

CAPE COD COMMISSION

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DATE: July 21, 2005

TO: Tedeschi Realty Corporation/Shaw's Supermarket

FROM: Cape Cod Commission

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

APPLICANT: Skaket Associates Nominee Trust
14 Howard Street
Rockland, MA 02370

PROJECT #: #TR 02002

PROJECT: Shaw's Supermarket
Route 6A/West Road
Orleans, MA 02653

CERTIFICATE OF TITLE: 88560

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of the Skaket Associates Nominee Trust/Shaw's supermarket as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Shaw's supermarket redevelopment project in Orleans, MA. The decision is rendered pursuant to a vote of the Commission on July 21, 2005.

PROJECT DESCRIPTION

The project site, located in a General Business (GB) Zoning District at West Road and Route 6A in Orleans, MA, consists of the Shaw's supermarket, a bank, retail space, and a restaurant, totaling 100,066 square feet. The proposed redevelopment project consists of the demolition of both the existing Shaw's Supermarket and adjacent retail space totaling 51,737 square feet, and constructing a new 69,119 square foot Shaw's Supermarket. Total new ground floor area will be 11,888 square feet, and total new area (including mezzanine space) will be 17,382 square feet.



The existing supermarket plaza is currently serviced by 599 parking spaces and is located on a 12.15-acre site. The proposed redevelopment project will consist of a reduction of 157 parking spaces, landscaping, transportation and other infrastructure improvements. Additional improvements being implemented by the Town of Orleans include widening of the Route 6A, West Road, and Eldredge Park Way intersection, re-signalization, inclusion of new turn lanes, grade changes to improve sight distances, and additional pedestrian amenities.

PROCEDURAL HISTORY

The project was referred to the Commission on January 17, 2002 by Orleans Town Planner George Meservey. The applicant submitted the DRI application to the Commission on January 22, 2002. However, the application was not deemed complete until March 21, 2002. An extension agreement was signed by the applicant on June 10, 2002, extending the decision period until January 31, 2003. A duly noticed public hearing was conducted pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on July 16, 2002. A second extension of the decision was granted to January 31, 2004 to deliberate on the proposed project. A hearing officer closed the public hearing on May 31, 2003. A second duly noticed public hearing was conducted on September 13, 2004 at the Orleans Town Hall. The hearing was closed and the record left open. Three subsequent extension agreements were signed, extending the decision period until January 31, 2004, January 31, 2005 and July 29, 2005. Three subcommittee meetings were held on January 6, 2005, May 4, 2005 and June 23, 2005:

At the June 23, 2005 subcommittee meeting, the subcommittee voted unanimously to recommend to the full Commission that the proposed redevelopment project be approved with conditions. A final public hearing was held before the full Commission on July 21, 2005. At that time both the public hearing and record were closed. At the conclusion of this hearing, the Commission voted _____ to approve the project as a DRI, with conditions.

MATERIALS SUBMITTED FOR THE RECORD

From the Proponent:

- Letter from Tedeschi Realty, Inc. ("Tedeschi") to George Meservey, Orleans Town Planner regarding redesign of West Road dated June 13, 1996
- Referral letter from the Orleans Town Planner for the proposed Skaket Corners redevelopment project dated January 17, 2002
- Development of Regional Impact application form dated January 17, 2002
- Memorandum from Nutter, McClennen and Fish ("Nutter") regarding outstanding information requested by staff dated February 6, 2002
- Letter from Bruce Campbell and Associates regarding road improvements to West Road dated February 11, 2002
- Letter from Nutter regarding extension agreement request dated May 16, 2002
- Letter from Shaw's/Star Market, Inc. ("Shaw's") regarding proposed expansion to existing plaza dated May 24, 2002
- Nitrogen loading calculations submitted by Coastal Engineering, Inc. ("Coastal") dated May 31, 2002
- Letter from Nutter regarding supporting materials for the DRI application dated May 31, 2002

- Open space calculations submitted by Coastal dated May 31, 2002
- Letter from Tedeschi to MassHighway regarding redesign of West Road dated July 11, 2002
- Traffic Impact Analysis and Proposed Mitigation submitted by MS Transportation, Inc. ("MST") dated July 16, 2002
- Letter from Shaw's regarding economic development information dated August 13, 2002
- Letter from Tedeschi regarding shopping plaza store square footages dated October 15, 2002
- Outdoor lighting information dated October 15, 2002
- Letter from Shaw's regarding solid and hazardous wastes dated October 23, 2002
- Letter from Nutter regarding request for extension agreement dated December 10, 2002
- Letter from Tedeschi regarding well locations at Skaket Corners dated December 13, 2002
- Letter from Nutter regarding extension agreement dated December 17, 2002
- Site plan outlining interior curbing of parking lots from Coastal dated December 19, 2002
- Fax from Tedeschi re: road improvements along West Road dated April 22, 2003
- Letter from MST regarding traffic issues dated July 12, 2004
- Draft landscape maintenance agreement dated August 12, 2004
- Nitrogen calculations submitted by Coastal dated August 16, 2004
- Memorandum from Nutter regarding outstanding information dated August 18, 2004
- Letter from Coastal regarding floor area of proposed shopping center dated August 31, 2004
- Memorandum from Nutter regarding outstanding information dated September 8, 2004
- Responses to Commission staff regarding request for additional information dated September 13, 2004
- Letter from Nutter regarding open space dated October 7, 2004
- Letter from Nutter regarding extension agreement dated December 5, 2004
- Letter from Coastal regarding groundwater elevation data dated December 22, 2004
- Groundwater Contour Map from Coastal dated January 6, 2005
- Private wells within 1 mile of proposed discharge from Coastal dated January 6, 2005
- Traffic options 1-5 from MST dated January 6, 2005
- Letter from Nutter regarding signed extension agreement dated January 10, 2005
- Bus shelter rendering dated January 21, 2005
- Rendering of side view of store from Route 6A dated January 21, 2005
- Letter from Nutter regarding six-month extension agreement dated February 1, 2005
- Email from Dennis Vigliotti of Ed Cormier, Associates to Sarah Korjeff regarding the façade design dated March 29, 2005
- Letter from MST regarding two alternative conceptual plans dated April 27, 2005
- Letter from Nutter regarding traffic and open space issues dated May 2, 2005
- Letter from MST regarding conceptual traffic plan dated May 26, 2005
- Conceptual plan for left turns at northern drive submitted by MST dated June 6, 2005
- Letter from Nutter regarding outstanding traffic issues dated June 19, 2005
- Letter from Tedeschi to Cape Cod Regional Transit Authority dated June 23, 2005
- Fax from Coastal regarding Stormwater Operations Plan dated June 23, 2005

From Cape Cod Commission Staff:

- Letter to Bill Scully of MST regarding traffic issues dated July 14, 2004
- Letter to George Meservey regarding traffic issues dated September 22, 2004
- Email to George Meservey regarding open space calculations dated October 5, 2004
- Letter to Nutter regarding extension agreement dated December 6, 2004
- Email from Sarah Korjeff to Greg Smith dated March 29, 2005
- Email to George Meservey from Greg Smith dated April 4, 2005
- Memorandum to subcommittee from Greg Smith dated April 13, 2005
- Memorandum to subcommittee from Heather McElroy regarding open space dated April 19, 2005
- Memorandum to Greg Smith from Tim Boesch regarding traffic issues dated June 6, 2005
- Letter to John McWeeney and Attorney Eliza Cox regarding outstanding project issues dated June 17, 2005
- Email to Eliza Cox of Nutter regarding signage plan dated July 13, 2005

Letters from state/local officials:

- Letter from Massachusetts Historical Commission dated March 13, 2002
- Letter from Erica Parra, Orleans Selectwoman, dated April 15, 2002
- Letter from Orleans Board of Selectmen dated July 16, 2002
- Letter from Town of Orleans Land Bank Committee dated December 2, 2002
- Letter from Orleans Fire Department dated September 13, 2004
- Letter from Town of Orleans Land Bank Committee dated September 15, 2004
- Letter from George Meservey to staff regarding open space issues dated September 15, 2004
- Letter from Town of Orleans Land Bank Committee dated September 20, 2004
- Letter from Town of Orleans Land Bank Committee dated January 6, 2005
- Email from John Jannell to Andrea Adams regarding lighting dated January 28, 2005
- Letter from Town of Orleans Land Bank Committee dated February 3, 2005
- Letter from the Town of Orleans regarding traffic reconfiguration dated March 29, 2005
- Email from George Meservey to Greg Smith dated April 4, 2005
- Memorandum from Ken Hull, Orleans Assessor, regarding open space value estimate dated April 5, 2005
- Copy of letter from Orleans Assessor to Alan Gibbs regarding open space calculations dated April 5, 2005
- Letter from Orleans Land Bank Committee regarding open space issues dated April 29, 2005
- Letter from Orleans Land Bank Committee regarding open space dated May 4, 2005
- Email from George Meservey to Bob Mumford regarding safety issues dated May 18, 2005
- Email from George Meservey to Tim Boesch regarding traffic dated June 7, 2005
- Email from George Meservey to Greg Smith regarding escrow accounts dated June 7, 2005
- Email from Alan Gibbs to Greg Smith regarding open space dated June 17, 2005
- Email from George Meservey to Greg Smith regarding police officer detail dated June 22, 2005

Letters and correspondence from the Public:

- Letter from Constance Calderwood dated July 13, 2002
- Phone call from Jane Moroney dated July 16, 2002
- Letter from Barbara O'Connor dated July 16, 2002
- Letter from Sheila Hurteau dated July 22, 2002
- Letter from Renee Andre dated August 27, 2004
- Letter from Kennis McKusick dated September 17, 2004
- Letter from Paul O'Connor dated September 20, 2004
- Letter from Edward Galloch dated September 20, 2004
- Letter from Owen Calder dated September 28, 2004
- Phone call from Mrs. Calderwood dated July 7, 2005

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 proceedings are incorporated into the record by reference.

TESTIMONY

Note: see minutes in project file for complete public hearing and subcommittee meeting proceedings.

At the July 16, 2002 public hearing, the applicant provided an overview of the proposed supermarket redevelopment project. Staff provided an overview of issues associated with traffic, natural resources, groundwater, landscaping, community character, economic development, affordable housing, and solid and hazardous waste management. The Subcommittee heard oral testimony at the hearing from:

- John Hickey, Orleans Selectman, who expressed concerns about interior parking lot circulation and improvements to West Road,
- Erica Parra, Orleans Selectwoman, who stated the applicant should work with the town to provide affordable housing,
- Barbara O'Connor of Orleans, who expressed concerns that the additional traffic on West Road would place a hardship on residents along West Road,
- Pat Fiero, Orleans Housing Assistance Corporation, who stated she was happy that Shaw's was working with the town to create additional affordable housing in town,
- Bruce Pilton, Orleans Joint Committee on Affordable Housing, who stated the affordable housing should be located off site, and
- Susan Milton of Orleans, who stated she liked the landscaping but wished there were more interior sidewalks and that the parking spaces were too narrow for today's larger vehicles.

At the September 13, 2004 public hearing, the applicant provided the subcommittee with an update on issues that were identified during the July 16, 2002 hearing, including open space, septic issues, traffic mitigation, affordable housing and landscaping. The staff report was presented to the subcommittee. Scott Michaud, staff hydrologist, stated that the project exceeded the 5ppm nitrogen standard and that the applicant was relying on monitoring through the local permit with no DEP oversight. Staff felt that the monitoring should be done through a state Groundwater Discharge Permit or through off-site mitigation. Tim Boesch,

staff transportation engineer, stated that there was concern at the main site-drive, as the applicant's study noted that the level of service (LOS) would function at LOS F under build conditions. During that hearing the Subcommittee heard oral testimony from the following persons:

- Paul O'Connor of 31 Sky Meadow Road in Orleans, who stated that he was concerned about volumes traffic conditions along West Road, as well as noise from vehicles backing up at the supermarket at night,
- Seth Wilkinson of the Orleans Conservation Commission, who expressed concerns about open space mitigation funds being used in part to provide affordable housing, and
- Darryl Barrows of 203 Route 6A in Orleans, who stated his concerns about noise during both construction and post construction operations.

JURISDICTION

The proposed Orleans Shaw's supermarket qualifies as a Development of Regional Impact (DRI) under the Cape Cod Commission Enabling Regulations Governing Review of Developments of Regional Impact, Chapter A, Section 3(e), Barnstable County Ordinance 90-12, as amended, which requires review of new commercial construction with a gross floor area greater than 10,000 square feet.

FINDINGS

The Commission has considered the application of Tedeschi for the proposed Shaw's supermarket in Orleans, MA, and based on consideration of such application and upon the information presented in the public hearings and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

General Findings:

- G1** The proposed project consists of the redevelopment of a parcel currently hosting a Shaw's Supermarket, a bank, retail space, and a restaurant, totaling 100,066 square feet. The proposed redevelopment project consists of the demolition of both the existing Shaw's Supermarket and adjacent retail space totaling 51,737 square feet, and constructing a 69,119 square foot Shaw's Supermarket. Total new ground floor area will be 11,888 square feet, and total new area (including mezzanine space) will be 17,382 square feet.
- G2** As the first public hearing was conducted on July 16, 2002, the project is being reviewed under the 1996 Regional Policy Plan.
- G3** The proposed project is not located within a Certified Growth Area according to the Orleans Local Comprehensive Plan, which was certified by the Cape Cod Commission in April 2000.
- G4** The project does not lie within a District of Critical Planning Concern (DCPC).
- G5** According to a letter submitted by the Orleans Town Planner on June 28, 2005, the project is consistent with the Town of Orleans' Local Comprehensive Plan.

- G6** The applicant will require a Special Permit for the creation of commercial space in excess of 2,500 square feet from the Orleans Zoning Board of Appeals, and may apply for a variance for signage relief.

Water Resource Findings:

WR1 The existing 51,737 square foot supermarket including two adjacent retail units will be demolished and replaced by a 69,119 square foot supermarket. Other existing development at the site, consisting of a bank, other retail space, and a restaurant, along with associated drainage structures managing runoff from impervious surface, will remain unchanged.

WR2 The existing development relies on a combination of wastewater infrastructure to treat 13,550 gallons of Title-5 wastewater flows. Existing wastewater infrastructure consisting of a denitrifying septic system that services the restaurant through a General Permit issued under the Massachusetts Department of Environmental Protection (MADEP) Innovative/Alternative (I/A) On-site Wastewater System Program. Standard Title-5 septic systems service the remainder of the project area.

A 25-parts per million (ppm)-N level of treatment for nitrogen removal is recognized for I/A systems approved under MADEP's I/A program, compared to 35-ppm-N for standard Title-5 systems. Based on these effluent nitrogen concentrations and relative Title-5 flows to the respective systems under *existing conditions*, wastewater effluent discharged to groundwater currently has a nitrogen concentration of approximately 30 mg/L-N.

WR3 The project will abandon the existing septic systems depicted on the Site Utilities Plan SD-3, revised July 01, 2005 that are currently used to treat 13,550 gallons of Title-5 wastewater flows. The project will aggregate 15,385 gallons of Title-5 wastewater flows from the entire site, including wastewater flows from the proposed supermarket's additional 17,382 square feet, for treatment using a Bioclere treatment system under a State-issued Ground Water Discharge Permit as noted on Site Utilities Plan SD-3, revised July 01, 2005. A Ground Water Discharge Permit is required under State Title-5 regulations for Title-5 flows that exceed 10,000 gallons per day.

The project was reviewed for impacts relative to 15,385 gpd Title-5 wastewater flows that the project will generate. On July 18, 2005, the Commission was informed that the applicant would seek approval from MADEP for additional capacity above 15,385 gpd in their Groundwater Discharge Permit application. Commission approval of this extra capacity will require additional review as a DRI modification.

The project's sewage treatment facility will use the existing wastewater leaching facilities to infiltrate treated effluent as noted on referenced Site Utilities Plan SD-3. Wastewater effluent under a Ground Water Discharge Permit is required to meet a nitrogen concentration of 10 ppm-N. Groundwater discharge permits also require a nitrogen concentration of 10 ppm-N in groundwater at the downgradient property boundary. Monitoring requirements for the project's Ground Water Discharge Permit have not been established pending issuance of the permit. The applicant has agreed to conduct groundwater-quality monitoring as a condition of this decision (refer to

Condition WR5) at locations identified as OT-2, MW-5 and MW-7 on Appendix A – Site Plan for Hydrogeologic Investigation, dated December 22, 2004.

- WR4** Maps depicting refined water table contours (Appendix A – Site Plan for Hydrogeologic Investigation, dated December 22, 2004) and the locations of private wells within a 1-mile radius of the project site (Figure 1B) were submitted to the Commission on January 6, 2005 by Coastal. The water-table map shows groundwater beneath the wastewater leaching facilities flowing northeast beneath West Road. Private wells closest to the project (~1,000 feet) are not in the flow path of groundwater flowing beneath the wastewater leaching facilities.
- WR5** Pursuant to MPS 2.1.2.2, all sewage treatment facilities are required to achieve 5 ppm-N in groundwater at the downgradient property boundary. The proximity of the existing leaching facility to the downgradient property boundary decreases the likelihood that MPS 2.1.2.2 could be met at that location. It has been demonstrated that the use of the Bioclere treatment system and resulting significant improvement in the site's general water quality described in Findings WR7 and WR8, the applicant's proposal to conduct groundwater quality monitoring as identified in condition WR3 and the fact that the private wells are not in the flow path of groundwater flowing beneath the wastewater leaching facilities as noted in Finding WR4 will protect the interests of MPS 2.1.2.2. For these reasons, the use of the flexibility clause is appropriate to relieve the project from having to achieve a nitrogen concentration of 5 ppm-N in groundwater at the property boundary. The applicant has proposed, as appropriate mitigation, to conduct groundwater-quality monitoring as a condition of this decision at locations identified as OT-2, MW-5 and MW-7 on Appendix A – Site Plan for Hydrogeologic Investigation. The proposed project, as approved with conditions, will not be more detrimental to the protected resource than would be allowable under MPS 2.1.2.2.
- WR6** The project is *not* located in a Wellhead Protection Area pursuant to MPS 2.1.1.2.A.
- WR7** The project site is located in a Water-Quality Impaired Area defined by MPS 2.1.1.2.D and Water Resource Classification Map I. Pursuant to Commission Technical Bulletin 91-001 methodology, *existing* development at the site results in nitrogen loading of 10 ppm-N to groundwater, which exceeds the regional 5-ppm nitrogen standard set by MPS 2.1.1.1.
- WR8** The project meets the regional 5-ppm groundwater nitrogen-loading standard set by MPS 2.1.1.1 with a nitrogen-loading concentration of 4.3 ppm-N.
- WR9** The project is located in a Water Quality Improvement Area (WQIA) as defined by MPS 2.1.1.2.E due to existing water-quality impairment described in Finding WR7 and the site's location in watershed areas for Namskaket and Little Namskaket Creeks, and Rock Harbor that are Marine Water Recharge Areas as defined pursuant to MPS 2.1.1.2.C. Water-quality improvement is a major goal in WQIA, and the project is required to improve water quality relative to existing conditions in accordance with MPS 2.1.1.2.E.1.

WR10 As required by MPS 2.1.1.2.E.1 and based on Technical Bulletin 91-001 methodology, the project results in improvement of water quality as described by Findings WR7 and WR8.

WR11 Tidal flushing rates for Namskaket and Little Namskaket Creeks, and Rock Harbor have not been established. Pursuant to MPS 2.1.1.2.C.1, the project is required to make a monetary contribution to determine the flushing rate(s) of relevant embayments. This contribution totals \$2,300 and is based on the project's wastewater flows.

WR12 Based on nitrogen-loading calculations submitted by the applicant, a reconfiguration of parking areas results in a 12,211-square foot reduction of impervious surface relative to existing conditions and a 3,000 square-foot decrease in lawn/landscaped areas. Stormwater runoff will to be directly infiltrated to groundwater using *existing* drainage structures consisting of catch basins and subsurface infiltration basins. A stormwater operation and maintenance plan was submitted as required by MPS 2.1.1.6.

Open Space Finding:

OS1 The open or pervious areas on the existing site are 2.38 acres, and consequently this redevelopment project is required to provide 2.38 acres of permanently protected open space, as required by MPS 2.5.1.4. The applicant has proposed to meet this open space requirement through a cash contribution to the Town of Orleans for the purchase of open space. The cash contribution is based on the per-acre price of \$224,148 (based on recent conservation purchases in the Town of Orleans), for a total open space cash contribution for this project of \$533,472.

Affordable Housing Finding:

AH1 The applicant is not required to meet any affordable housing MPSs. However, the applicant has agreed to provide \$100,000 cash contribution to the Town of Orleans for affordable housing to assist the town in developing additional affordable housing stock.

Community Character Findings:

CC1 The proposed project is not located within an historic district and is not adjacent to individual historic buildings listed on the National or State Register of Historic Places. The Massachusetts Historical Commission (MHC) determined, in a letter dated March 13, 2002, that the project is unlikely to affect significant historic or archaeological resources. As such, the project is consistent with MPSs relating to preservation of historic and archaeological resources.

CC2 Goal 6.2 of the RPP encourages redevelopment and seeks to ensure that future development respects the traditions and character of Cape Cod consistent with the Commission's design manual, Technical Bulletin #96-001. The proposed project involves redevelopment and expansion of an existing supermarket within the already developed area of a commercial plaza. The redevelopment respects traditional character by incorporating a varied roofline and front façade, making the proposed building appear as a series of smaller attached masses that more closely resemble

traditional forms. Views to the building are partially shielded by existing small frontage buildings located at the eastern corners of the property.

- CC3** MPS 6.2.1 states “no new development shall include a single structure which has a footprint greater than 50,000 square feet unless it can be demonstrated through the design of the building and vegetative or other screening methods that the project will not have adverse visual impacts on the surrounding community.” The proposed supermarket maintains a generally low roof height and form consistent with the existing plaza buildings and the surrounding area. The proposed building footprint is approximately 64,000 square feet, which represents only a 17,382 square foot increase in area of the plaza. The majority of this additional square footage will be located to the rear of the property, where it will not be visible to the public. Expansion is also proposed south of the existing structure, facing Route 6A. Because the location of the additional square footage and the design of the building are generally consistent with traditional forms, the project will not have adverse visual impacts on the community.
- CC4** MPS 6.2.2 requires “in all cases, where new buildings and additions are proposed, that the mass and scale of the building, roof shape, roof pitch, and proportions and relationships between doors and windows shall be harmonious among themselves and consistent with traditional Cape Cod architectural styles.” The proposed structure incorporates gable roof forms on the primary façades and traditional building materials to relate the design to traditional Cape Cod architecture. The proposed structure incorporates several features that serve to break down the apparent mass and scale of the building, specifically, a series of gable roofs with different heights, numerous setbacks in the façade line, and a projecting porch on the front portion of the south façade to shield the area to the rear. In addition, the use of wood shingles, clapboards and bricks on various parts of the building exterior serve to vary the building’s long façade.
- CC5** The applicant did not submit final signage plans for the project, though signage is shown on the building elevation drawings. Sign plans will need to be reviewed for consistency with MPS 6.2.8 regarding internally lit signs, and with ODRP 6.2.19 regarding the general scale and form of signs. Signage will also need to conform to the Town of Orleans signage regulations unless otherwise varied.
- CC6** MPS 6.2.4 requires “redevelopment of existing strip development to provide adequate landscaped buffers between the parking areas and the street to limit adverse visual impacts, and to provide adequate buffers and significant improvement to interior parking lot landscaping to improve the visual character of the site.” MPS 6.2.5 requires “all projects to provide landscaping that enhances architectural features and integrates buildings with their environment, as well as provides amenities for pedestrians.” The applicant submitted a landscape plan that adequately addresses the buffering and landscaping requirements of MPS 6.2.4 through the provision of a substantial amount of new plant material and the retention of existing plant material. The proposed site plan meets MPS 6.2.5 by including sidewalks throughout the project, as well as other pedestrian amenities such as benches, bike racks, transit

shelter, crosswalks and interior signage. The Plant List contains non- invasive and sustainable plant materials in sizes that are adequate.

- CC7 While not required under the 1996 RPP, the applicant proposes to install an irrigation system to maintain the on-site landscaped areas, and provided a draft maintenance contract for a period of three full growing seasons that includes watering, fertilization, mulching, replacement of dead plant material, and integrated pest management.
- CC8 Based on information submitted by Nutter on September 13, 2004, the project's exterior lighting design will consist of seventy (70) new lights, 12 of which are to be mounted on the building and 58 are to be pole mounted. The pole-mount lights include a combination of single, double and triple head fixtures as shown on a foot-candle plan drawn by LSI Industries, Sheet #LO-69206, dated 9/02/04. Based on a review of PDF files drawn from the lighting manufacturers' websites, the fixtures proposed are consistent with Technical Bulletin 95-001 and therefore comply with MPS 6.2.7.
- CC9 Orleans Town Meeting enacted an Outdoor Lighting Bylaw on May 10, 2004. Based on this Bylaw, the Assistant Orleans Town Planner advised that the wall sconces (on building mounted fixtures) be limited to a 12-foot mount height. (refer to e-mail, January 28, 2005, from John Jannell to Andrea Adams).

Transportation Findings:

- T1 Area regional roadways include West Road, Route 6A, Route 6, Eldredge Park Way, Lots Hollow Road, Finlay Road, and Old Colony Way per MPS 4.1.1.2.
- T2 The redevelopment project will generate new traffic. Both existing and future trip generation have been estimated using the Institute of Transportation Engineer's *Trip Generation* manual, 7th ed., 2003. Land Use Code 820 Shopping Center has been used since the size of both the existing and proposed supermarket are less than 60% of the total size of the shopping center. The new trip generation has been estimated as the difference between the expected trip generation for the 117,388 square foot final configuration and the expected trip generation for the existing 100,066 square foot configuration as follows:

| | |
|-----------------------------|---------------|
| Weekday Daily Trips | 744 New Trips |
| Weekday Afternoon Peak Hour | 70 New Trips |
| Saturday Midday Peak Hour | 94 New Trips |

The above trip generation is less than half of the estimated trip generation for a new retail building the size of the redevelopment expansion.

- T3 MPS 4.1.1.1 requires mitigation of project traffic impacts at all locations affected by 25 or more new trips. After accounting for trip reduction measures allowed by MPS 4.1.1.3 and required by MPS 4.1.2.1 and a 25% pass-by trip reduction where appropriate, the following regional roadway locations have been estimated to be impacted by 25 or more new peak hour trips:

| | |
|---------------------------------------------------|------------------------|
| West Road at Skaket Corners Main Site Driveway | 70 new peak hour trips |
| West Road between Route 6A and Main Site Driveway | 59 new peak hour trips |
| Route 6A and West Road / Eldredge Park Way | 52 new peak hour trips |
| Route 6A between West Road and Route 6 Eastbound | 26 new peak hour trips |

The project will add traffic to area roadways not included in the analysis where the project impact is lower than 25 new peak hour trips, increasing congestion and delay for the general public, which is considered a detriment of the project.

- T4** Per MPS 4.1.1.4, peak hour analysis of the unsignalized West Road and the Skaket Corners main site driveway has shown the intersection operates very poorly (LOS F) under existing conditions and will worsen with the impact of the proposed project. The *Highway Capacity Manual* (Transportation Research Board, 2000 edition) defines Level-of -Service as delay for each minor movement and the poorest of these controls the overall performance of the intersection. Under existing conditions, the right turns out of the driveway operate at LOS F (107 seconds delay) and left turns operate at LOS D (26 seconds delay). Under future conditions, the right turns improve to LOS C (22 seconds delay), but the left turns degrade to LOS F (114 seconds delay). (All performance measures above are based on micro-simulation analysis by the Cape Cod Commission staff). To meet the requirements of MPS 4.1.1.1 for this intersection, the applicant proposes to fund a police officer detail at the main site driveway during all times the Orleans Police Chief deems such a detail necessary for safe operations. At a minimum, this police detail will be in effect each Friday afternoon and midday Saturday beginning each Memorial Day weekend and continuing through each Labor Day weekend. The days and hours of the required minimum detail noted above will be reviewed by the Police Chief and the applicant after the first full season and adjusted if, based upon the observations of the Orleans Police, the traffic patterns require either an increase or a decrease in police officer detail at the main site driveway. If additional detail hours beyond the minimum detail are required by the Orleans Police Chief, they will be paid for by the applicant. Payments for police detail will be made directly by the applicant to the Town of Orleans.

The project's trip generation increase will affect the main site driveway increasing the number of conflicts with traffic not accessing the plaza on West Road. Furthermore, the police details will stop traffic not accessing the plaza, delaying the public flow of traffic on West Road. These are considered detriments of the project.

- T5** The Town of Orleans has undertaken an expansion and re-signalization of the Route 6A and West Road/Eldredge Park Way intersection. This improvement includes new turning lanes (which add a new travel lane to the segment of West Road between the main site driveway and the intersection), new lane designations, new traffic signals, revised signal timing, and grade changes along the southbound West Road approach to the intersection. The applicant has shown that with the town's improvements and with the increased traffic generation from the redevelopment project, the intersection will operate at a better LOS than under existing conditions. Under MPS 4.1.1.12, the applicant is relying on the town's intersection improvements to mitigate the redevelopment impact and is required to pay fair share funds commensurate with the

redevelopment impact for the intersection improvement project. This amount has been estimated at \$35,900. The intersection improvement project includes an additional turning lane that requires part of the applicant's property. Consequently, in lieu of a cash payment, the applicant has donated 0.17 acres of land for the turning lane. Through Other Development Review Policy (ODRP) 4.1.3.2., the land donation would need to be worth \$210,250 per acre to cover the fair share payment. The Orleans assessor's records show the current land value assessment of the property is at least this amount. Since the applicant is relying on the town improvements to mitigate the redevelopment project impacts, occupancy of the new supermarket will not be allowed until the intersection improvement project is substantially complete, operational, and functional.

- T6** To meet the requirements of MPS 4.1.1.1 for the segment of West Road between the redevelopment's main site driveway and Route 6A, the applicant is relying on the town's intersection improvement project. The intersection improvements include an additional turn lane (amounting to a full additional travel lane for this segment of roadway) and grade changes for better sight lines along this segment. The applicant's fair share cost of the entire intersection project is outlined in Finding T5 and is covered by the donation of land for the improvements. Since the applicant is relying on the town improvements to mitigate the redevelopment project impacts, occupancy of the new supermarket will not be allowed until the intersection improvement project is substantially complete, operational, and functional.
- T7** To meet the requirements of MPS 4.1.1.1 for the segment of Route 6A between West Road/Eldredge Park Way and Route 6, the applicant has proposed to pay a fee towards transportation improvements in the Town of Orleans as allowed by ODRP 4.1.1.20. The payment is \$100 for each of the 26 trips, resulting in a total payment of \$2,600.
- T8** MPS 4.1.1.5 requires all site driveways to have acceptable sight distances. The applicant submitted an analysis indicating stopping sight distances were acceptable up to 30 miles per hour approaching the redevelopment's driveways except for traffic northbound from Route 6A to the main site driveway. The town's improvement project involves re-grading West Road between Route 6A and the main site driveway to improve sight distances. Since the applicant is relying on the town improvements to mitigate redevelopment project impacts, occupancy of the new supermarket will not be allowed until the intersection improvement project is substantially complete, operational, and functional. In addition, the applicant will be required to provide a letter from a professional engineer stating that the sight distances meet the requirements of MPS 4.1.1.5 before the new supermarket is occupied.
- T9** MPS 4.1.1.6 requires redevelopment to follow accepted access management practices. The main site driveway is approximately 300 feet from the Route 6A/West Road intersection, which is acceptable for the redevelopment project. The northern site driveway will be reconfigured for better access, but will be limited to a maximum 24-foot driveway width. The project does not propose to increase or decrease the number of existing driveway curb cuts.

- T10** MPS 4.1.1.7 requires that there be no degradation of public safety as a result of a redevelopment. Crash history was reviewed for roadways in the study area with no locations showing crashes above statewide crash rates. The crash history for the site driveways shows crash rates are below state and district averages for unsignalized intersections. The crash history for Route 6A and West Road/Eldredge Park Way shows crash rates are below state and district averages for signalized intersections. In addition, as noted elsewhere in this decision, the Town of Orleans has undertaken a project which is expected to improve safety at the intersection of Route 6A and West Road/Eldredge Park Way as well as improve site distances along West Road from Route 6A to the main site driveway. As the LOS is very poor at the unsignalized main site driveway as noted in finding T4, the applicant will provide funding for a traffic control officer at the main site driveway during peak periods to improve LOS and safety, consistent with MPS 4.1.1.7.
- T11** MPS 4.1.1.14 requires the provision of adequate parking and encouragement of shared parking. The redevelopment will reduce the number of existing parking spaces from 599 to 442. The entire plaza shares the on-site parking.
- T12** MPS 4.1.1.15 limits parking created for developments to the needs identified in a CCC approved traffic study or the requirements of the town, whichever is greater. The proposed redevelopment does not create parking spaces and thus is not required to reduce parking to the town minimum.
- T13** MPS 4.1.1.16 requires adjacent commercial properties to share access points and provide connections between parcels where appropriate. For the project, there is only one adjacent property. Driveway consolidation is not appropriate given the area's topography, parcel ownership, and land uses.
- T14** MPS 4.1.1.17 requires internal site circulation and access/egress be designed to minimize impacts on the adjacent roadway system. The project will reconfigure an internal site intersection, allowing free-flow entrance into the plaza to avoid backups onto the public roadway. In addition, the northern site driveway and service roadway will be redesigned to allow the majority of site truck traffic to use the less congested northern driveway, relieving complications at the main site driveway. In addition, signage will be placed throughout the parking area and on West Road to direct exiting left turn traffic and entering right turn traffic to the northern driveway, reducing left turn conflicts at the main site driveway.
- T15** MPS 4.1.2.1 requires a 20 percent reduction of expected weekday automobile trips through alternative transportation modes and programs or other trip offset mitigation. For this project, the required reduction is 150 daily trips. The applicant has committed to provide a trip reduction program for the entire Skaket Corners plaza including carpooling and carpool support services, transit shelter, bike racks, sidewalks/ pedestrian ways, trip reduction program coordination, and a financial incentive to meet this requirement. Also, the project is located within a half-mile walking and one-mile bicycling distance from a large variety of retail, office, and residential land use. Approximately 125 of the trips reduced are expected among employees and 25 among customers.

T16 MPSs 4.1.2.3, 4.1.2.4, and 4.1.2.5 requires redevelopments to have pedestrian, bicycle, and transit facilities, inter-linkages (such as bus stops and bicycle racks) which connect transportation modes, and safety measures. The applicant's plans include a bus stop for the Cape Cod Regional Transit Authority's year round H2O line service to the plaza. The project's transit shelter will provide intermodal connections to the general public that is a benefit of the proposed project.

Currently, there are two on-site bicycle racks with capacity for ten bicycles each. The plans also include a new, five-bicycle capacity rack near the supermarket entrance. A pedestrian pathway along a landscaped island with connections to other buildings, Route 6A, and West Road, and a West Road sidewalk will promote pedestrian use of the facility. Additional sidewalks will connect throughout the plaza including crosswalks with appropriate pavement/markings where pedestrian ways cross vehicle travel lanes.

Solid Waste and Hazardous Waste Management Findings:

SW1 MPS 4.2.1.1 requires the applicant address how waste will be diverted, to the maximum extent possible, away from disposal facilities (landfills and incinerators) and be composted and/or recycled, per the integrated solid waste management system outlined in the standard. The applicant has provided a plan outlining how the supermarket will divert organic materials from the waste stream that is consistent with MPS 4.2.1.1.

SW2 MPS 4.2.1.2 requires the applicant allocate adequate storage space for interim storage of recyclable materials. The applicant has provided plans of the supermarket that identify adequate space for storage, processing and handling of recyclables (cardboard, as well as tin cans and plastic bottles) in areas where service vehicles can access them that is consistent with MPS 4.2.1.2.

SW3 MPS 4.2.1.3 requires the applicant to manage construction wastes (asphalt, brick, concrete, wood, sheetrock and metals) in a manner consistent with the integrated solid waste management system outlined in MPS 4.2.1.1. The applicant has not yet provided plans for how building demolition and construction wastes will be recycled or disposed of. This plan shall include a listing of materials to be generated, where the materials will be sent to for recycling or disposal, and the manner by which these materials will be safely stored on site that is consistent with MPS 4.2.1.3.

HW1 The project site is not located in either a Wellhead Protection District or a Potential Public Water Supply Area. As such, Minimum Performance Standard (MPS) 4.2.2.3 of the 1996 Regional Policy Plan does not apply to this project.

HW2 MPS 4.2.2.1 and 4.2.2.2 continue to apply to the project, in both the construction and post-construction phases. These Minimum Performance Standards stipulate that *development and redevelopment shall make reasonable efforts to minimize their hazardous waste generation through source reduction, reuse, material substitution, employee education and recycling, and that development and redevelopment shall be in compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.00.*

- HW3** The applicant submitted a copy of a September, 2002 pre-demolition survey by LFR, Inc. for lead paint, asbestos-containing materials (ACM), PCB-containing light ballasts and fluorescent tubes which covers the existing supermarket building, the GNC and Rose's Dry Cleaners buildings (which are to be demolished to make space for the new Shaw's Supermarket). The LFR survey recommends that the handling of identified ACMs (insulation on the supermarket's bakery ovens), ballasts and fluorescent bulbs be done by companies licensed and permitted to remove and dispose of these hazardous wastes. Concerning lead-based paint building materials, the LFR survey recommends "the General Contractor and all subcontractors be advised of the possibility of lead in paint" (LFR Levine-Fricke site survey, pg. 12) and that composite samples be taken of building components for a lead leaching analysis prior to site demolition (LFR site survey, pg. 16). These actions are consistent with MPS 4.2.2.2.
- HW4** Shaw's submitted an October 24, 2002 e-mail to Commission staff stating that a 1994 site assessment done by Briggs Associates, Inc. noted no underground tanks on the site, and that Shaw's had not installed any underground tanks on site.
- HW5** A narrative included with the DRI application describes Shaw's program for dealing with fluorescent light tubes. Shaw's also submitted an August 13, 2002 letter which states that the proposed new supermarket will not collect used oil, but will collect used consumer batteries.
- HW6** Based on the information submitted by the applicant, the proposed new supermarket will not generate a significant amount of hazardous wastes. Some waste will be generated by maintenance of the HV/AC equipment, replacement of fluorescent bulbs, and collection of consumer batteries. Shaw's submitted a copy of the company's re-lamping procedures, but has not provided evidence that used bulbs will have proper disposal. Shaw's also did not provide the Commission with evidence of a contract to recycle and/or dispose of consumer batteries.
- HW7** Shaw's has not provided the Commission with information on hazardous materials and/or wastes attributable to the wastewater treatment system to ensure consistency with MPS 4.2.2.1 and 4.2.2.2. The project also includes an in-store pharmacy. Shaw's did not clarify to the Commission what hazardous/infectious wastes, including unsalable or waste pharmacy products, this part of the store will generate and how they are to be handled. Shaw's also did not submit information concerning demolition/construction activities and conformance with MPS 4.2.2.1 and 4.2.2.2.

Noise Finding:

- N1** MPS 2.6.1.1 requires DRIs to be in compliance with the state's air pollution control regulations. The MA DEP regulations on noise state that *no person owning, leasing, or controlling a source of sound shall willfully, negligently, or through failure to provide necessary equipment, service, or maintenance or to take necessary precautions cause, suffer, allow, or permit unnecessary emissions from said source of sound that may cause noise.* The proposed project involves the demolition of the existing supermarket and adjacent buildings. Shaw's did not submit information to the Commission that indicated the project will be consistent with MPS 2.6.1.1 during

either the demolition and construction phases of the project, or when the new building is occupied.

Economic Development Findings:

- ED 1** Economic development goals 3.1 and 3.3 call for the Commission to promote economic or employment diversity on Cape Cod. While the economic development information provided by the applicant does not show that the project will either advance or detract from current economic or employment diversity, the project is a redevelopment of an existing site and continuation of a current use with an expected increase in employment and a significant capital investment.
- ED 2** The applicant estimates that the proposed Shaw's supermarket will add 25 new full- and part-time positions. No wage, benefits, or residency data was provided.
- ED 3** The applicant estimates that the capital investment required for the renovation will be between \$5.0 and \$6.0 million and noted that this new investment would result in an increase in net real estate tax dollars with minimal impact of public services.

CONCLUSION

Based upon the findings listed above, the Cape Cod Commission hereby concludes:

- The probable benefits of the proposed project outweigh the probable detriments resulting from development. As proposed, the project will result in a reduction in the nitrogen load concentration (WR-8), reduction in impervious and lawn areas (WR12), \$533,472 open space cash contribution (OS1), \$100,000 cash contribution for affordable housing (AH1), provision of three-year landscape maintenance agreement (CC7), infrastructure improvements to West Road and Route 6A (T5), reduction in number of parking spaces (T11), creation of new full and part-time jobs (ED2), and net increase in real estate tax dollars (ED3).
- Detriments of the project include increase in traffic congestion (T3) and increase in traffic conflicts on West Road (T4).
- The project is consistent with the Orleans Local Comprehensive Plan,
- The project is not located within a District of Critical Planning Concern (DCPC),
- The project, as proposed, is consistent with the 1996 Regional Policy Plan, as supported by the Findings above,
- The project is in compliance with the local zoning requirements provided that the project obtains a special permit required by the Town.

The Cape Cod Commission hereby approves the application of Tedeschi Realty Corporation for the Shaw's supermarket in Orleans, MA providing the following conditions are met:

CONDITIONS

General Conditions:

- G1** This DRI decision is valid for 7 (seven) years and local development permits may be issued pursuant hereto for 7 (seven) years from the date of this written decision.
- G2** Failure to comply with all conditions stated herein shall be deemed cause to revoke or modify this decision.

G3 The applicant shall obtain all state and local permits necessary or applicable for the proposed project.

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 relating to such appeal have been completed.

G5 The proposed Tedeschi Realty/Shaw's Supermarket shall be constructed in accordance with the following plans:

| <u>Title</u> | <u>Date</u> |
|------------------------------------------------------------|-------------|
| SD1 ALTA/ACSM Land Title Survey | 7/26/99 |
| SD2 Layout/Materials Plan | 7/01/05 |
| SD3 Site Utilities Plan | 7/01/05 |
| Elevation Drawings and Roof Plan by Ed Cormier Associates | 4/06/05 |
| L-1 Landscape and Planting Plan | 7/23/04 |
| GW-1 Appendix A- Site Plan for Hydrologic Investigation | 12/22/04 |
| LO-69206 Lighting Foot-candle Plan drawn by LSI Industries | 9/02/04 |
| SE-1 Site Lighting Plan | 9/01/04 |
| Signage Plan from MS Transportation Systems | 7/14/05 |

G6 Any changes in the final plans shall require a modification from the Cape Cod Commission in accordance with Section 12 of the Cape Cod Commission Enabling Regulations. 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 Town of Orleans Planning Board shall be submitted to the Commission upon receipt of local approvals for review by Commission staff to determine their consistency with Section 12 of the Cape Cod Commission Enabling Regulations.

G7 Prior to the issuance of a building permit, the applicant shall obtain a preliminary Certificate of Compliance from the Commission that states all conditions in this decision pertaining to issuance of a building permit have been met. Prior to receiving a permanent or temporary Certificate of Occupancy for the proposed project, the applicant shall obtain a final Certificate of Compliance from the Cape Cod Commission. Unless otherwise stated in this decision, the project shall be constructed in accordance with final plans listed in this decision in Condition G5 and all conditions of this decision shall be met prior to issuance of a Final Certificate of Compliance of the proposed project. The project shall not be open for business to the public until a final Certificate of Compliance is received from the Cape Cod Commission.

G8 The applicant shall notify Commission staff of the intent to seek a Preliminary or Final Certificate of Compliance at least thirty (30) days prior to the anticipated date of building permit or occupancy permit issuance. Such notification shall include a list of key contact(s) along with their telephone numbers 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. Upon prior notice, the applicant shall allow Cape Cod Commission staff to enter onto the property that is the subject of this decision for the purpose of determining whether the conditions contained in the decision are met, and at any time in the future to determine continuing compliance with the conditions of this and/or subsequent modification decisions.

- G9** The applicant shall be responsible for providing proof of recording of the decision prior to issuance of a Preliminary Certificate of Compliance.
- G10** The applicant shall demonstrate that a copy of this decision has been provided to the general contractor and all tenants (if applicable) prior to the start of construction.

Water Resources Conditions:

WR1 The project shall be constructed in accordance with findings WR1 through WR12, including:

- The use of a Bioclere treatment system under a State-issued Groundwater Discharge Permit as noted on Site Utilities Plan SD-3 for the treatment of 15,385 gallons of Title-5 wastewater flows (WR3),
- Groundwater-quality monitoring at locations OT-2, MW-5 and MW-7 on Appendix A- Site Plan for Hydrological Investigation (WR5), and
- A monetary contribution of \$2,300 to determine the tidal flushing rates of Namskaket and Little Namstaket Creeks, and Rock Harbor

WR2 The project's Title-5 wastewater flows shall be limited to 15,385 gallons per day. The project's wastewater design shall be constructed in accordance with Site Utilities Plan SD-3, revised July 01, 2005.

WR3 An executed copy of the Ground Water Discharge Permit application submitted to MADEP for approval of the project's wastewater design with a 15,385 gallon per day capacity limit shall be submitted to the Commission prior to the Commission's issuance of the Preliminary Certificate of Compliance. The applicant has the option to seek extra wastewater capacity for the project's wastewater treatment facility in excess of the 15,385 gpd approved by this decision through a modification of this decision.

WR4 The MADEP-approved Groundwater Discharge Permit shall be submitted to Commission prior to issuance of the Final Certificate of Compliance.

WR5 The applicant shall monitor water quality in accordance with the following requirements:

The applicant shall collect and analyze groundwater samples to determine water quality conditions under existing conditions. After each quarter of wastewater facility generation, the applicant shall collect and analyze groundwater samples to monitor water quality. All groundwater samples

shall be collected in a manner consistent with provisions of 310 CMR 40.0017(2), *Environmental Sample Collection and Analyses - Procedures and methodologies* at the water-table in locations OT-2, MW-5 and MW-7 noted on Appendix A – Site Plan for Hydrogeologic Investigation, dated December 22, 2004.

Monitoring wells shall consist of 10-foot screens straddling the water table and be consistent with DEP's *Standard References for Monitoring Wells*, Publication No. WSC-310-91. Well completion logs and boring logs shall be submitted for approval by Commission staff for compliance with Condition WR5 prior to issuance of a Preliminary Certificate of Compliance.

Water samples shall be analyzed by a Massachusetts certified analytical laboratory in accordance with the following schedule:

- Static water level - quarterly;
- Specific conductance - quarterly;
- pH - quarterly;
- Chlorides - quarterly;
- Total nitrogen-N - quarterly;
- TKN-N - quarterly;
- Ammonia - quarterly;
- Nitrate-N - quarterly; and
- Volatile organic compounds (pursuant to EPA Method 524) - annually

Analytical results for water samples collected and analyzed to establish baseline water-quality shall be submitted in to the Commission prior to issuance of the Final Certificate of Compliance. Analytical results for subsequent water samples shall be submitted to both the Commission and the Orleans Health Agent for each quarter thereafter within one month of sample collection.

WR6 Prior to the issuance of a Preliminary Certificate of Compliance, the project shall contribute \$2,300 to determine the flushing rate and/or the development or implementation of nitrogen-management strategies for Namskaket and Little Namskaket Creeks, and/or Rock Harbor. Such funds shall be held by Barnstable County and expended at the discretion of the Executive Director of the Commission for the above purpose.

WR7 Provisions of the project's Operation and Maintenance of Stormwater Facilities Plan submitted in accordance with MPS 2.1.1.6, including Emergency Spill Cleanup Plans as incorporated, shall be implemented on an on-going basis and include bi-annual inspection and cleaned out of the site's stormwater catch basins to ensure their proper function.

Open Space Condition:

OS1 Prior to the issuance of a Preliminary Certificate of Compliance, the applicant shall make a one-time payment of \$533,472 to Barnstable County/CCC for the purpose of

purchasing open space in the Town of Orleans, (Funds will be expended upon approval of the CCC Executive Director).

Affordable Housing Condition:

AH1 Prior to the issuance of a Preliminary Certificate of Compliance, the applicant shall make a one-time payment of \$100,000 to Barnstable County/CCC for the purpose of providing additional affordable housing in the Town of Orleans. Funds will be expended upon approval of the CCC Executive Director.

Community Character Conditions:

CC1 The applicant shall construct the Orleans Shaw's Supermarket building in accordance with the approved elevation drawings and roof plan, dated 4/06/05, by Edward D. Cormier Associates, Inc., and received by the Commission on April 8, 2005.

Should unexpected conditions arise during demolition and construction that require redesign of the building, the applicant shall obtain approval from Cape Cod Commission staff prior to the start of construction consistent with the Commission's policy on Revisions to Approved DRIs as outlined in Section 12 of the Enabling Regulations dated March 2005. Modifications made during construction that are in accordance with the approved elevation drawings by Edward D. Cormier Associates, Inc., and received by the Commission on April 8, 2005 shall be considered as Minor Modifications #1 and approved by Commission staff.

CC2 Detailed signage plans for any freestanding pylon sign and building signage shall be submitted for Commission staff approval prior to the issuance of a Preliminary Certificate of Compliance. The overall height of the building's signboard area or frieze shall be reviewed in concert with the Town of Orleans' signage regulations and shall be reduced in height as necessary unless a variance is obtained for signage.

CC3 The applicant shall construct the project in accordance with the approved landscape plan L-1 provided by Mary Smith Architects dated July 23, 2004 and received by staff on August 18, 2004.

CC4 Plant materials specified by this decision may be substituted with prior written approval of Commission staff.

CC5 The applicant shall install an irrigation system for all on-site landscaped areas. The applicant shall provide a fully executed landscape maintenance contract for three full growing seasons consistent with the approved draft maintenance contract prior to installation of plantings and prior to issuance of a final Certificate of Compliance.

CC6 If all required exterior lighting, site work, 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 equal 150% of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The check shall be payable to the Cape Cod Commission. All work will be reviewed by Commission

staff for consistency with this decision and the escrow agreement 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.

- CC7** The project's exterior lighting design shall be consistent with 1996 RPP MPS 6.2.7 and Technical Bulletin 95-001. It shall also be consistent with the manufacturers' catalog information described in finding CC8. This includes consistency with the Lighting Foot-candle Plan drawn by LSI Industries, Sheet # LO-69206, dated 9/2/04. The design shall also be consistent with Orleans Outdoor Lighting Bylaw.
- CC8** Prior to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall submit an "as to be installed" exterior lighting plan. This plan shall be used in connection with condition CC9, and shall conform to the standards and information submission requirements of Technical Bulletin 95-001, including, if necessary, revised manufacturers' lighting catalog information and a point-to-point foot-candle plan.
- CC9** Prior to issuance of a Final Certificate of Compliance, in-the-field verification of light levels must be conducted by Commission staff to verify conformance with the requirements of the Technical Bulletin 95-001 and MPS 6.2.7.
- CC10** If changes are made to the project's exterior lighting design during construction, the Applicant shall submit for Commission staff review and approval information consistent with Technical Bulletin 95-001 that describes the proposed changes. Changes that are determined by Commission staff to be consistent with Technical Bulletin 95-001 may be deemed Minor Modifications Type #1 in accordance with the Commission's *Enabling Regulations*.

Transportation Conditions:

- T1** The project will be built according to site plans SD2 and SD3 dated July 01, 2005 and signage plan from MS Transportation dated July 14, 2005. These include:
- Restructuring of the internal circulation to allow trucks to use the northern driveway and service road behind the buildings,
 - Reconfiguration of the northern driveway to allow easier access to and from the north on West Road while keeping driveway widths beyond corner radii to 24 feet,
 - Simplification of the internal intersection to eliminate the entrance STOP sign control, eliminate one leg of traffic, and avoid backups onto West Road,
 - Reduction of parking spaces from 599 to 442,
 - A sidewalk along West Road from the northern driveway to the main site driveway,
 - Internal sidewalks and crosswalks throughout the site connecting to West Road and Route 6A, including striping for three existing internal crosswalks, five new internal crosswalks with striping, new sidewalk along portions of Route 6A, a new sidewalk along an internal landscaped parking island, and a new sidewalk connecting from the West Road sidewalk through the bank open air porch and parking lot to the main retail building,

- An additional bicycle rack near the entrance to the supermarket with at least a five bicycle capacity,
- A bus shelter, and
- Signage for internal traffic circulation providing directions to the northerly exit, and signage on West Road to promote use of the northern driveway.

T2 The applicant shall pay for a police traffic detail at the main site driveway intersection with West Road during all times the Orleans Police Chief (or designee) determine that such officer control is necessary for transportation safety and/or congestion management. At a minimum, the police detail shall be provided for one four-hour shift on Friday afternoons (time to be determined by the Orleans Police Department) and one four-hour shift Saturday's midday (time to be determined by Orleans Police Department) beginning the Friday of Memorial Day weekend and continuing weekly through Saturday of Labor Day weekend. After the first full season of police details (Memorial Day to Labor Day), the Orleans Police Chief (or designee) and applicant may review the required minimum number of shifts and adjust the number, day, and times of the required shifts as appropriate for the following summer season. Such a review shall happen on an annual basis to adjust the minimum shift requirements. The applicant shall notify the Executive Director of the CCC in writing as to the agreed upon changes in the minimum shift requirements each year if changed. If no review takes place between the applicant and the Orleans Police Chief, the minimum police detail requirements as outlined in this decision shall remain in effect. Additional police traffic detail shifts in addition to the minimum requirements can be required anytime the Orleans Police Chief (or designee) determine such shifts are necessary based upon his/her observations that the traffic patterns at the main site driveway require an increase in police detail. All police detail shifts shall be paid for by the applicant and shall be paid directly to the Town of Orleans.

T3 Prior to the issuance of a Preliminary Certificate of Compliance, the applicant shall provide land for the town intersection improvement project at Route 6A and West Road / Eldredge Parkway. Such land shall consist of approximately 0.17 acres of land on the southeastern corner of the lot adjacent to the intersection along West Road and Route 6A as outlined in the Massachusetts Highway Department Right of Way Bureau Notice of Taking dated August 12, 2003, which has been donated in accordance with Finding T5.

T4 Prior to the issuance of a Final Certificate of Compliance, the town intersection improvements at the intersection of Route 6A and West Road / Eldredge Park Way shall be substantially complete, operational, and functioning. At a minimum, the final configuration of travel lanes, new operating signals, pedestrian and bicycle controls, sidewalks, crosswalks, and grade changes along West Road shall be complete. All signals and controls shall be fully operational in their final configuration and functioning to control traffic on a full-time basis. This determination shall be made by Commission transportation staff. In the event the aforementioned work outside of the applicant's control is not complete, the applicant may apply to the CCC for consideration of a modification to this condition.

- T5** Prior to the issuance of a Preliminary Certificate of Compliance, the applicant shall make a one-time payment of \$2,600 to Barnstable County/CCC. Uses of the funds may include, but are not limited to: (i) purchase of vacant developable land for conservation, (ii) initiation, operation or marketing of transit services, (iii) planning, design and/or construction of bicycle paths or sidewalks, (iv) performance of transportation studies or installation or operation of traffic monitoring devices, (v) planning, engineering and/or construction of transportation improvements, and/or (vi) purchase of easements and/or transportation rights-of-way. Funds will be expended upon approval of the CCC Executive Director.
- T6** Prior to the issuance of a Final Certificate of Compliance, but after the grading work on West Road related to the town's intersection project and after the northern site driveway re-alignment is functionally complete, as determined by CCC transportation staff, the applicant shall provide a signed and sealed letter from a Massachusetts licensed professional civil engineer certifying that the sight distances to both site driveways on West Road meet or exceed the American Association of State Highway Transportation Official's guidelines for safe stopping sight distance. In the event the aforementioned work outside of the applicant's control is not complete, the applicant may apply to the CCC for consideration of a modification to this condition.
- T7** All commercial truck traffic shall be required to use the northern driveway for access and egress except for vehicles accessing the restaurant at the southeast corner of the redevelopment. Prior to the issuance of a Final Certificate of Compliance, signage directing truck traffic to the northern driveway shall be installed.
- T8** The applicant shall institute a trip reduction program throughout the redevelopment site that shall include all buildings, employers, and employees on site. The program shall include the following:
For employees:
- Designate an on-site trip reduction coordinator, who will oversee and coordinate all trip reduction programs across the entire plaza, including all employers/employees,
 - Promote carpooling/ridesharing among plaza employees including:
 - Initiate support of matching services, and assemble/provide information regarding available carpooling/ridership opportunities,
 - Post carpooling/ridesharing opportunities and incentives prominently in the employee area at the supermarket and provide such information to all employees in the plaza on a periodic basis,
 - Designate at least three preferential parking spaces for employees that carpool, and
 - Accommodate flexible work schedules for those who carpool
 - Provide a guaranteed ride home program in case of an emergency for those employees who use alternative transportation modes
 - To promote use of transit services, the applicant shall:
 - Sell transit tickets/tokens and multi-ride discount passes,
 - Distribute up-to-date schedule and route information for the local CCRTA H2O line and other connecting transit lines to all employees periodically, but at least once a year,

- Post current transit schedule, route information, and transit incentives prominently in the employee area, and
- Provide an on-site bus/trolley stop, including all-weather shelter with up-to-date schedule and route information
- Implement on-site services to discourage midday trips including providing a separate employee lunch/rest area with a refrigerator and microwave and provide onsite outgoing mailbox,
- Provide incentives through store coupons for each plaza employee each day they choose to commute by alternative modes which reduce trips to the plaza,
- Provide a secure bicycle storage facility on-site,
- Institute employee recognition programs for alternative commuters,
- Improve the sidewalk connections between the plaza and adjacent parcels and roadways, and
- Post details of trip reduction program for employees and reference on-line sources or websites such as www.gocapecod.org for further information

For Patrons:

- Provide an on-site bus/trolley stop, including all-weather shelter with up-to-date schedule and route information,
- Provide a taxi pick-up area for patrons who walk to the site but wish to take a taxi home. Information on local taxi services, including phone numbers will be made available to the patrons at the store, including a free call for the taxi if necessary,
- Construct (if not already in place) a sidewalk along the project's West Road frontage between the Plaza's northern driveway and main driveway and provide safe connection to internal walkways,
- Provide a walking connection between the Plaza and the adjacent property to the north (currently the Cape Cod Five Cent Savings Bank's Operations Center),
- Provide secure bicycle storage open to the public as well as patrons (to encourage biking to the transit stop), and
- Provide transit passes / tokens at the store

T9 Prior to the issuance of the Final Certificate of Compliance, the applicant shall provide secure bicycle parking for a minimum of 25 bicycles for both employees and patrons of the plaza. The two current racks with a capacity of 10 bicycles each shall remain. A new rack with capacity for at least five bicycles will be added near the supermarket main entrance.

T10 Prior to the issuance of the Final Certificate of Compliance, the applicant shall provide a covered, partially enclosed bus shelter at the plaza. Prior to the Preliminary Certificate of Compliance, the final location and configuration of this shelter as well as written proof of bus shelter location acceptability from the Cape Cod Regional Transit Authority shall be submitted to CCC transportation staff for approval.

Solid Waste and Hazardous Waste Management Conditions:

SW1 Prior to the issuance of a Preliminary Certificate of Compliance by the Commission, the proponent shall submit a draft contract for Cape Cod Commission staff approval

specifying that the disposal method that contractors shall use to dispose of all asphalt, brick, concrete (ABC), untreated wood, metals and other solid waste generated by demolition and construction activities will conform to the requirements of MPS 4.2.1.1 and 4.2.1.3.

- HW1** The Applicant shall implement the recommendations contained in the September, 2002 pre-demolition survey by LFR, Inc. for lead paint, asbestos-containing materials (ACM), PCB-containing light ballasts and fluorescent tubes.
- HW2** Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall provide to Commission staff a copy of the store's program to dispose of fluorescent tubes, used consumer batteries, wastes attributable to the site's wastewater treatment system and unsaleable pharmacy products.
- HW3** Prior to issuance of a Preliminary Certificate of Compliance, the applicant shall provide to Commission staff written evidence that site demolition and construction contractors will conform to the requirements of MPS 4.2.2.1 and 4.2.2.2.

Noise Condition:

- NI** The Applicant shall take steps to ensure that all heavy construction/demolition equipment is fitted with noise attenuation mufflers. The Applicant shall also take steps to ensure that appropriate time of day and day of week restrictions are placed on demolition/construction activities. Any new HV/AC equipment for the new supermarket shall be placed inside sound enclosures, and the supermarket's physical plant shall be equipped with silencers on ducts and exhaust vents, as well as low-fan noise air handling units.

Economic Development Conditions:

- ED1** Prior to the issuance of a Final Certificate of Compliance, the applicant shall provide a report to the Commission detailing the number of Cape Cod contractors, local suppliers, and workers employed during the construction phase of the project. The applicant shall note those businesses that are women or minority owned.
- ED2** Prior to the issuance of a Final Certificate of Compliance, the applicant shall provide a report to the Commission detailing the number of new jobs created, the position titles, wages and benefits to be paid, and the number of minorities, disabled, elderly, unemployed or underemployed persons expected to fill the new positions.

CONCLUSION

Based on the findings above, The Cape Cod Commission hereby approves with conditions the Development of Regional Impact application of Skaket Associates Nominee Trust for the construction of a new 69,119 square-foot Shaw's supermarket in Orleans, MA.



Alan Platt, Chairperson

7/21/05

Date

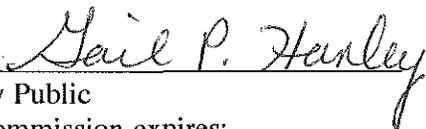
Barnstable, ss.

On this 21st day of July, 2005, before me personally appeared

Alan Platt, to be 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.



Notary Public
My Commission expires:

10/13/11