



CAPE COD COMMISSION

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E-mail: frontdesk@capecodcommission.org

DATE: March 31, 2005

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

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

PROJECT #: MOD02030
RE: Modification of Development of Regional Impact Decision (TR97007) dated
12/14/00 as amended 4/10/03 (MOD02030)
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

MODIFICATION TO DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of C. Talanian Realty (Applicant) 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 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

As approved by the Cape Cod Commission on December 14, 2000, the SouthCape Village Outlet Mall consisted of an Outlet Center/Shopping Mall of 160,000 square feet (s.f.) located on an

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approximately 25 acre site on Route 28 in Mashpee within one of the town's certified growth centers. The project was approved for nine buildings ranging in size from 5,000 to 25,000 s.f., providing for up to 35 stores.

In October 2002, the Applicant proposed to modify the December 2000 DRI decision to construct a supermarket and retail space. The Commission's Regulatory Committee determined that the Applicant's proposed modification constituted a Major Modification under Section 7(d)(iii) of the Cape Cod Commission Administrative Regulations. In April 2003, the Commission approved with conditions a "Phase I Modification" to the original DRI decision that consists of the construction of a 42,000 s.f. supermarket and 14,600 s.f. of retail space and includes changes to traffic mitigation, building design, landscaping, and site work. The "first phase" modification approval allowed for construction of the supermarket/retail use and provided the associated mitigation requirements for that portion of the project.

The Applicant is now seeking to construct an additional 103,400 s.f. of retail space ("Phase II DRI Modification"). This "second phase" modification entails increased transportation impacts and changes in traffic mitigation. It does not entail changes in the areas of community character, water resources, hazardous materials, open space, economic development, or noise.

PROCEDURAL HISTORY

The SouthCape Village Outlet Mall DRI (TR97007) was reviewed jointly by the Commission and the state's MEPA (Massachusetts Environmental Policy Act) unit pursuant to a Memorandum of Understanding between the Executive Office of Environmental Affairs and the Commission. The Applicant submitted a Supplemental Environmental Impact Report (SEIR) on the proposed modification in October 2003 and submitted the DRI modification application for the proposed Phase II Modification in November 2003. MEPA issued a certificate on the SEIR in December 2003.

A hearing officer opened the public hearing for the Phase II Modification on January 12, 2004 and closed the public hearing on April 8, 2004. A duly authorized subcommittee of the Commission held a public hearing pursuant to Section 5(g) of the Act at the Carol Jacobson Senior Center in Mashpee on April 21, 2004. The hearing was continued to May 13, 2004, where it was closed by a hearing officer. An extension of the 60 day timeframe to issue a decision was granted to December 3, 2004. The subcommittee held public meetings to deliberate on the project on April 29, 2004; May 13, 2004; and September 20, 2004, October 21, 2004. At the September 20, 2004 meeting, the subcommittee voted 3 to 1 to recommend to the full Commission that the Phase II Modification be approved, subject to conditions. A public hearing was held before the full Commission on November 4, 2004, where the public hearing was closed. At this hearing, the Commission voted 7 to 5 not to approve the Phase II Modification. The Commission granted an additional extension of the 60 day timeframe to issue a decision to June 10, 2005.

Commission staff met with the applicant on several occasions between November 2004 and February 2005 to discuss alternative mitigation approaches to address the Phase II Modification

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traffic impacts. The subcommittee held additional public meetings to deliberate on the applicant's modified proposal on February 17, 2005 and March 17, 2005. At the February 17, 2005 meeting, the subcommittee voted 5-0 to recommend to the full Commission that the Phase II Modification be approved, subject to conditions. A duly noticed public hearing was held before the full Commission on March 31, 2005. At this hearing, the Commission voted 11 to 0 to approve the Phase II DRI Modification.

Materials submitted for the record:

From the applicant

Document date:

- Preliminary draft SEIR 6/03/03
- Letter from Don Megathlin of Talanian Realty re: previous meeting 7/17/03
- Letter from Bob Vanasse of Vanasse Assocs. re: scope and project update 7/30/03
- Letter from Bernie Guen of Vanasse Assocs. re: background development 8/3/03
- Mashpee Rotary Preliminary Improvement Program Alternatives 8/18/03
- Letter from Jeffrey Dirk of Vanasse Assocs re: study area 8/25/03
- Letter from Don Megathlin re: meeting summary 9/5/03
- Letter from Don Megathlin re: update 10/5/03
- Letter from Don Megathlin to MHD re: Mashpee Rotary 11/6/03
- DRI application form 11/7/03
- SEIR 11/18/03
- Response to SEIR comment letter from Jeffrey Dirk 1/9/04
- Conceptual Design Plans & analysis Mashpee Rotary 1/20/04
- Copies of letters to towns of Falmouth, Sandwich, Barnstable re: roadway improvements 1/26/04
- Email from Don Megathlin to Glenn Cannon re: input 1/28/04
- Crash diagrams 2/9/04
- Phone notes from Bernie Guen re: trip reduction 2/9/04
- Mitigation summary table and revised Conceptual Improvement Plan 2/19/04
- Letter from Bernie Guen re: TDM 2/24/04
- Letter from Jeffrey Dirk re: trip reduction requirements 2/27/04
- Construction bid Route 28 contract 2/27/04
- Revised mitigation summary table 3/1/04
- Letter from Don Megathlin re: mitigation cost 3/3/04
- Letter from Jeffrey Dirk with ITE Safety Toolbox 3/4/04
- Connector Road value/cost 3/8/04
- Revised mitigation summary table 3/10/04
- Land value/cost estimates Route 28 3/15/04
- Cost estimates: Connector Road 3/15/04
- Email from Don Megathlin re: conference call 3/17/04
- Appraisal report 3/24/04
- Revised mitigation summary table 4/5/04
- Memo from Don Megathlin re: land swap 4/14/04
- Compilation of traffic analyses/reports 4/26/04
- 3 letters from Don Megathlin re: response to comments 4/29/04
- Traffic volume network diagrams 5/3/04
- Memo from Don Megathlin re: NSTAR meeting 5/3/04
- Letter from Don Megathlin re: follow-up of subcommittee meeting and

summary of land swap proposal	5/5/04
• Letter from Jeffrey Dirk re: summary of mitigation	5/6/04
• Letter from Jeffrey Dirk to MassHighway re: request for letter	5/5/04
• Draft MOA re: land swap	5/12/04
• Letter from Jeffrey Dirk re: response to May 24 letter	6/7/04
• Draft Purchase & sales agreement	9/3/04
• Letter from Don Megathlin re: project update	9/9/04
• Letter from Jeffrey Dirk re: structural improvements	9/16/04
• Purchase & sales agreement	10/21/04
• 2 faxes from Michael Bliss re: revisions to draft decision	10/19/04
• Fax from Jeffrey Dirk re: revisions to draft	10/20/04
• Summary report to CCC	10/28/04
• CC Times editorial & letters to editor	11/3/04
• Email from Michael Bliss re: vote talley	11/5/04
• Letter from Michael Bliss: extension request	11/12/04
• Letter from Michael Bliss re: further review	11/23/04
• Letter from Jeffrey Dirk re: trip generation numbers	12/10/04
• Letter from Don Megathlin re: recap of meeting	12/21/04
• Letter from Don Megathlin re: land values	12/23/04
• Letter from Don Megathlin re: further info	1/6/05
• Letter from Don Megathlin re: modifications	1/21/04
• Letter from Don Megathlin re: modifications	2/11/05
• Letter from Michael Bliss re: benefits	2/11/05
• Fax from Don Megathlin re: building figures	3/2/05
• Letter from Michael Bliss re: schedule change	3/2/05

From Cape Cod Commission

Document Date

• Project timeline	11/21/03
• Staff report/SEIR	11/14/03
• Cover memo to subcommittee re: hearing	11/14/03
• Letter to Matt Patrick re: Mashpee road improvements	10/22/03
• Letter to Don Megathlin re: response to 7/17/03 letter	7/29/03
• Memo to Jeffrey Dirk re: study area	7/24/03
• Letter to Jeffrey Dirk re: study area, trip generation, etc. confirmation	10/9/03
• Memo to subcommittee re:hearing	11/14/03
• Staff report SEIR	11/14/03
• SEIR comment letter to MEPA	11/24/03
• Email to Don Megathlin re: Mashpee rotary	2/2/04
• Phone notes: Glenn Cannon	2/11/04
• Phone notes from Bob Mumford	2/13/04
• Email from Bob Mumford re: timeframe	2/18/04
• Phone notes from Glenn Cannon re: Bob Burgmann call	3/2/04
• Cover fax from to Jeffrey Dirk re: Burgmann call	3/2/04
• Staff report/DRI	4/14/04
• Memo to subcommittee re: hearing	4/15/04
• Cover memo to subcommittee	5/6/04
• Memo to subcommittee re: transportation update	5/7/04
• Memo to Jeffrey Dirk re: transportation issues	5/24/04

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- Letter to Don Megathlin re: extension 4/26/04
- Cover memo to subcommittee and LOS analysis 4/28/04
- Cover memo and transportation update to subcommittee 9/16/04
- Mashpee Place DEIR 10/25/04
- Preliminary Plan of Land, prepared for Assurance Const. Co. dated August 8, 2000
by Christopher Costa & Assoc. 10/25/04
- Draft decision 11/4/04
- Email to Michael Bliss re: vote 11/5/04
- Memo to CCC re: extension request 11/12/0
- Letter to Michael Bliss re: minutes 12/13/04
- Letter to Frank Cappy re: information request 1/3/05
- Trip reduction calculations 2/9/05
- Memo to Subcommittee: update 2/15/05
- Draft mitigation schedule changes 3/4/05
- Memo to subcommittee re: requested changes 3/11/05

From Local and State Officials

Document date

- Letter from Rep. Patrick re: Mashpee roadway improvements 10/10/03
- EOE/MEPA Certificate on SEIR 12/1/03
- Letter from DCR in support of NStar parcel preservation 11/19/03
- Letter from Peter Tancredi to Jeff Dirk re: Sandwich improvements 2/17/04
- Letter from Bob Burgmann to Jeffrey Dirk re: Barnstable improvements 2/24/04
- Letter from Joyce Mason, Mashpee Town Administrator re: mitigation comments 4/28/04
- Letter from Bernie McCourt, MassHighway re: proposed improvements 5/10/04
- Letter from Greg Taylor, Mashpee DPW, re: need for signal at Orchard Rd. 5/13/04
- Letter from Mashpee Board of Selectmen re: Request for Orchard Rd.
signal and quick review 6/11/04
- Letter from Jeffrey Davis Perry, State Representative, in support 9/10/04
- Letter from Demetrius Atsalis, State Representative, in support 9/7/04
- Letter from Frank Hartig, DCR, update on land swap 9/1/04
- Letter from Christine Berry, DCR re: conservation restrictions 10/04/04
- Letter from Rep. Patrick re: Orchard Road 10/9/04
- Email from Tom Fudala, Mashpee Town Planner re: zoning compliance 10/20/04
- Letter from Peter Tancredi, Sandwich DPW re: mitigation 10/21/04
- Letter from Mashpee Board of Selectmen in support of draft decision 11/2/04
- Letter from Eric Turkington, State Representative, in support 11/4/04
- Memo from Mashpee Planning Board in support of extension request 11/18/04
- Email from Tom Fudala in support of changes 3/16/05
- Letter from Marcia King, Mashpee Delegate to Assembly of Delegates 3/17/05
- Letter from Jeffrey Davis Perry, State Representative, in support 3/04/05
- Letter from Eric Turkington, State Representative, in support 3/25/05
- Letter from John Klimm, Barnstable Town Manager 3/30/05

From the public

Date received

- Petition from Mashpee Neck Association for Orchard Road signal 8/5/03
- Letter from Charles Hajjar, Deer Crossing Realty Trust: in support 11/19/03
- Letter from Maggie Geist & Don Keeran of APCC: traffic concerns 11/20/03
- Letter from Ronald Tosti of Mashpee: in support 11/20/03

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- Petition in support of a Marshalls 11/20/03
- Letter from Douglas Storrs, Mashpee Commons Ltd. Partnership, re: concerns about rotary improvements 2/9/04
- Letter from John Michaels, Quashnet Valley Condo Assoc Mngr re: concerns about Lowell Road/Great Neck Road North 4/22/04
- Letter from Mary Ann Matthews, LIFE,: in support 4/12/04
- Letter from George & Clair Reichenbacher of Mashpee: in support 4/14/04
- Letter from David Leary, Mashpee Condominium Trust: in support 4/17/04
- Letter from Dick & Eleanor Marsh, the Brain Center: in support 4/18/04
- Letter from Leslie Marsh, Plymouth Savings Bank: in support 4/20/04
- Letter from Charles Hajjar, Deer Crossing Realty Trust: in support 4/16/04
- Letter from Ronald Tosti of Mashpee: in support 4/20/04
- Letter from Paul Hartel, Appraisal Co. of New England in support 4/20/04
- Letter from Jean & Robert Canning of East Falmouth: in support 4/21/04
- Letter from Douglas Storrs, Mashpee Commons Ltd. Partnership, re: rotary improvements concerns 4/21/04
- Letter from Maggie Geist & Don Keeran of APCC: traffic concerns 4/22/04
- Letter from Gary Locarno of Boston: opposed 4/21/04
- Letter from Aurelian Anghelusi, Willowbend Gen.Mngr., re: Orchard Road 4/26/04
- Letter from Edward Larkin of Mashpee in support 4/29/04
- Letter from Violet Larkin in support 4/29/04
- Letter from Ted Nadolny, Mashpee Chamber of Commerce re: meeting with applicant's representatives 4/21/04
- Letter from David Vieira, Friends of Mashpee Nat'l Wildlife Refuge re: Nstar parcel 4/30/04
- Letter from Martin O'Malley, Jr. of Mashpee: growth concerns 5/12/04
- Letter from Rita Abdella of Mashpee re: Orchard Road signal 8/13/04
- 92 form letters re: need for signal at Orchard Road/Route 28 8/17/04-10/1/04
- Letter from F. Keats Boyd, Jr. of Mashpee re: Orchard Road signal 8/17/04
- Letter from Elizabeth Markham of Boston re: Orchard Road signal 9/2/04
- Letter from Barry & Taylor Joyce of Cotuit re: Orchard Road signal 8/17/04
- Letter from Deborah Gasior of Mashpee re: Orchard Road signal 8/23/04
- Letter from Gretchen O'Reilly of Cotuit re: Orchard Road signal 8/23/0
- Letter from Sidney Starobin of Mashpee re: Orchard Road signal 8/23/04
- Letter from Paul & Margery Duncan of Mashpee re: Orchard Road signal 8/23/04
- Letter from Jan Boyce of Willowbend re: Orchard Road signal 8/23/04
- Letter from Joseph Rivetone of Mashpee re: Orchard Road signal 8/23/04
- Letter from Donna Connor: Orchard Road signal 8/24/04
- Letter from Catherine Frederico: Orchard Road signal 8/26/04
- Letter from Robert & Joan Cranzano of Osterville re: Orchard Road signal 8/26/04
- Letter from Norman & Lois Morse of Mashpee re: Orchard Road signal 8/30/04
- Letter from Gail O'Reilly of Winchester re: Orchard Road signal 8/30/04
- Letter from Mr. & Mrs. McCrensky of Mashpee re: Orchard Road signal 8/30/04
- Letter from Carole Ogren of Sandwich re: Orchard Road signal 8/31/04
- Letter from Mrs. O'Brien of Cotuit re: Orchard Road signal 8/31/04
- Letter from Carole Stout of Chestnut Hill re: Orchard Road signal 9/3/04
- Letter from Rosalie & Harvey Slansky re: Orchard Road signal 9/3/04
- Letter from Bruce & LuAnn Ohanian re: Orchard Road signal 9/7/04

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- Letter from Kate & Ralph Waynor of Mashpee re: Orchard Road signal 9/9/04
- Letter from Stephen Karp of Mashpee re: Orchard Road signal 9/10/04
- Letter from Joan Muse, Seaview Realty re: Orchard Road signal 9/15/04
- Letter from Peter and Gretchen Maglione in support of project 9/9/04
- Letter from Stephen Carroll of NSTAR re: land swap 9/2004
- Letter from Martin O'Malley Jr. of Mashpee re: concerns/in opposition 10/1/04
- Letter from Hugh Williams of Waquoit in opposition 11/1/04
- Letter from Adele M. Rohe of E.Falmouth in opposition 11/3/04
- Letter from Norina Reif of Falmouth in opposition 11/3/04
- Letter from Don Keeran and Maggie Geist of APCC re: traffic concerns 11/3/04
- Letter from Ellen Gordon of Mashpee: disagree with CCC vote 11/5/04
- Letter from Jerry Blumengarten of Mashpee: agree with CCC vote 11/5/04
- Letter from Elizabeth Mathys of Mashpee in support of project 11/9/04
- Letter to Mashpee Enterprise from George Locarno of Mashpee:
agree with CCC vote 11/19/04
- Letter from Antonio Lorenzo of Mashpee: agree with CCC vote 11/26/04
- Letter from Jim Boutilier of Mashpee: agree with CCC vote 11/26/04
- Letter from Walter Wightman of Mashpee: agree with CCC vote 12/6/04
- Letter from Anna Brown and Thomas Scammell of Mashpee in support
of project 12/10/04
- Letter from Mary Scanlan of Mashpee in support of CCC vote & DCPC 12/13/04
- Letter from Frank Cappy: information request 12/28/04
- Letter from K.J. Ducharme in support of CCC vote 1/4/05
- Letter from Dick & Eleanor Grace of The Brain Center in support 3/21/05
- Letter from Robert Canzano of Osterville in support 3/21/05
- Letter from John Miller in support 3/22/05
- Letter from Thomas Caston of New Seabury Homeowners in support 3/22/05
- Letter from Deborah Glasior of Mashpee in support 3/24/05
- Letter from A. Anghelusi, Willowbend CC Manager, in support of Orchard Rd light 3/24/05
- Letter from Benjamin deRuyter, Beacon Realty Group, in support 3/25/05
- Letter from Charles Hajjar of Hajjar Realty in support 3/25/05
- Letter from David Leary, LIFE at Mashpee, in support 3/25/05
- Email from Peggy Casey of Mashpee : thanks for good work 3/25/05
- Letter from Violet Larkin of Mashpee in support 3/25/05
- Letter from John Livingston, Seamist Manager, in support 3/28/05
- Email from Gary Locarno of GML Assocs in opposition 3/28/05
- Letter from Elizabeth Markham of Mashpee in support 3/28/05
- Letter from Carol Ogren of Mashpee in support 3/28/05
- Letter from David Vieira, Friends of Mashpe Nat'l Wildlife Reserve, in support 3/28/05
- Letter from Ronald Tosti, Parish of Christ the King, in support 3/28/05
- Email from Joan Brown of Mashpee in support 3/30/05
- Email from Margery Cleary of Mashpee in support 3/30/05
- Letter from Jamie Regan of Mashpee in support 3/30/05
- Letter from Julie Brady of Mashpee in support 3/30/05
- Letter from David Consalvi of Mashpee in support 3/30/05
- Letter from Tim Feldham, Bosun's Marine, in support 3/30/05
- Letter from Leonard Delorey of Mashpee in opposition 3/30/05

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- Letter from Joseph Ambrose of Mashpee in support 3/30/05
- Letter from Deborah Regan, Century 21 Realty, in support 3/30/05
- Letter from Noel Chaput, Health Plans Insurance, in support 3/30/05
- Letter from the Bornas family of Mashpee in support 3/30/05
- Letter from Sidney Starobin of Mashpee in support of Orchard Rd. light 3/30/05
- Letter from David Burton of Mashpee in support 3/31/05
- Letter from Joan Muse of Seaview Real Estate in support 3/31/05

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

At the April 21, 2004 public hearing on the Phase II Modification request, Donald Megathlin, representing the Applicant, presented the modification request, first providing an overview of the Phase I modification. Jeffrey Dirk of Vanasse Associates discussed the traffic analysis and the Applicant's mitigation proposal. He outlined how the project would address the safety, congestion, and trip reduction requirements of the RPP. Mr. Megathlin and Attorney Michael Bliss also discussed the Applicant's proposal to swap the Drew parcel for the 31 acre NSTAR parcel to address trip reduction requirements and provide open space benefits.

Martha Hevenor introduced the staff report and presented an overview and timeline of the project's procedural history. Glenn Cannon presented a summary of the transportation comments. He said that the trip reduction proposal meets the RPP requirements. He outlined the safety and congestion mitigation proposals, noting that safety improvements must be implemented prior to occupancy. He also explained how fair-share money is applied and discussed elements of the Applicant's fair share mitigation.

The subcommittee asked questions about the land swap and whether alternatives are under consideration. They also asked the Applicant to address fair-share mitigation with officials in the other towns. Subcommittee members noted concern about the project's impacts on the rotary.

Don Keeran of the Association to Preserve Cape Cod (APCC) expressed concern about traffic impacts. He said he supported the land swap but that it should be concluded prior to Commission approval.

Sarah Gorzyka said of Shipwreck Drive said that a light is needed at Orchard Road/Route 28/Ashers Path. Ed Baker spoke for the need to signalize the Orchard Road/Route 28 intersection and noted stormwater mitigation as well as concerns about the Great Neck Road sidewalk extending past the pine barrens.

Martin O'Malley, of Windchime, said that most Windchime residents are opposed to the project according to a poll. He said the project is a poor use of the land and recommended a DCPC for the area.

Bruce Taggart said the proposed by-pass road would impact the residential neighborhoods. Mr. Cannon clarified that the by-pass roads Mr. Taggart referred to are not part of this project. Mr. Dirk said that the bypasses would use existing roads.

Lolita McCrae expressed her support for an Orchard Road/Route 28 light.

Alan Marks expressed concerns about traffic and more retail development in the area.

Martha Hillsacket expressed concern about the urbanization of Mashpee, noting that the town should hire an expert to look at the big picture prior to Phase II.

At the November 4, 2004 public hearing before the Cape Cod Commission, Martha Hevenor presented a summary of the main findings and conditions of the draft decision. Don Megathlin discussed the Phase I modification and gave an overview of the Phase II proposal.

Brendan Annett of Waquoit Bay National Estuarine Research Reserve and the Mashpee Wildlife Partnership spoke about the benefits of protecting the 31 acre NSTAR parcel.

Christine Berry of the state Department of Conservation and Recreation (DCR) explained the history behind the proposed land swap. George Hampson, member of the Friends of Mashpee National Wildlife Refuge spoke in support of the land swap.

Don Keeran of APCC discussed how the roadways cannot support this project and said the Commission should not be held hostage to approve a project for a proposed signal that should be there anyway.

Freddie Dimico, resident of Shellback Way, spoke in favor of the project and said that the sidewalks and other improvements provided under Phase I were good for residents.

John Michaels, manager of Quashnet Valley condominiums, said that Lowell Roads is dangerous and that he supports the improvements there.

Violet Larkin of Mashpee said that Marshalls would provide a more affordable place to shop.

Mimi Lupinski spoke in support of the traffic light at Orchard Road.

Mary Ann Matthews of LIFE at Mashpee spoke in support of the sidewalks constructed in Phase I and in support of Phase II.

Bob Contrimarsh of Mashpee Neck Road spoke in favor of the project.

Lolita McCrae of the Mashpee Neck Association said the Orchard Road intersection is dangerous and that she supports the project.

Dick Grace expressed support of efforts made.

Commission members' questions and discussion focused primarily on the project's traffic impacts.

Improvements to the Mashpee Rotary were discussed as well. Commission members noted concern that the project's approval was the mechanism for getting the Orchard Road signal. The subcommittee chair said that the project's traffic issues are not being met and that is a detriment. The Commission chair expressed his concern about the traffic impacts and discussed his reason for not supporting the project. Ernie Virgilio expressed his support of the Phase II modification and moved to approve it. The motion was seconded but defeated, with 5 voting in favor and 7 against.

JURISDICTION

The SouthCape Village project (TR97007) qualified as a Development of Regional Impact (DRI) under Section 3(e) of the DRI Enabling Regulations as commercial development that involved "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 original SouthCape Village DRI decision constituted a Major Modification under Section 7(d)(iii) of the Cape Cod Commission Administrative Regulations.

FINDINGS

The Commission has considered the application of C. Talanian Realty for the proposed Major Modification to the SouthCape Village DRI decision, 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:

General

The following findings replace Findings G1 and G2 of the original SouthCape Village DRI (TR97007, December 14, 2000).

G1. The Phase II DRI modification consists of the redevelopment of an existing 25⁺ acre site which had been used as Dick and Ellie's Flea Market for several years. A total of 56,600 s.f. of retail space was approved for the site under the SouthCape Village Phase I DRI Modification decision MOD02030 dated April 10, 2003. The Applicant proposes 103,400 s.f. of additional retail space under this Phase II DRI modification.

G2. The SouthCape Village Outlet Mall (TR97007) was categorically included for the preparation of an Environmental Impact Report (EIR) under the Massachusetts Environmental Policy Act (MEPA). Pursuant to a Memorandum of Understanding (MOU) between the Cape Cod Commission and the Executive Office of Environmental Affairs, the Applicant elected to participate in a joint Cape Cod Commission/MEPA review process designed to address the concerns of both agencies. The Secretary of Environmental Affairs issued a MEPA compliance certificate for the Phase I and Phase II Modifications on December 8, 2003.

The following Finding G3 replaces Finding G3 of the original SouthCape Village DRI (TR97007, December 14, 2000), as amended by the SouthCape Village Phase I DRI Modification (MOD02030, April 10, 2003).

G3. The proposed Phase I Modification to the SouthCape Village DRI presented new impacts in the areas of transportation and community character. As the public hearing for the Phase I DRI Modification was opened on February 12, 2003, these issue areas were reviewed for consistency with the 2002 RPP. The Phase I Modification did not present additional impacts in the areas of open space, water resources, economic development, hazardous materials, and noise.

The following Finding G4 is added.

G4. The proposed Phase II Modification to the SouthCape Village DRI presents new impacts in the area of transportation. As the public hearing for the Phase II Modification was opened on January 12, 2004, this modification was reviewed for consistency with the 2002 RPP transportation requirements. The proposed modification does not present additional impacts in the areas of community character, open space, water resources, economic development, hazardous materials, and noise.

Transportation

The following findings are added to Findings T1-T17 of the *original SouthCape Village DRI (TR97007, December 14, 2000), as amended by the SouthCape Village Phase I DRI Modification (MOD02030, April 10, 2003)*.

T18. The Applicant proposed a modification to the SouthCape Village Outlet Mall DRI decision that would allow for the construction of 160,000 s.f. of retail space on Route 28 in Mashpee in two phases. Phase I (approved by the Commission in April 2003, MOD02030) consists of a 42,000 s.f. grocery store and 14,600 s.f. retail space. The second phase of development (103,400 s.f. of additional retail space) is proposed at this time. In terms of the transportation impacts associated with the phased modification, the traffic analysis for the second phase assesses the cumulative impacts of the project at the full 160,000 s.f. build-out (which includes the approved Phase I Modification and the proposed Phase II Modification).

T19. According to the Supplemental Environmental Impact Report (SEIR) dated October 2003, the 160,000 s.f. of retail space is expected to generate 9,222 vehicle trips on an average weekday (4,611 in/4,611 out) and 12,286 vehicle trips on an average Saturday. The RPP allows a 10% peak hour traffic adjustment for any development proposed within a growth center, and standard engineering practice allows for a “pass-by” rate of 25% (vehicles accessing a retail site as part of a multi-purpose trip). In addition, the RPP requires that all DRIs reduce the site-generated traffic by 25%. The expected net increase in traffic on Route 28 from the project on an average year round basis, after allowing for these traffic adjustments, is as follows:

Average weekday	5,187 trips
Average morning peak hour	N/A
Average evening peak hour	434 trips
Average Saturday	6,910 trips
Average Saturday peak hour	600 trips

T20. MPS 4.1.1.1 states *Development and redevelopment shall not degrade safety for pedestrians, bicyclists, or motor vehicle operators or passengers.*

MPS 4.1.1.2 states *Analysis of crashes and the potential safety impacts of development and redevelopment shall be required on all regional road links, at all intersections of regional roads, and at local road intersections with regional roads that are used by a project for access to the regional road network, where the project is expected to increase traffic by 25 or more trips during the project's average peak hour. Locations with an average of three or more crashes per year or a higher than average crash rate, as compared to the latest three years of local, regional, or state data, shall require measures to mitigate potential safety impacts of the development and redevelopment to comply with Minimum Performance Standard 4.1.1.1. All measures to mitigate safety impacts must be consistent with Goal 4.1.3 and its supporting Minimum Performance Standards.*

Based on the SEIR, sixteen (16) of the intersections impacted by more than 25 peak hour trips from this project have three or more crashes per year and/or a crash rate higher than the state average. Eight (8) of these intersections, including the Mashpee Rotary and Route 28 at Quinaquisset Avenue, are within the town of Mashpee. The Mashpee Rotary and the intersection of Route 151 and Old Barnstable Road were found to have twenty-two (22) injury crashes each over the three-period analyzed, with a fatal crash occurring at the intersection of Route 151 and Old Barnstable in Mashpee. Four (4) high crash locations are within the town of Falmouth, three (3) high crash locations are within the town of Barnstable, and one (1) high crash location is in the town of Sandwich.

The Mashpee Rotary (Pine Tree Corner Rotary) is listed in the Top 1000 crash locations as reported by the MassHighway Department and is the tenth highest crash location on Cape Cod. The intersection experiences approximately 22 crashes per year. (MPS 4.1.1.2 considers three crashes per year as a safety concern.) Under full build conditions, SouthCape Village will generate approximately 2,500 new vehicle trips through the rotary on a daily basis. The Applicant has proposed to offset the degradation in public safety at the rotary by upgrading signs and pavement markings at this intersection.

To address safety impacts at the Route 28/Quinaquisset Avenue intersection and the Route 28/Orchard Road/Ashers Path intersection, the Applicant has committed to restricting left turns at the Route 28/Quinaquisset Avenue intersection and to signalizing Route 28/ Orchard Road/Ashers Path. Currently the Route 28/Orchard Road/Ashers Path intersection operates at level of service F under average year-round conditions. Restricting left turns out of Quinaquisset Avenue would place an additional burden on the existing unsignalized Route 28/Orchard Road/Asher Path intersection. As such, the proposed safety plan for Route 28/Quinaquisset Avenue would necessitate simultaneous signalization of Route 28/Orchard Road/Ashers Path.

In addition to the Mashpee Rotary, Route 28/Quinaquissett Avenue, and Route 28/Orchard Road/Ashers Path, the Applicant has offered safety mitigation at all high crash locations impacted by more than 25 peak hour trips by the project to offset the degradation in public safety caused by the DRI. Therefore the proposed modification complies with MPS 4.1.1.1. The Applicant's safety mitigation is outlined in Transportation Condition T17.

4.1.3.13 states All road and intersection widening or new traffic signals proposed as part of development and redevelopment or used to support development of theoretical mitigation plans must be consistent with community character and not degrade scenic or natural resources. Road and intersection widening and new traffic signals shall not be used as actual mitigation or to support theoretical mitigation in local or regional historic districts.

To address the community character impacts of the new traffic signal, the Route 28/Orchard Road/Ashers Path signal plans will incorporate ornamental mast arms and/or ornamental signal posts, ornamental signal heads, and related ornamental signal equipment. Therefore this modification complies with MPS 4.1.3.13.

MPS 4.1.3.14 states *Where recommended by the Commission, all roadway widening, intersection signals, and other roadway capacity alterations proposed as mitigation by development and redevelopment to accommodate automobile travel shall include traffic recording devices to monitor traffic volumes, vehicle classification, and travel speeds continuously, and shall include devices to access the data remotely. Where necessary, a commitment of funds to support maintenance and operation of the devices may be required by the Commission.*

The new Route 28/Orchard Road/Ashers Path traffic signal will be equipped with traffic counting equipment and remote access capability. Therefore this modification complies with MPS 4.1.3.14.

T21. MPS 4.1.1.3 states *All access and egress locations for development and redevelopment shall meet local, county, and/or state and federal access management bylaws, technical bulletins, standards, and/or policies for driveway spacing and separation from the nearest intersections. Development and redevelopment with frontage on more than one street shall be restricted to access and egress via the lower volume road when deemed appropriate by the Commission.*

Site access for the proposed project will consist of the existing Shellback Way driveway and two existing Donna's Lane driveways (a right-turn entrance-only at South Street and a two-way entrance drive at Commercial Street). Therefore the proposed modification complies with MPS 4.1.1.3.

T22. MPS 4.1.1.7 states *Acceptable sight distances shall be met and maintained at all access and/or egress locations for development and redevelopment regardless of project traffic volumes. At a minimum, these shall meet the stricter of the Massachusetts Highway Department and American Association of State Highway Transportation Officials standards for safe-stopping sight distances.*

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.

T23. The project site was previously developed as a flea market (Dick and Ellie's Flea Market). In accordance with standard transportation engineering practice, transportation credit was given to the SouthCape modification for its summer daily trip generation. Based on information submitted for the record in the December 14, 2000, SouthCape Village Outlet Mall DRI decision (TR97007), the previous development generated 1,744 peak season daily trips. As such, the proposed modification complies with MPS 4.1.1.7.

T24. MPS 4.1.2.1: *All development and redevelopment not located within Growth Incentive Zones shall implement adequate and acceptable measures to reduce and/or offset 25% of the expected increase in summer site traffic resulting from the development on a daily and project peak-hour basis. Employee carpooling, flexible work hours, and incentives for alternatives to automobile travel are strategies consistent with this standard. Trips generated from public transit buses and school buses shall not be included in trip generation for purposes of determining the trip-reduction*

requirement. Truck, tractor/trailer combination, and other non-automobile trips shall be considered as passenger car equivalents based on the ratio of two axles per vehicle. For example, a three-axle truck shall be considered 1.5 vehicles; a five-axle combination unit shall be considered 2.5 vehicles.

Based on the average summer daily traffic generation (9,229 vehicles per day), minus the previous summer traffic generation of the flea market formerly on the site (1,744), the increase in net new summer daily traffic from this project is 7,485 trips per day. MPS 4.1.2.4 allows for the project's trip reduction requirement to be reduced from 25% of the summer daily traffic to 20% because the site is on a fixed route transit service and the Applicant has agreed to provide transit amenities in accordance with Transportation Condition T19.

The trip reduction requirements of this project amount to 1,497 (7,485 x .20) daily vehicle trips. The Applicant has offered a trip reduction plan that includes an employee/patron trip reduction program, provision of a sidewalk along Great Neck Road South from Donna's Lane to Godfrey Road, and the donation of vacant developable land for preservation to meet the RPP's trip reduction requirement.

The Applicant's employee/patron trip reduction program, as part of the overall trip reduction plan, includes in-kind strategies as provided under Transportation Condition T20.

The Applicant completed construction of a sidewalk along Great Neck Road South from Donna's Lane to Godfrey Road to satisfy Condition TR8 of the Phase I DRI Modification decision (MOD02030 dated April 10, 2003). This condition required SouthCape to contribute \$317,000 for alternatives to automobile travel, which was used toward the construction of the sidewalk along Great Neck Road South. Based on Commission transportation staff's analysis, the trip reduction value of \$317,000 (using the Commission transit equivalency worksheet) results in a reduction of approximately 151 daily trips.

As allowed by MPS 4.1.2.7(a), the Applicant has also proposed the preservation of vacant developable land (the seven acre "Drew parcel" and the 31-acre "NStar parcel"), to offset a portion of the project's trip generation. The Drew parcel, currently owned by Talanian Realty, is located along the southern portion the SouthCape project site, and the NStar parcel is located in the center of an extensive network of protected open space, within the Mashpee National Wildlife Refuge. The Applicant has agreed to transfer ownership of the Drew parcel to NStar in exchange for NStar's transferring ownership of the 31-acre parcel to the Massachusetts Department of Conservation and Recreation (DCR) for permanent protection as open space. Future development on the Drew parcel will be limited to a utility substation use only. The utility substation proposal would be subject to Commission and local board review. The substation (when operational) is expected to have negligible daily traffic, however during repairs or emergencies, the substation may generate numerous service vehicles. Commission transportation staff has estimated the averaged daily traffic at two (2) trips per day.

The Applicant has submitted a signed purchase and sales agreement between NStar, Talanian Realty, and DCR dated October 15, 2004 which includes a draft deed restriction for the Drew

parcel. The permanent protection of the NStar parcel and the development restrictions on the Drew parcel have the potential to offset 1,278 daily trips. In addition, the permanent preservation of the 31-acre NSTAR piece is a project benefit as it would provide a critical link within an existing open space network, offering opportunities both for wildlife habitat protection and for public recreation.

The following table summarizes the potential trip reduction credits for this project:

Trip Reduction Measure	Trip Reduction Credit
Employee sponsored trip reduction plan	98 trips
Drew parcel development restrictions	1072 trips
Great Neck Road South sidewalk	151 trips
31 acre NSTAR parcel preservation	204 trips
Total	1525 trips

The project is required to offset 1,497 trips. Based on the analysis submitted, the trip reduction program has the potential to offset 1,525 trips; therefore this project complies with MPS 4.1.2.1 (trip reduction).

T25. MPS 4.1.3.2 states *Regardless of traffic volumes, Level of Service analysis shall be required at all access and/or egress points onto the regional road system for development and redevelopment. All new driveways providing access and/or egress onto the regional road system for development and redevelopment shall operate at Level of Service C or better during the project's summer peak hour for a minimum of five (5) years after project occupancy, except that Level of Service D shall be allowed for projects located within Growth Incentive Zones. For unsignalized driveways, the Level of Service standards shall be met for each turning or non-turning maneuver; for signalized driveways, the Level of Service standards shall apply to the overall intersection Level of Service.*

The Applicant has submitted a level of service (LOS) analysis showing that the project's site drives will operate at LOS C or better during the peak hours. Therefore the proposed modification complies with MPS 4.1.3.2.

T26. MPS 4.1.3.4 states in part that DRIs shall conduct analyses and provide for full mitigation of project impacts after traffic adjustments, in compliance with the minimum performance standards supporting Goal 4.1.2. In lieu of mitigation for traffic impacts concurrent with project development, the Commission, at its discretion, may allow a fair-share payment of funds to Barnstable County to meet the requirements of this minimum performance standard. The fair-share contributions for the impacted locations are then "pooled" to provide improvements at specific locations consistent with the RPP.

Based on the trip generation and trip distribution information provided in the SEIR, fifty (50) regional intersections and ninety-two (92) regional links were identified and analyzed. The study area has been completed in accordance with RPP standards.

The Applicant has proposed fair-share contributions based on future theoretical transportation improvements and/or the transit equivalency cost to offset SouthCape Village's transportation impacts at all regional intersections or regional roadway links impacted by the project, consistent with Technical Bulletin 96-003 and MPS 4.1.3.4. The Commission accepts the Applicant's fair-share contributions to meet this standard.

The Applicant's transportation mitigation is outlined in a technical report by Vanasse Associates dated April 5, 2004 and summarized in the Vanasse Associates, Inc. letter dated September 16, 2004. In conformance with the RPP and Technical Bulletin 96-003, the Applicant has proposed fair-share mitigation at locations where roadway widening or intersection signalization will not degrade the community character, scenic or natural resources. At locations where roadway widening or signalization would degrade the community, scenic or natural character of the area, the Applicant has proposed a fair-share contribution based on the transit equivalency equation, which conforms to the RPP.

Mashpee town officials have requested specific projects to be implemented by the Applicant. The Applicant has agreed to implement these projects, as identified in the table below. The estimated cost of such projects has been subtracted from the required fair-share mitigation amount for the town of Mashpee.

Location	Proposed Mitigation	Estimated Cost
Mashpee Rotary	New directional signs utilizing existing by-pass roads (Job's Fishing Road and Donna's Lane); subject to approval by town of Mashpee and Commission staff.	\$60,000
Great Neck Road North at Lowell Road	Construct geometric improvements at Lowell Road.	\$202,000
Route 28 at Ashers Path and Orchard Road	Install traffic signal control and intersection geometric improvements.	\$413,000
Route 28 between Shellback Way and Donna's Lane	Widen Route 28 to provide 4-lane cross section	\$352,000 (Completed as Phase I mitigation.)
Connector Road	Construct Connector Road	\$306,596 (Completed as Phase I mitigation.)
Route 28 at Shellback Way	Signal Installation	\$221,915 (Replace non-compliant signal equipment provided as Phase I mitigation with the ornamental mast signals required by Phase I decision .)

To minimize the impacts created by the signal at the Route 28/Shellback Way site drive, the Applicant has committed to improving two areas adjacent to this intersection as follows: The Applicant has consolidated three curb cuts on Route 28 accessing the Liquor Warehouse and the Peters Insurance Agency to form two driveways (completed as Phase I mitigation). In addition, under the Phase I Modification the Applicant made a payment of \$10,000 to Barnstable County/Cape Cod Commission, currently held in an escrow account, to ensure the reconstruction of the Shellback Way and the Deer Crossing commercial site drive in accordance with the conceptual plan dated October 7, 1999. If the work required under this condition is completed by December

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31, 2005, the escrow funds shall be returned to the Applicant, with interest less any escrow fees. In the event that the work required under this condition is not completed by December 31, 2005, this payment shall be forfeited by the Applicant and may be used for any transportation improvements within the town of Mashpee.

Vanasse Associates outlined the project's fair share mitigation costs in a letter dated September 16, 2004. These mitigation funds will be held by Barnstable County and applied to transportation improvements in the towns of Mashpee, Falmouth, Barnstable, Sandwich, and Bourne (the study area towns impacted by the project). As part of the Phase I mitigation requirements, the Applicant previously contributed a total of \$18,100 to the towns of Falmouth (\$11,900); Barnstable (\$4,800); and Sandwich (\$1,400). These amounts have been subtracted from the fair-share mitigation amounts due for each respective town. The proposed modification complies with MPS 4.1.3.4. The mitigation amounts are provided under Transportation Condition T26.

The total fair-share mitigation amount for this project is \$3,415,185. \$1,573,611 has been allocated toward structural improvements at specific locations, and \$18,100 was provided as a cash payment under the Phase I Modification (as outlined above), leaving a monetary mitigation payment of \$1,841,574 to be applied to transportation improvements and/or the acquisition of vacant developable land in the towns of Mashpee, Falmouth, Barnstable, Sandwich, and Bourne (study area towns impacted by this project).

T27. The Applicant agreed to contribute \$260,989 for the purchase of vacant developable land within the town of Mashpee. Combined with the fair-share mitigation funds for Mashpee (\$594,902), this contribution could partially fund the purchase of three acres of vacant developable land in Mashpee, which has the potential to offset approximately 2,997 trips (half of the new traffic from the SouthCape Village Phase II project) based on a theoretical trip generation for vacant developable commercial land in Mashpee. This contribution is not required under the Minimum Performance Standards and is provided in excess of other RPP requirements. As such it is considered a benefit of the project.

Heritage Preservation/Community Character

The findings of the original SouthCape Village DRI decision (TR97007, December 14, 2000) as amended by the Phase I DRI Modification decision (MOD 02030, April 10, 2004) remain in effect.

Water Resources

The findings of the original SouthCape Village DRI decision (TR97007, December 14, 2000) as amended by the Phase I DRI Modification decision (MOD 02030, April 10, 2004) remain in effect.

Open Space/Natural Resources

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

Economic Development

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

Hazardous Materials

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

Noise

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

Land Use

The findings in the original SouthCape Village DRI decision (TR97007, December 14, 2000) remain in effect.

CONCLUSION

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

The probable benefits of the proposed SouthCape Village Phase II DRI Modification will outweigh the probable detriments resulting from the development. This conclusion is supported by the above findings, including Transportation Findings T24 and T27. The permanent preservation of the 31-acre NSTAR parcel will provide a critical link within an existing open space network, offering opportunities both for wildlife habitat protection and for public recreation. The \$260,989 contribution will fund the preservation of 3 acres of vacant developable land and provide trip reduction benefits.

The Phase II Modification is consistent with the minimum performance standards of the Regional Policy Plan and with Mashpee's Local Comprehensive Plan (LCP). The modification is consistent with local zoning.

The Commission hereby approves, with conditions, the application of C. Talanian Realty for the SouthCape Village Phase II DRI Modification, provided the following conditions are met.

CONDITIONS

General

The following Conditions G1-G4 repeat Conditions G1-G4 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):

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

G2. Failure to comply with all conditions stated herein and to remain in compliance herewith, shall be deemed cause to revoke or modify this decision, at the discretion of the Cape Cod Commission.

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

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

The following Condition G5 replaces Condition G5 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):

G5. Prior to the issuance of any building permit for the Phase II Modification, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of such building permit have been met.

The following Condition G6 repeats Condition G6 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):

G6. Until the issuance of a Certificate of Occupancy or Final Certificate of Compliance for all of the structures shown in the approved plans, the Applicant shall provide the Commission with an annual progress report to be submitted on or before the anniversary date of this decision. The annual progress report shall describe the status of local development permitting and project construction, including expected date of commencement of site preparation work. The applicant shall notify Commission staff of changes in the annual report.

The following Conditions G7 and G8 replace Conditions G7 and G8 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):

G7. The proposed SouthCape Village Phase II 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 any building permit for the Phase II Modification, the Applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with the decision in accordance with Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 6/3/99 and as amended. 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 reviewed by Commission staff.

The following Condition G9 repeats Condition G9 the original SouthCape Village DRI decision (TR97007, December 14, 2000):

G9. Alterations to proposed building footprint, parking layout or service areas within the Permissible Building Area as denoted on the permissible building area site plans dated October 15, 1999 as prepared by Prellwitz Chilinski shall be considered Minor Modifications #1 and shall be approved by Commission staff provided that such alterations retain the variety indicated in the final elevations and do not result in a material change to any of the following: overall building area or massing; open space; drainage patterns; quantity of parking spaces; traffic patterns; quantity or quality of landscaped areas.

The following Conditions G10 and G11 replace Conditions G10 and G11 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):

G10. Prior to receiving a Certificate of Occupancy for the Phase II Modification from the Town of Mashpee, the Applicant shall obtain a Final Certificate of Compliance for the Phase II Modification from the Commission.

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

The following Conditions G12-G14 repeat Conditions G12-G14 of the original SouthCape Village DRI decision (TR97007, December 14, 2000):

G12. The Applicant shall notify Commission staff of the intent to seek a Preliminary or Final Certificate of Compliance at least 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. The Applicant agrees to allow the Cape Cod Commission staff to enter onto the property which is the subject of this decision for the purpose of determining whether the conditions of this decision are met.

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

G14. If any traffic mitigation component is not completed in accordance with these conditions, no Final Certificate of Compliance shall thereafter be issued until such construction measure or component is completed as determined by Commission staff. The Cape Cod Commission is under no obligation to issue a Final Certificate of Compliance if the Applicant has failed to complete any traffic mitigation measure identified in this decision.

Transportation

The following conditions are added to Conditions T1-T8 and T10-T16 of the original SouthCape Village decision (TR97007, December 14, 2000), as amended by the SouthCape Village Phase I DRI decision (MOD02030, April 10, 2003). Condition T9 of the original SouthCape Village decision (TR97007, December 14, 2000), as amended by the SouthCape Village Phase I DRI decision (MOD02030, April 10, 2003) is replaced by Condition T22 below.

T17. The Applicant shall submit all necessary plans and permits (including all MassHighway and town permits) to implement the safety mitigation projects outlined in the table below, in accordance with Transportation Finding T20, in accordance with the following schedule: 1) Prior to issuance of a Preliminary Certificate(s) of Compliance for up to 54,735 s.f. (Buildings C and D) of the Phase II Modification, the Applicant shall have completed and submitted 25% design plans for these projects to MassHighway, the town, and the Commission, and 2) prior to issuance of a Preliminary Certificate(s) of Compliance for the remaining 48,665 s.f. (Buildings E, F1, F2, G, H, and I) of the Phase II Modification, the Applicant shall have completed and submitted all necessary design plans (including 25%, 75% and 100%) to MassHighway, the town, and the Commission and shall have obtained all state and local permits for these projects.

Intersection	Safety Mitigation
Route 151/ Old Barnstable Road	Install advance-warning signs on Route 151 and Old Barnstable Road and provide optimal traffic signal timing plan.
Route 151/Job's Fishing Road	Install advance warning signs on Route 151.
Mashpee Rotary	Upgrade all signs and pavement markings as shown in the Mashpee Rotary Sign, Pavement Marking and Geometric Improvement Plan by Vanasse Associates, Inc. dated 3/2/04.
Route 130/ Great Neck Road North	Install advance-warning signs on Route 130 and Great Neck Road North and provide optimal traffic timing signal plan.
Great Neck Road North/ Lowell Road	See Condition T24.
Great Neck Road North/Old Barnstable Road	Improve sight distance on Old Barnstable Road westbound by trimming vegetation and install advance warning signs on Great neck Road North.

Route 28/ Quinaquisset Avenue	Construct raised island and install signs to restrict left turns at intersection as shown in the Mashpee Place Draft Environmental Impact Report dated June 2002 by VHB, Figure 3.16. To be completed immediately following the signalization of Route 28/Ashers Path/Old Orchard Road.
Route 28/ Shellback Way	Completed as Phase I mitigation.
Route 151/ Sandwich Road	Install advance warning signs on Route 151, evaluate existing traffic signal timing and provide optimal timing plan.
Route 151/ Currier Road	Install advance warning signs and an overhead flashing beacon.
Route 28/ Old Meeting House Rd/Davisville Rd	Install signs, evaluate access management control of commercial driveways located in the vicinity of intersection and provide optimal timing plan.
Route 28/ Carriage Shop Rd /Metoxit Road	Install new signs and evaluate access management control of driveways located in the vicinity of intersection.
Route 28/Main Street/ S. County Road	Upgrade all signs and pavement markings and install an overhead-flashing beacon.
Route 28/Route 149/Prince Ave	Install advance-warning signs on Route 28 and install an overhead-flashing beacon.
Route 28/ Route130	Install advance-warning signs on Route 28 and Route 130 and provide optimal traffic signal timing plan.
Route 130/ Snake Pond/ Harlow Road	Implement optimal traffic signal timing plan.

T18. Prior to issuance of a Final Certificate of Compliance for the Phase II Modification, the Applicant shall implement the safety mitigation requirements in accordance with the safety mitigation table in Transportation Condition T17. There shall be no occupancy, temporary or otherwise, of any Phase II building until Condition T17 is satisfied.

T19. Prior to the issuance of a Final Certificate of Compliance for the Phase II Modification, the Applicant shall provide the following transit amenities in accordance with Transportation Finding T24:

- Two on-site bus stops in a location already agreed upon between the project proponent and the Cape Cod Regional Transit Authority (CCRTA).
- Work with tenants to develop employee work hours to match transit schedules for transit riders.
- Install commuter information centers or bulletin boards at one or more prominent location(s) that would include up-to-date information about the various TDM programs that are available, as well as transit schedules and maps, ride matching forms, and promotional fliers.
- Work with tenants to implement the COMMUTER CHECK program on a pre-tax basis for employees to use with participating transit services.

T20. Prior to the issuance of a Final Certificate of Compliance for the Phase II Modification, the Applicant shall provide an employee/patron trip reduction program that includes the following in-kind strategies, in accordance with Transportation Finding T24:

- Assemble information regarding carpooling and its benefits to be distributed to tenants and their employees.
- Designate an area where carpool information will be posted for all employees of the project.

- Implement a guaranteed ride home program (taxi service) for use in the case of an emergency for program participants.
- Designate preferential parking spaces for employees that carpool.
- Provide secure bicycle storage areas to accommodate bicycles for both employees and patrons.
- Work with large tenants to provide on-site services to decrease employee midday trip making. The on-site services shall include a lunchroom, microwave, refrigerator, and prepared foods.
- Provide an on-site transportation coordinator. The transportation coordinator shall be responsible for insuring that the complete rideshare program, including car/vanpools; accommodating work shifts; promotions; incentives; preferential parking; and guaranteed ride home program, is consistently promoted and provided.
- Provide flexible work hours for employees that car/vanpool.
- Work with tenants to develop employee work hours to match transit schedules for transit riders.
- Implement an annual transportation fair to be held at least once a year.
- Distribute to all employees a new employee information packet that will include information about the various TDM programs that are available and the ways in which employees can participate.
- Provide a quarterly bulletin or newsletter reminding employees about the TDM programs and making the employees aware of any new or modified services.
- Provide bicycle maps indicating the location of bicycle facilities in the area will be posted in central locations within the development to encourage bicycle commuting.
- Provide a reference in all promotional materials or link, in the case of a website, to the Cape Cod Commission transportation information center Travel Demand Management services at www.gocapecod.org/tdm. In addition, website based materials and advertising developed for the project will include listing and links to available public transportation services serving the project site.
- Provide incentives each day for each employee who commutes to work using alternative methods that reduce automotive trips such as bicycling, walking, carpooling or transit. These incentives shall include free meals through coupons/discount cards for use toward the purchase of goods and services within the development or at adjacent retailers and entries into weekly raffles for prizes such as movie tickets, free meals and/or goods and services.

T21. Beginning one year from the date of occupancy, the Applicant shall provide to Commission staff for a period of five years an annual report regarding employee participation in the TDM plan. The report shall include the total number of employees participating in the TDM plan; the total number of employees working at the site; the type of incentives offered for participation; and the reduction in traffic for an average summer weekday for the various strategies of the TDM Plan.

T22. As allowed by MPS 4.1.2.7(a) (land donations), prior to the issuance of a Preliminary Certificate of Compliance for the Phase II Modification, the Applicant shall complete the land transfer with NStar such that ownership of the 31 acre NStar parcel is transferred to DCR to be held as permanently protected open space and the Drew parcel is restricted such that its future development is limited to electric utility substation use only. Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall provide staff with written documentation of the completion of such land transfer in accordance with this modification decision. No Preliminary

Certificate of Compliance shall be issued unless and until the 31 acre parcel has been transferred to DCR to be held as permanently protected open space.

T23. In accordance with Finding T26, the Applicant has made a payment of \$10,000 to Barnstable County/Cape Cod Commission, currently held in an escrow account, to ensure the reconstruction of Shellback Way and the Deer Crossing commercial site drive in accordance with the conceptual plan dated October 7, 1999 or as otherwise approved by Cape Cod Commission staff. If the work required under this condition is completed by December 31, 2005, the escrow funds shall be returned to the Applicant, with interest less any escrow fees. In the event that the work required under this condition is not completed by December 31, 2005, this payment may be used for any transportation improvements within the Town of Mashpee.

T24. The Applicant shall provide to the Commission staff for review and approval the necessary plans (including 25%, 75% and 100% submissions) and all state and local permits (including all MassHighway and town of Mashpee permits) to implement the projects outlined in the table below, in accordance with the following schedule: 1) Prior to issuance of a Preliminary Certificate(s) of Compliance for up to 54,735 s.f. (Buildings C and D) of the Phase II Modification, the Applicant shall have completed and submitted 25% design plans for these projects to MassHighway, the town of Mashpee, and the Commission, and 2) prior to issuance of a Preliminary Certificate(s) of Compliance for the remaining 48,665 s.f. (Buildings E, F1, F2, G, H, and I) of the Phase II Modification, the Applicant shall have completed and submitted all necessary design plans (including 25%, 75% and 100%) to MassHighway, the town, and the Commission and shall have obtained all state and local permits for these projects.

Location	Proposed Mitigation
Mashpee Rotary	New directional signs utilizing existing by-pass roads (Job's Fishing Road and Donna's Laneas shown conceptually in the Mashpee Rotary Preliminary Concept Plan dated September 2003 by Vanasse Associates, Inc., Figure D, E and H, subject to town of Mashpee and Commission staff approval.
Great Neck Road North at Lowell Road	Construct Lowell Road improvements according to the Preliminary Plan of Land (The Plan), prepared for Assurance Const. Co. dated August 8, 2000 by Christopher Costa & Assoc. The Plan was submitted as part of the Lowell Road Subdivision DRI (TR99020).
Route 28 at Ashers Path and Orchard Road	Install traffic signal control and intersection geometric improvements as shown in the Mashpee Place Draft Environmental Impact Report dated June 2002 by VHB, in Figure 3.17. The Route 28/Orchard Road/Ashers Path signal plans shall incorporate ornamental mast arms and/or ornamental signal post, ornamental signal heads, and related ornamental signal equipment and traffic monitoring devices with remote access capability.
Route 28 at Shellback Way	Replace non-compliant signal equipment provided as Phase I mitigation with ornamental signal equipment (as approved by MassHighway) as required by the Phase I modification decision (Condition T2).

T25. Prior to the issuance of a Final Certificate of Compliance for the Phase II Modification, the Applicant shall implement the required projects in accordance with the mitigation table in Transportation Condition T24. As specified in Finding T26, implementation of these projects is the

SouthCape Village Phase II DRI Modification/MOD02030

Decision

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sole responsibility of the Applicant. If any other parties (public or private), prior to the Applicant's constructing mitigation at these locations, construct traffic improvements at any of these locations that make the Applicant's proposed mitigation unnecessary or impractical, the Applicant shall pay an amount equivalent to that proposed mitigation cost at those locations (as outlined in Finding T26) to the County of Barnstable/Cape Cod Commission. Such payments in lieu of in-kind traffic mitigation are necessary to comply with MPS 4.1.3.4 and shall be used to support transportation improvements in the town of Mashpee.

T26. In accordance with Findings T26 and T27, the Applicant shall make two (2) monetary payments to Barnstable County as set forth in the table below and in accordance with the following schedule: 1) Prior to issuance of a Preliminary Certificate(s) of Compliance for up to 54,735 s.f. (Buildings C and D) of the Phase II Modification, the Applicant shall make a payment in the total amount of \$1,112,996 for use in the towns of Mashpee, Falmouth, Sandwich, Bourne and Barnstable as set forth in the table below under "First Payment," and 2) prior to issuance of a Preliminary Certificate(s) of Compliance for the remaining 48,665 s.f. (Buildings E, F1, F2, G, H, and I) of the Phase II Modification, the Applicant shall make a payment in the total amount of \$989,567 for use in said towns as set forth in the table below under "Second Payment."

These funds will be held by the Cape Cod Commission/Barnstable County and applied as follows: for Falmouth, Barnstable, Sandwich, and Bourne, they will be applied to transportation improvements within each town consistent with the RPP. In the town of Mashpee, the funds will be held by the Cape Cod Commission/Barnstable County and applied to the purchase of vacant developable commercial land within the study area. Funds will be released to the towns at the discretion of the Executive Director.

	First Payment	Second Payment	Total
Mashpee	\$453,067	\$402,824	\$855,891
Falmouth	\$330,693	\$294,020	\$624,713
Barnstable	\$213,657	\$189,962	\$403,619
Sandwich	\$102,628	\$91,246	\$193,874
Bourne	\$12,951	\$11,515	\$24,466
Total	\$1,112,996	\$989,567	2,102,563

Heritage Preservation/Community Character

The conditions of the original SouthCape Village DRI decision (TR97007, December 14, 2000) as amended in the Phase I DRI Modification decision (MOD 02030, April 10, 2003) remain in effect.

Water Resources

The conditions of the original SouthCape Village DRI decision (TR97007, December 14, 2000) as amended in the Phase I DRI Modification decision (MOD 02030, April 10, 2003) remain in effect.

Open Space/Natural Resources

The conditions of the original SouthCape Village DRI decision (TR97007, December 14, 2000) as amended in the Phase I DRI Modification decision (MOD 02030, April 10, 2003) remain in effect.

Economic Development

The conditions of the original SouthCape Village DRI decision (TR97007, December 14, 2000) as amended in the Phase I DRI Modification decision (MOD 02030, April 10, 2003) remain in effect.

Hazardous Materials

The conditions of the original SouthCape Village DRI decision (TR97007, December 14, 2000) as amended in the Phase I DRI Modification decision (MOD02030, April 10, 2003) remain in effect.

Noise

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

Land Use

The conditions in the original SouthCape Village DRI decision (TR97007, December 14, 2000) remain 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 SouthCape Village Phase II DRI Modification located in Mashpee, MA.

David J. Ansel 3/31/05
David J. Ansel, Chair Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

March 31, 2005

Before me, the undersigned notary public, personally appeared David J. Ansel, in his/her capacity as Chair 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 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.

Gail P. Hanley
Notary Public

My Commission Expires: October 13, 2011