waiver for reduction in parking from the Brewster Planning Board, and a height variance.

G4. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

G5. The applicant shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project and issued subsequent to this decision. A copy of final plans approved by the Brewster Planning Board, Brewster Zoning Board of Appeals, and Site Plan Review shall be submitted to the Commission upon receipt of local approvals.

G6. Prior to issuance of a building permit for any phase of proposed construction, the applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with this decision and with the information and plans submitted as part of the DRI review. Such review shall also be conducted consistent with Section 7 of the Cape Cod Commission *Administrative Regulations, Modifications to Approved DRIs*, dated 5/30/02 and as amended from time to time.

G7. Prior to issuance of a building permit for any phase of construction, the applicant shall obtain a preliminary Certificate of Compliance from the Commission which states that all conditions in this decision pertaining to issuance of a building permit for such phase have been met.

G8. The applicant shall provide the Commission with a progress report to be submitted on or before the anniversary of the date of this decision and each year thereafter until the project is completed. The progress report shall describe the status of local development permitting and project construction, including the expected date of commencement of site preparation work.

G9. The proposed Pleasant Bay Assisted Living Facility shall be constructed in accordance with the following final plans and other information noted below:

- "Partial First Floor Plan," from The Architectural Team, Inc., dated 11/26/02, received as part of a letter, received 11/27/02.
- Sign drawing, from Cape Craft Signs, color rendering showing down-mounted light, received 10/11/02.
- Point-to-Point Foot-candle Plans, Site Plans C-13 and C-13a, from The Architectural Team, Inc. and Rizzo Associates, received 11/6/02.
- "Open Space Master Plan," from Rizzo Associates, dated 10/2/03 (sic), received 10/4/02.
- "Treatment System Site Plan," from Rizzo Associates, dated 10/25/03 (sic), received 10/4/02.
- "Landscaping Plan and Key," Site Plans C-5 and C-5a, from The Architectural Team, Inc. and Rizzo Associates, received 11/6/02.

The project shall also be constructed in accordance with the information on exterior lighting submitted by Rizzo Associates in a letter received on 10/9/02.

The on-site treatment plant shall be operated, managed and maintained in accordance with the operation and maintenance plan provided as part of the "Drainage Report" prepared by Rizzo Associates, revised 4/5/02, and received on 4/17/02.

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

G11. The applicant shall notify Commission staff of the intent to seek a Certificate of Compliance at least thirty (30) days prior to the anticipated date of occupancy. 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 applicant understands that the Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The applicant agrees to allow Cape Cod Commission staff, upon prior notice, to enter onto the property which is the subject of this decision, at reasonable times for the purpose of determining whether the conditions contained in the decision are met.

G12. The applicant shall be responsible for providing proof of recording of the decision prior to issuance of a Certificate of Compliance.

G13. The applicant shall demonstrate that a copy of this decision has been provided to the general contractor(s) prior to the start of land clearing and/or construction.

### **Heritage Preservation/Community Character**

CC1. Plant materials specified by this decision may be substituted with prior written approval of Commission staff.

CC2. If all required exterior lighting, site work, irrigation, and/or other 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 form and content satisfactory to Commission counsel. The amount of the escrow agreement shall be equal to 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 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 and landscape work shall be completed within six months of issuance of a Final Certificate of Compliance.

CC3. Prior to issuance of a Preliminary Certificate of Compliance, the applicant shall submit for Commission staff review and approval a draft landscape maintenance agreement for three (3) full growing seasons which follows guidelines established by Commission staff. Prior to issuance of a Final Certificate of Compliance, the applicant shall submit documentation of a final maintenance agreement contract.

CC4. The applicant shall install the proposed signage consistent with the sign drawing, from Cape Craft Signs, color rendering showing down-mounted light, received 10/11/02.

CC5. Should unexpected conditions arise during construction that require adjustments to site exterior lighting fixtures, including substitutions of fixture heads, the applicant shall obtain approval from Cape Cod Commission staff prior to the construction consistent with Section 7 of the Cape Cod Commission's *Administrative Regulations, Modifications to Approved DRIs*, dated 5/30/02 and as amended from time to time. Modifications made during construction to the exterior lighting design that are in accordance with the approved plans may be considered as Minor Modifications #1 and may be approved by Commission staff without payment of a modification fee.

CC6. Prior to issuance of a final Certificate of Compliance from the Commission, in-the-field verification of 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. This shall also include verification that installed signage is in conformance with condition CC4.

### **Hazardous Materials/Wastes**

Haz-1. Prior to issuance of a Preliminary Certificate of Compliance, the applicant and/or land clearing contractors shall denote in the field the approximate location of the Wellhead Protection District/Zone II line. Field marking may consist of "snow" or construction fencing (commonly bright orange plastic sheets with holes), hay bales, or a suitable equivalent that can provide an obvious visual cue to equipment operators. Prior to the issuance of a Preliminary Certificate of Compliance, Commission staff shall also complete an inspection of the field marking project to ensure that it has been installed.

Haz-2. All land clearing, de-stumping and other site preparation work, and all construction activities shall take place outside of the area marked in accordance with condition Haz-1, above. Equipment shall be positioned so as to work from outside the marked area. Vehicle and equipment storage related to land clearing, site preparation and building construction shall occur outside of the area marked in accordance with condition Haz-1. Any equipment fueling or servicing shall be done on a designated area of the site that has an impervious surface and berms.

Haz-3. The applicant shall provide written notice to the Commission should a company other than Stericycle handle the facility's medical and bio-hazard waste. Once written notification is provided, Commission staff shall review it to determine consistency with Section 7 of the Cape Cod Commission *Administrative Regulations, Modifications to Approved DRIs*, dated 5/30/02 and as amended from time to time.

Haz-4. The Town of Brewster shall notify the Commission should the Town and/or Superintendent of the Brewster Water Department determine that the project site is of interest for development of a future public supply well. Once written notification is provided, Commission staff shall review it to determine consistency with Section 7 of the Cape Cod Commission *Administrative Regulations, Modifications to Approved DRIs*, dated 5/30/02 and as amended from time to time.

### **Solid Waste**

SW1 Prior to the issuance of a Preliminary Certificate of Compliance by the Commission, the applicant shall submit a draft contract for Commission staff approval specifying the disposal method and location that the contractor shall use to dispose of all asphalt, brick, concrete (ABC), untreated wood, metals and other solid waste generated by the construction activities. These materials shall be managed according to an integrated waste management system, and disposed of at a facility permitted to dispose of construction demolition materials.

SW2. Adequate equipment and storage space shall be provided to accommodate a recycling program. Prior to the issuance of a final Certificate of Compliance, Commission staff shall complete an inspection of the project to ensure that adequate equipment and adequate storage space for the recycling of cardboard has been installed and/or provided.

### **Water Resources**

WR1. Prior to issuance of the Final Certificate of Compliance, the applicant shall modify the Amphidrome wastewater treatment system to include a phosphorous removal component. The annual phosphorous loading shall not exceed the phosphorus load produced by the existing nursing home facility.

WR2. Prior to issuance of the Final Certificate of Compliance, the applicant shall install three monitoring wells downgradient from the leaching system (one additional well over the groundwater discharge permit conditions). Also prior to the Final Certificate of Compliance, the applicant shall conduct three sampling events from the adjacent nursing home's existing septic system to evaluate current effluent phosphorous concentrations, and three sampling events prior to occupancy of the assisted living facility from the monitoring wells to establish background levels.

WR3. Prior to issuance of the Final Certificate of Compliance, the applicant shall petition the Massachusetts Department of Environmental Protection to amend the groundwater discharge permit to include a maximum phosphorous discharge of 8.0 mg/liter and a daily total phosphorous loading range of 1.32-1.77 pounds with data reported monthly. The applicant shall undertake measurements of monitoring wells monthly, with results reported quarterly to the Cape Cod Commission.

WR4. The applicant shall work with the Brewster Board of Health to incorporate monthly phosphorous monitoring into local permit requirements. The Cape Cod Commission shall be copied on quarterly reports.

WR5. The applicant shall work with the Orleans Water Quality Task Force to assist in the continuation of water quality monitoring of Uncle Seth's Pond, or to separately monitor Uncle Seth's Pond for a minimum of 5 (five) years from the date of issuance of the Final Certificate of Compliance to appropriately measure water quality trends. Prior to issuance of the Final Certificate of Compliance, the applicant shall submit evidence to the Commission staff that the monitoring program which has been established will continue.

WR6. Prior to issuance of a Preliminary Certificate of Compliance, the applicant shall develop an annual environmental monitoring/contingency plan (Plan) to evaluate the effectiveness of phosphorous removal from the Pleasant Bay system described in Finding WR2 on water quality in Uncle Seth's Pond. The Plan shall include measures to evaluate treatment plant efficiency, water quality trends in downgradient groundwater and in Uncle Seth's Pond, and contingency protocols if improvement is not achieved in comparison to the existing septic system serving the Nursing Home. Prior to the Preliminary Certificate of Compliance, the applicant shall also submit for Commission staff review and approval and outline/draft of the environmental monitoring/contingency plan. Prior to issuance of the Final Certificate of Compliance, the applicant shall submit the final environmental monitoring/contingency plan for Commission staff review and approval. The applicant shall also submit to the Commission and the Town of Brewster an annual report for 5 (five) years from the date of issuance of the Final Certificate of Compliance on the effectiveness of phosphorous removal, implementation of the Plan, and water quality in Uncle Seth's Pond.

WR7. In the event that the Massachusetts Department of Environmental Protection chooses not to allow the amendment of the groundwater discharge permit to include the provisions outlined in condition WR3, and/or the Brewster Board of Health does not incorporate phosphorous monitoring into local permit requirements, the applicant shall inform the Cape Cod Commission of this in writing not more than 10 working days after such determinations. The applicant shall also submit an application to the Commission consistent with Section 7 of the Cape Cod Commission *Administrative Regulations, Modifications to Approved DRIs*, dated 5/30/02 and as amended from time to time.

## **Transportation**

T1. To reduce traffic impacts on Regional Roadways, the use of the assisted living facility and aquatic center shall be limited to residents of the assisted living facility (Pleasant Bay Health & Living Centers, LLC) and patients of the Pleasant Bay Nursing Home only.

T2. The applicant shall construct the facility's driveways according to the plans noted in the General Conditions. The applicant shall verify and maintain American Association of State Highway Transportation Officials safe stopping sight distances at both driveways. The applicant shall work with the Town of Brewster to maintain vegetation on town-owned property if necessary to maintain appropriate sight distances at the site driveways.

T3. The applicant shall provide 53 parking spaces unless the Town of Brewster requires more. However, the applicant shall provide no more than the 95 spaces required under town zoning without further Cape Cod Commission review.

T4. The applicant shall implement a trip reduction program at the assisted living facility as well as at the existing nursing home. The program shall include:

### On-Site Services

- Beauty salon;
- Convenience store for light grocery shopping;
- Newspaper delivery services;
- Lunchroom; and,
- Provide a lunch incentive for each employee each day they commute to work using alternative methods that reduce automotive trips such as bicycling, walking, or carpooling with other employees.

### Carpools / Vanpools

- Designate an employee to serve as the Transportation Coordinator who will be responsible for promoting the rideshare program and other Transportation Demand Management (TDM) measures as well as coordinating carpooling throughout the development.
- Designate one or more parking spaces (as demand indicates) convenient to building entrances which will be reserved for carpool or vanpool vehicles.
- Establish a bulletin board to aid in matching employees to carpools and vanpools.
- Provide a guaranteed ride home program for employees commuting by alternative methods in case of emergencies.

### Provide Shuttle Bus Service

- Provide a shuttle bus service between 7:00 AM and 5:00 PM available to residents and employees. The buses will provide service to shopping centers, doctors' offices, and planned activities.
- Provide information on-site to employees relative to the available public transportation services.

### Bicycle Use

- Provide a secure area and rack to store bicycles.
- Consideration of access to lockers and showers to employees who bicycle to work.

### Flexible Hours

- Allow flexible work hours for non-shift workers when it will support participation in carpools and vanpools and also help to shift site generated traffic away from the normal peak commuting hours.

### General Information

- As noted above, the applicant will provide a ride-matching bulletin board at both facilities. This bulletin board shall contain other informational literature describing the TDM program such as transit options, shuttle options, and lunch incentive.

### **Open Space/Natural Resources**

NR/OS-1. Prior to the Preliminary Certificate of Compliance, Pleasant Bay Assisted Living shall provide the Cape Cod Commission with a draft conservation restriction consistent with Massachusetts General Laws Chapter 184, §§31 – 33 and accompanying plan to be approved by Commission counsel which provides that 8.52 acres located on Parcels A and B and identified as open space on the plan titled "The Residences at Pleasant Bay Brewster, MA, Open Space Master Plan" dated 10/02/03(*sic*) shall be preserved as permanent open space. The conservation restriction as approved by Commission Counsel and plan shall be executed and recorded at the Registry of Deeds or Registry District of the Land Court and proof of recording shall be provided to the Commission prior to the receipt of the Final Certificate of Compliance. In order to preserve the water supply protection and habitat values of the open space areas protected through this conservation restriction, the land subject to this conservation restriction shall remain undisturbed, though provision may be made for habitat management and public walking trails.

### **Affordable Housing**

AH-1. The applicant, in conformance with MPS 5.1.2 of the RPP, shall provide six (6) units within the assisted living facility as affordable units. The applicant shall designate at any one time six (6) units for elderly individuals whose gross income is fifty (50%) percent or less of the median income or who are eligible for the Group Adult Foster Care Program (GAFC) under the MassHealth Medicaid Program for Group Adult Foster Care in addition to the Supplemental Security Income- Group (SSI-G) for the payment of rent. The affordable units shall be randomly scattered within the facility and shall provide studio and one bedroom units in proportion to the overall ratio of such units within the facility at any time. Any six (6) units may be designated at any point in time so long as six units are maintained

as affordable in perpetuity for the purpose of providing safe and decent housing to low income elders and conform to all terms and conditions of this decision. The income limits are established by the U.S. Department of Housing and Urban Development, as may be adjusted from time to time, for the Barnstable-Yarmouth MSA. Assets are calculated for income purposes in accordance with the federal low income housing tax credit program (HUD passbook rate- currently 2%- imputed to fixed assets).

AH-2. Assisted living is a special combination of housing and personalized support services designed to respond to individual needs of those requiring help in activities of daily living (ADL) but who do not require skilled medical care provided in a nursing home. Each affordable unit shall also receive the standard package for assisted living at Pleasant Bay which will include the following:

1. Housing Unit (studio or one bedroom)
2. Electric and HVAC utilities
3. Three (3) meals per day
4. Standard housekeeping services (i.e., change of linen etc.)
5. 45 minutes per day of hands-on direct care relating to life care needs (ADL) [bathing, dressing, etc.]
6. Standard facility wide transportation (i.e., shuttle to shopping etc.)
7. Emergency call system for each residential unit
8. Personal laundry services
9. Social, recreational and health promotion activities

Not included and subject to additional costs are the following:

1. Additional hands-on daily care (ADL)
2. Prescriptions and medications
3. Cable/phone
4. Medical or physician oriented treatment

For the purposes of condition AH2, the room rental component of the affordable units shall not exceed 30% of the residents' gross annual income and shall be subject to the maximum rent limits for the "high" HOME rents established by the U.S. Department of Housing and Urban Development, as may be adjusted from time to time.

Also, the combined allowable rent and service charges as noted above shall not exceed the greater of 80% of the household's income or the total amount of revenue the owner could receive from a GAFC/SSI-G recipient who retains at least \$75 of discretionary income monthly as a personal needs allowance.

In the event any of the above listed programs are discontinued and no similar substitutions exist, the applicant shall provide written notification of such discontinuance to the Cape Cod

Commission. The specific method of providing the affordable housing in compliance with Section 5.1.2 of the RPP may be adjusted, including providing equivalent housing units off site through the purchase of existing units, redevelopment, new construction or a contribution of land or funds acceptable to the Commission, in accordance with Section 7 of the Cape Cod Commission's Administrative Regulations, Modifications to Approved DRIs, dated 5/30/02 and as amended from time to time. Without such modification, the applicant shall continue to provide the affordable housing units as specified.

AH-3. Prior to the issuance of a Preliminary Certificate of Compliance by the Cape Cod Commission, the applicant shall provide to the Commission copies of the following:

1. Preliminary tenant location plan
2. Final construction specifications
3. Copy of marketing and tenant selection plan
4. Recorded deed restriction requiring the perpetual affordability of the six (6) units as described in Conditions AH-1 and AH-2. The deed restriction shall be reviewed and approved prior to recording by Commission Counsel.
5. Draft monitoring agreement by and between the applicant and a housing authority or non-profit organization with experience in income and rent certifications, which shall provide, *inter alia*, for the applicant to file a report annually listing each unit occupied within the assisted living facility by an individual whose income is fifty (50%) percent or less than the median income in the area, the rents and services charged for each unit and the income levels of the occupant of each of the identified units. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the applicant for preparation of a monitoring report to be issued to the Cape Cod Commission. The applicant's obligation to pay the fee and provide a report shall commence upon the issuance of an occupancy permit and shall be payable yearly on or before April 15<sup>th</sup> of each year.

AH-4. Prior to the issuance of a Final Certificate of Compliance, the applicant shall deliver to the Cape Cod Commission the following:

1. Executed monitoring agreement
2. Final marketing and selection plan
3. List of any residents who have reserved units and meet the affordability requirements set forth within this decision
4. Verification of contact with service organizations and governmental entities marketing the affordable units
5. Copies of mortgage and/or construction financing documents. Such financing shall be subordinate to this DRI decision as recorded with the Barnstable County Registry of Deeds and shall contain covenants that require conformance with all regulatory and land use permits, including this decision and all conditions contained therein.

The final marketing and selection plan shall include the policy for balancing eligible internal transfers and external applicants when filling subsequent vacancies in the affordable units. Tenant selection guidelines should also include a preference for Barnstable County

residents (defined as a person who lives, works, grew up, or has immediate family in a town in the County).

Rental of the affordable assisted living units shall be carried out on a first-come, first-served basis, with no preference given to households with family members who can supplement the cost of the non-standard assisted living services.

AH-5. Prior to any future refinancing, the applicant shall submit to the Cape Cod Commission copies of documents related to the re-financing, including but not limited to mortgage documents.

The Cape Cod Commission hereby approves with conditions the application of Joshua Zuckerman 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 Pleasant Bay Assisted Living Facility located in Brewster, MA.

[Signature]  
Name, Cape Cod Commission Chair

1/14/03  
Date

**Commonwealth of Massachusetts**

**Barnstable, ss.**

On this 17<sup>th</sup> day of January 2003, before me personally appeared

Robert Randolph, 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:

