



CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MA 02630
(508) 362-3828
FAX (508) 362-3136

E-mail: frontdesk@capecodcommission.org

DATE: September 8, 2005

TO: Benjamin and Paul de Ruyter
Mashpee Industrial Park Trust

FROM: Cape Cod Commission

RE: Amendment to Development Agreement entered into
in April 1997 and modified in April 1998, June 2003

APPLICANT: Benjamin and Paul de Ruyter
Mashpee Industrial Park Trust
P.O. Box 307
Yarmouthport, MA 02675

COMMISSION'S PROJECT NUMBER: DA - 96001

AMENDMENT TO DEVELOPMENT AGREEMENT

The Mashpee Industrial Park Development Agreement (Development Agreement) entered into by the Mashpee Industrial Park Trust and the Cape Cod Commission (Commission) on April 17, 1997 and modified in decisions dated April 22, 1998 and June 25, 2003, is hereby amended by a vote of the Commission. All conditions attached to and incorporated into the Development Agreement as entered into on April 17, 1997 and as modified in decisions dated April 22, 1998 and June 25, 2003 shall continue to apply except as modified herein.

AMENDED CONDITIONS

1. The following changes shall be made to condition TR4 of the Development Agreement:

TR4. Prior to **the issuance of a Preliminary Certificate of Compliance** for commencement of construction of each phase the MIPT agrees to do the following:

(a) List of Uses by Phase

Provide to the Commission a list of proposed uses and anticipated daily and PM Peak vehicle trip generation figures based on the then-current ITE Trip Generation Manual;

(b) Trip Reduction

Provide a monetary contribution to an escrow fund (the "TDM Contribution Escrow") in the amount of twelve thousand five hundred dollars (\$12,500), which amount shall be deemed a

contribution toward the 20% trip reduction requirement set forth in the RPP (the "TDM Contribution"). The MIPT agrees to provide a total TDM Contribution of fifty thousand dollars (\$50,000) for all four phases of the project. In addition to the TDM Contribution, MIPT agrees to ~~implement the following trip reduction measures within each phase of the Property:~~ (i) ~~Creation of~~ **create** a Mashpee Industrial Park Travel Demand Management Panel (the "TDM Panel") which shall consist of a representative of the MIPT and representatives of Occupants operating within the Property at any time. The TDM Panel shall be created prior to commencement of construction in the first phase and shall meet at least semi-annually to discuss methods of meeting the 20% trip reduction goal and improving trip reduction strategies and implementation for the Park. The TDM Panel shall provide the MIPT with an annual report to be incorporated into the TDM Report referenced below.

~~(ii) Construction of a shuttle bus stop, including a covered and enclosed waiting area, in a location approved by the Commission, the Town, and the Cape Cod Regional Transit Authority. This stop shall be located within the Park or on Route 28 near the site and shall be constructed prior to commencement of construction within the fourth phase.~~

~~(iii) Require Occupants to provide bicycle racks for use by employees.~~

~~(iv) Require Occupants to implement preferential parking for car/van poolers and to enforce such parking restrictions.~~

~~(v) Provide showers and lockers within buildings controlled by the MIPT.~~

~~(vi) Encourage on-site amenities to reduce trips such as ATM, direct deposit, cafeterias, child care and fitness centers as appropriate.~~

~~(vii) MIPT will prepare and deliver to each Occupant a trip reduction strategy manual and will coordinate the presentation of seminars or other educational materials (i.e. video tapes) to all Occupants regarding trip reduction strategies. The MIPT is encouraged to contact Caravan to assist in this task.~~

~~The MIPT agrees that the foregoing TDM strategies will be implemented on a permanent basis by the MIPT and, to the greatest extent feasible, by each Occupant within the phase. The MIPT further agrees to provide the Commission with an annual report on the success of implemented TDM strategies (the "TDM Report"). The first TDM Report shall be due after the completion of the first phase of development, and prior to the issuance of the Preliminary Certificate of Compliance for the second phase.~~

TR5. Prior to the issuance of a Final Certificate of Compliance by the Cape Cod Commission for any phase of development, MIPT agrees to do the following:

(e) (a) Off-Site Mitigation

Provide a monetary contribution to an escrow fund (the Off-Site Mitigation Escrow) in an amount equal to the average per square foot cost for off-site mitigation attributable to each use within the proposed phase, consistent with the Off-site Mitigation Schedule attached hereto as

Exhibit D, which Schedule shall be adjusted annually consistent with the then-current Boston Consumer Price Index. The off-site mitigation contribution for each phase shall be adjusted if actual uses are not consistent with the list of uses provided pursuant to subsection (a) above, upon a change of use, and/or upon occupancy by medical/dental uses pursuant to subsection (d) below. The escrow fund shall be used for design and construction of off-site roadway improvements in the vicinity of the Park **Town of Mashpee**. Escrow funds not expended within ten (10) years of receipt shall revert to the Cape Cod Regional Transit Authority.

(d) (b) Proposed Medical/Dental Uses

Provide the amount of gross floor area of proposed medical and/or dental uses within the phase and an additional monetary contribution, as determined by the Commission, to address off-site mitigation and 20% trip reduction associated with such development. The MIPT further agrees to provide to the Commission the amount of gross floor area of medical and/or dental uses created as a result of changes of use to existing buildings within the Property and to provide an additional monetary contribution, as approved by the Commission, to address off-site mitigation and 20% trip reduction associated with such changes of use. The off-site mitigation component of such monetary contribution shall be based upon then-current ITE trip generation manual and the fair share contribution as determined under the then-current Commission technical bulletin(s). The trip reduction component of such monetary contribution shall be based upon then-current Commission policy regarding trip reduction, taking into account trip reduction measures implemented under subsection **TR4(b)** above. The MIPT agrees that such monetary contribution shall be made prior to applying for a building permit for the proposed medical/dental use.

(e) (c) Site Drive Mitigation

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

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

(d) Trip Reduction

MIPT agrees to implement the following trip reduction measures within each phase of the Property. The MIPT agrees that the foregoing TDM strategies will be implemented on a permanent basis by the MIPT and, to the greatest extent feasible, by each Occupant within

the phase. The MIPT further agrees to provide the Commission with an annual report on the success of implemented TDM strategies (the "TDM Report").

- (i) Require Occupants to provide bicycle racks for use by employees.
- (ii) Require Occupants to implement preferential parking for car/van poolers and to enforce such parking restrictions.
- (iii) Provide showers and lockers within buildings controlled by the MIPT.
- (iv) Encourage on-site amenities to reduce trips such as ATM, direct deposit, cafeterias, child care and fitness centers as appropriate.
- (v) MIPT will prepare and deliver to each Occupant a trip reduction strategy manual and will coordinate the presentation of seminars or other educational materials (i.e. video tapes) to all Occupants regarding trip reduction strategies. The MIPT is encouraged to contact MassRides to assist in this task.

TR6. Prior to the issuance of the Preliminary Certificate of Compliance by the Cape Cod Commission for the fourth phase of development, the MIPT agrees to do the following:

- (i) **Construction of a shuttle bus stop, including a covered and enclosed waiting area, in a location approved by the Commission, the Town, and the Cape Cod Regional Transit Authority. This stop shall be located within the Park or on Route 28 near the site. and shall be constructed prior to commencement of construction within the fourth phase.**

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

OS1. Reservation of Open Space

- (a) In order to provide wildlife and pine barrens habitat and provide buffers to adjacent parcels, the MIPT shall provide 40% permanently protected open space (as defined by the RPP) within the Property (the "Open Space").
- (b) Said Open Space shall consist, in part, of the land shown on the plan attached hereto as Exhibit F as "Required Buffer Area", depicted by cross-hatching, which land shall count toward the 40% requirement. Prior to the conveyance of any Lot, or the issuance by the Commission of a Certificate of Compliance for Phase Two or any part of Phase Two, whichever is sooner, the MIPT shall provide a restrictive covenant a permanent open space restriction, consistent with M.G.L. Chapter 184 Sections 31-33, in a form reasonably acceptable to Commission Counsel, providing that the Required Buffer Area shown on Exhibit F remain as permanent open space and remain in a vegetated, natural state. At a minimum, the Required Buffer Area shall include 100 feet from the southern boundary of the Park extending into Lots 20 and 21 and 50 feet from the southern boundary of the Park extending into ~~Lot 27~~ Lot 23 and any other Lots owned or

controlled by the MIPT located on the southern boundary of the Park, **and shall include the undeveloped balance of Lot 28, and the northern buffer on Lot 1 and 34.** The MIPT agrees to make a good faith attempt, to the greatest extent feasible, to extend the permanently restricted buffer area to all Lots along the southern boundary of the Park. **To this end, the rear 50 foot buffer on Lot 27 shall be permanently protected through a restrictive covenant, as required by the 1998 modification, which allowed the Park to exchange Lot 27 for Lot 23.**

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

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

SEE NEXT PAGE FOR SIGNATURES

Signatures

Alan Platt

Chair, Cape Cod Commission

12/15/05

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

12/15, 2005

Alan Platt

Before me, the undersigned notary public, personally appeared _____, in his capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which personal knowledge of the undersigned.

Gail P. Hanley

Notary Public

My Commission Expires:

10/13/11

J. B. Mason Trustee

Representative of Mashpee Industrial Park Trust

11/15/05

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Dec 15, 2005

Before me, the undersigned notary public, personally appeared _____ in his/her capacity as a representative of the Mashpee Industrial Park Trust, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

[Signature]

Notary Public

My Commission Expires: