

CAPE COD COMMISSION

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

E-mail: frontdesk@capecodcommission.org

Date: January 12, 2006.

To: Mr. K. Bergman

From: Cape Cod Commission

RE: Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Section 23

Applicant: Town of Provincetown
C/o Town Manager
260 Commercial Street,
Provincetown, MA 02657

Project: Cape End Care Campus
100 Alden Street,
Provincetown, MA 02657

Project #: HDEX # 05030

Book/Page: Book 2750, Page 81
Book 937, Page 383
Book 267, Page 404
Book 465, Page 138

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Hardship Exemption (Project of Community Benefit) application of the Town of Provincetown (Applicant) for the Cape End Care Campus at 100 Alden Street in Provincetown, MA pursuant to Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended. The decision is rendered pursuant to a vote of the Commission on January 12, 2006.



PROJECT DESCRIPTION

The proposed project is for the demolition of an existing town owned and operated nursing home (17, 721 square feet) and the construction of a new 138,434 square foot, continuing-care nursing facility. The Cape End Care Campus will be constructed in two phases and will result in a new three-story structure and associated parking located on Alden Street in Provincetown, MA. The Care Campus will provide a nursing home, out-patient rehabilitation therapy, assisted/independent living and other health care services to the elderly and will accommodate a 41-bed skilled nursing facility and 80 assisted/independent living units. The project will provide 74 parking spaces, 41 of which will be located in an underground parking garage. The project will be constructed on an approximately 2.66-acre property resulting from the combination of a 1.42-acre town owned parcel and an adjacent 1.24-acre property to be acquired by the town as a result of a land swap with the Roman Catholic Bishop of Fall River. The site is located in a Residential (RES-3) zoning district and is also within the Health Care Overlay District (HCO) and the Provincetown Local Historic District. The property adjacent to the northwest and those across the street are used as cemeteries, the area to the southeast are a mixture of privately owned residential uses and town owned property, including a property used for recreational fields.

The new facility will be developed in phases, as described below:

Phase 1: A new 76,719 square foot building will be constructed to the rear of the new site, while the existing facility remains occupied and in operation. This portion of the new building is proposed to include a new 41-bed skilled nursing facility on the first floor and approximately 42 apartments on the second and third floors. During construction, the existing parking lot will be in use.

Phase 2: Once the rear portion of the building can be occupied, the residents of the nursing home will be relocated to the new Phase 1 building and the existing structure will be demolished. At the front of the site, the remainder of the new building (61,715 square feet) will be constructed to accommodate the remaining 38 apartments and the underground parking. During this phase of construction, visitors to the facility will be able to use a private lot nearby for temporary parking.

PROCEDURAL HISTORY

The Cape End Care Campus was referred to the Cape Cod Commission (CCC) on November 17, 2005 as a mandatory Development of Regional Impact (DRI) by Douglas Taylor, Director of Community Development, on behalf of the Provincetown Historic District Commission. The Applicant submitted a Development of Regional Impact (DRI) Hardship Exemption (Project of Community Benefit) on November 16, 2005 under Section 8 of the DRI Enabling Regulations. The Project was subject to review under the 2002 Regional Policy Plan (RPP).

A duly noticed public hearing was conducted by an authorized subcommittee of the Commission pursuant to Section 5 of the Act on December 14, 2005, which was followed by a subcommittee meeting on the same evening to deliberate on the project. At the December 14, 2005 meeting, the subcommittee voted unanimously (5-0) to recommend to the full Commission that the Hardship

Exemption (Project of Community Benefit) be approved with conditions. The subcommittee met on January 9, 2006 and January 12, 2006 to review the draft decision and conditions. A final public hearing was held before the full Commission on January 12, 2006, where the Commission voted to approve the Hardship Exemption (Project of Community Benefit), subject to conditions.

MATERIALS SUBMITTED FOR THE RECORD

By Applicant:

- Application for DRI Hardship Exemption dated November 16, 2005, including attachments
- Email from Mr. K. Bergman dated November 16, 2005 re: Schedule
- Email from Mr. D. Anderson dated November 17, 2005 re: Revision to permit sequence
- Facsimile from Ms. R. Butler dated November 18, 2005 re: Notice of local filing
- Email from Mr. D. Anderson dated November 21, 2005 re: Project information
- Letter from Ms. S. Everett dated November 21, 2005, re: MHC Filing
- Email from Mr. D. Anderson dated November 22, 2005 re: Hearing
- Email from Mr. D. Anderson dated November 22, 2005 re: Buses
- Email from Mr. K. Bergman dated November 22, 2005 re: Hearing
- Email from Mr. D. Anderson dated November 22, 2005 re: Habitat location
- Letter from Mr. F. Torphy dated November 23, 2005, re: Application/description
- Three Emails from Mr. D. Anderson dated November 28, 2005 re: Additional information
- Email from Mr. D. Anderson dated November 29, 2005 re: MHC filing
- Email from Ms. J. McKnight dated November 29, 2005 re: MHC filing
- Two Emails from Mr. D. Anderson dated November 29, 2005 re: Additional information
- Email from Mr. D. Anderson dated November 29, 2005 re: Water and Solid Waste
- Email from Ms. J. McKnight dated November 29, 2005 re: MHC filing
- Email from Mr. D. Anderson dated November 29, 2005 re: Affordable Housing
- Facsimile from Ms. J. McKnight dated November 29, 2005 re: MHC filing
- Facsimile from Mr. W. Skully dated November 30, 2005 re: Calculation sheets for traffic
- Email from Mr. D. Anderson dated November 30, 2005 re: Construction Employment
- Email from Mr. D. Anderson dated December 1, 2005 re: Permit narrative
- Email from Mr. D. Anderson dated December 1, 2005 re: Financial Narrative
- Two Emails from Mr. D. Anderson dated December 2, 2005 re: Copies
- Two Emails from Mr. D. Anderson dated December 2, 2005 re: Revised Financial Narrative
- Email from Mr. D. Anderson dated December 2, 2005 re: Walkway and Generator
- Email from Mr. D. Anderson dated December 2, 2005 re: Construction costs
- Email from Mr. D. Anderson dated December 2, 2005 re: Campus Fees
- Email from Mr. D. Anderson dated December 2, 2005 re: Expanded Pro Forma
- Six Emails from Mr. D. Anderson dated December 5, 2005 re: Additional Information, Demolition Protocols, Employment Information, Generator, Job Creation, Cover letter
- Letter from Mr. D. Anderson dated December 6, 2005, re: Application
- Email from Mr. D. Anderson dated December 9, 2005 re: Cape United Elders
- Email from Mr. D. Anderson dated December 13, 2005 re: responses to staff report
- Email from Mr. D. Anderson dated December 13, 2005 re: Status grid, narratives
- Email from Mr. D. Anderson dated December 15, 2005 re: Outstanding items
- Two emails from Mr. D. Anderson dated December 19, 2005 re: Natural Heritage
- Email from Ms. L. Pawle dated December 19, 2005 re: Natural Heritage

- Two emails from Mr. D. Anderson dated December 20, 2005 re: Timing of copies, Trip reduction
- Two emails from Rev. H. Taylor dated December 20, 2005 re: Affordable Housing
- Facsimile from Rev. H. Taylor dated December 20, 2005 re: Affordable Housing
- Email from Ms. L. Pawle dated December 22, 2005 re: Natural Heritage
- Email from Rev. H. Taylor dated December 22, 2005 re: Sources/uses for Cape project
- Email from Ms. L. Pawle dated December 23, 2005 re: Natural Heritage
- Transmittal from Ms. M. Gonzales dated December 23, 2005 re: Updated plans
- Email from Mr. D. Anderson dated December 27, 2005 re: Update
- Email from Mr. D. Anderson dated December 27, 2005 re: Addendum
- Email from Mr. D. Anderson dated December 28, 2005 re: Affordable Housing
- Email from Mr. D. Anderson dated December 28, 2005 re: Cape End Manor
- Email from Mr. D. Anderson dated December 28, 2005 re: Addendum
- Email from Mr. D. Anderson dated December 29, 2005 re: Addendum
- Email from Mr. D. Anderson dated December 29, 2005 re: AHR
- Email from Mr. D. Anderson dated December 29, 2005 re: Rentals
- Facsimile from Rev. H. Taylor dated December 29, 2005 re: Rentals
- Email from Rev. H. Taylor dated January 2, 2006 re: Affordable Housing
- Email from Mr. D. Anderson dated January 4, 2006 re: Decision
- Email from Mr. D. Anderson dated January 4, 2006 re: Abutter
- Email from Mr. D. Anderson dated January 4, 2006 re: Affordable Housing
- Three emails from Mr. D. Anderson dated January 6, 2006 re: Conditions
- Email from Mr. D. Anderson dated January 8, 2006 re: Medicare/Medicaid
- Email from Mr. D. Anderson dated January 10, 2006 re: Bedroom units
- Email from Mr. D. Anderson dated January 10, 2006 re: Cost Reports
- Email from Ms. S. Everett dated January 10, 2006 re: Conditions
- Email from Mr. D. Anderson dated January 10, 2006 re: Message

By State:

- Letter from Rep. S. Gomes undated received December 14, 2005
- Letter from Ms. B. Simon dated December 9, 2005, re: MHC determination
- Letter from Mr. T. French dated December 23, 2005, re: NHESP determination
- Email from Mr. D. Brown dated January 10, 2006 re: Medicaid/Medicare

By Commission Staff:

- Email from Ms. M. Fenn dated November 17, 2005, re: Schedule
- Letter from Mr. P. Dascombe dated November 21, 2005, re: DRI notification
- Email from Mr. P. Dascombe dated November 21, 2005, re: Affordable Housing/Economic Development
- Email from Mr. P. Dascombe dated November 22, 2005, re: Hearing
- Email from Mr. P. Dascombe dated November 22, 2005, re: Site Visit
- Email from Mr. P. Dascombe dated November 28, 2005, re: Additional Information
- Email from Mr. P. Ruchinkas dated November 29, 2005, re: Information
- Email from Mr. P. Dascombe dated December 5, 2005, re: Questions
- Email from Mr. P. Dascombe dated December 5, 2005, re: Protocols

- Email from Mr. P. Dascombe dated December 6, 2005, re: Application materials
- Memo from Mr. P. Dascombe dated December 7, 2005, re: Hearing materials
- Staff Report dated December 14, 2005
- Two Emails from Mr. P. Dascombe dated December 7, 2005, re: Staff Report
- Email from Mr. P. Dascombe dated December 9, 2005, re: Cape United Elders
- Email from Mr. P. Ruchinkas dated December 12, 2005, re: Affordable Housing Restriction
- Email from Mr. P. Dascombe dated December 19, 2005, re: Natural Heritage
- Email from Mr. P. Dascombe dated December 20, 2005, re: Trip reduction
- Email from Mr. P. Ruchinkas dated December 20, 2005, re: Affordable Housing
- Email from Mr. P. Ruchinkas dated December 22, 2005, re: Affordable Housing
- Email from Mr. P. Ruchinkas dated December 22, 2005, re: Sources/uses for Cape project
- Email from Mr. P. Dascombe dated December 28, 2005, re: Lighting
- Email from Mr. P. Dascombe dated December 29, 2005, re: Addendum
- Email from Ms. A. Adams dated December 29, 2005, re: Lighting
- Email from Mr. P. Dascombe dated December 29, 2005, re: Rental Fees
- Two emails from Mr. P. Ruchinkas dated December 29, 2005, re: Affordable Housing
- Email from Mr. P. Dascombe dated January 4, 2006, re: Affordable Housing
- Email from Mr. P. Dascombe dated January 4, 2006, re: Decision

By Interested Parties:

- Letter from Ms. J. Fossiano, et al, dated December 9, 2005, re: Cape United Elders comments
- Letter from Mr. G. Hayden, dated December 13, 2005
- Letter from Ms. E. Costa, dated December 14, 2005
- Email from Mr. H. Burchman dated January 4, 2006

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

TESTIMONY

A public hearing was held on December 14, 2005 at the Provincetown Town Hall, Provincetown. Mr. K. Bergman, Ms. S. Peake and Rev. H. Taylor gave a presentation on the project on behalf of the applicant and spoke to the facility's need within the outer cape and its status as a Project of Community Benefit. Mr. P. Dascombe presented the applicable standards for a Hardship Exemption (Projects of Community Benefit) and the key issues identified in the Commission's December 14, 2005 report.

Ten people spoke at the hearing in support of the project. One abutter expressed concerns over lighting and buffering to his property from the project.

The subcommittee members had comments and questions on the buffering of the adjacent property, traffic generation, parking, affordable housing and the relationship between the town and New England Deaconess Association.

JURISDICTION

The Cape End Care Campus qualifies as a Development of Regional Impact under Section 3(g) of the DRI Enabling Regulations as a development that is planned to create 30 or more residential units.

FINDINGS

The Commission has considered the application of the Town of Provincetown for the proposed Cape End Care Campus, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to the 2002 Regional Policy Plan and Section 23 of the Act:

General Findings:

- G1. The Town of Provincetown currently owns the site occupied by the existing Cape End Manor Nursing Home that is used as a 60-bed skilled nursing facility. The Town has operated and funded a municipal nursing home facility in Provincetown since 1956, and operated the existing 17,150-square-foot facility for twenty-five years (since 1981). A Town appointed Board of Directors administers the operations of the facility, prepare annual budgets and report to the Town Manager and Board of Selectmen. Since July 2005, the facility operations have been managed in partnership between the Town and New England Deaconess Association (NEDA), which is a non-profit Massachusetts corporation. Because the existing facility is outdated, crowded and in need of replacement to meet the current needs of residents for more specialized care, the Town of Provincetown has applied to expand this municipal project.
- G2. The Applicant is proposing the Cape End Care Campus in an effort to respond to the growing need for skilled nursing facilities and independent/assisted living facilities on Cape Cod and particularly in the Town of Provincetown. The facility will provide a continuum of care services at the Cape End Care Campus with 41 skilled nursing beds, 80 assisted/independent living apartments and an out-patient rehabilitation facility.
- G3. To accommodate a facility to meet these needs, the Applicant has negotiated a land swap to acquire an adjacent 1.24-acre piece of the property that is currently used as a utility area for the adjacent cemetery. The acquisition of this property will create a new approximately 2.66-acre parcel on which the proposed Cape End Care Campus will be constructed.
- G4. The Cape End Care Campus will be built in two phases and consist of a total of 138,434 square feet. Phase 1 will involve the construction of a new 76,719 square foot building to the rear of the new site, while the existing facility remains occupied and in operation. This portion of the new building is proposed to include a new 41-bed skilled nursing facility on the first floor and approximately 42 apartments on the second and third floors. Phase 2 will commence when the Phase 1 building is occupied, at which time the existing facility will be demolished. The remaining 61,715 square feet of the new building will be constructed to accommodate the balance of the apartments (38 units) and the underground parking. The

Applicant intends to transfer the property ownership to the NEDA, which will construct and operate the new facility.

- G5. The Commission finds that the proposed project is a Project of Community Benefit, as defined by Section 1(c) of the Enabling Regulations, as it will provide enhanced, quality health services to the Outer Cape and will provide much needed housing options for seniors, consistent with Section 1(a) and 1(c) of the Act, whose goals include the development of an adequate supply of affordable housing, balanced economic growth and the provision of adequate capital facilities. The project also provides a number of economic benefits to the Town as well as an economic stimulus to the Outer Cape. For instance, the project will create additional year-round jobs, create temporary opportunities for local construction companies and increase the local expenditures in the economy when operating.
- G7. The Applicant has shown that fully complying with the requirements of the RPP would create a financial hardship, particularly the expense and time to prepare the required traffic studies. In addition, full compliance with the affordable housing requirements would affect the viability of the project and its ability to provide important health services through its outpatient care, nursing home and assisted/independent living units which are substantially supported by the entry fees and rental revenue generated from the proposed mix of units. The Applicant has also shown that federal and state regulations controlling nursing bed facilities prevent the Applicant from deed restricting any of the skilled nursing beds to Medicaid eligible patients, although the facility is Medicaid licensed and all of the skilled nursing beds are Medicaid eligible.
- G8. The project does not lie within a District of Planning Concern, and is consistent with the Provincetown Comprehensive Plan and municipal development bylaws.

Water Resource Findings:

- WR1. The property is located in a Marine Water Recharge Area for Provincetown Harbor. The project is also located in a densely developed area, classified as an impaired area. As defined by 2.1.1.E of the RPP, this combination results in a water quality improvement area, which has the major goal of improvement of water quality. As currently known, there are no identified marine water quality loading standards for Provincetown Harbor.
- WR2. The project plans to be connected to the wastewater treatment plant and is therefore consistent with MPS 2.1.1.2.E.2. that allows public and private sewage treatment facilities to be used in conjunction with any development or redevelopment.
- WR3. The project will be served by public water supply for both domestic service and a separate fire flow service. Documentation provided by the applicant demonstrates that there will be adequate supply to meet the water use demand from this project.
- WR4. Stormwater will be handled onsite. Roof runoff will be infiltrated directly to the groundwater through numerous dry wells. Stormwater generated on paved surfaces will be

pre-treated with deep sump catch basins and then infiltrated via surface recharge basins. The design also calls for construction of several rain gardens that will handle runoff from the side yards, but no details of the design were provided and therefore the decision is conditioned to require submittal of more detailed information. As conditioned, the stormwater design meets the Massachusetts stormwater policy guidelines, and MPS best management practices as required by MPS 2.1.3.3. The Applicant also provided a stormwater maintenance and inspection plan consistent with MPS 2.1.3.6.

Natural Resource Findings:

- NR1. The project entails the redevelopment of the existing facility on a 1.42-acre site and its expansion onto an abutting 1.24-acre parcel. The existing site area, which includes the Cape End Manor building, site drive, lawn, and parking areas, is entirely developed. The abutting parcel consists primarily of previously disturbed grassy areas and contains a cemetery driveway and utility building.
- NR2. Due to the amount of existing disturbance and development on the site, a natural resources inventory (NRI) was not required. No wetlands are located on the site.
- NR3. The site is located within an area mapped by the Massachusetts Natural Heritage and Endangered Species Program (NHESP) as "Priority Habitat" for rare plant and animal species. MPS 2.4.1.4 prohibits Developments of Regional Impact that would adversely affect habitat of local populations of rare wildlife and plants. On December 23, 2005, NHESP issued a letter stating that the proposed project will not result in a prohibited "take" of state-listed rare species; consequently the project is in compliance with MPS 2.4.1.4.
- NR4. As a municipal project, the Cape End Manor DRI is exempt from open space requirements.
- NR5. The proposed project meets the minimum performance standards pertaining to wildlife and plant habitat.

Affordable Housing Findings:

- AH1. MPS 5.1.1 requires that 10% of a project's proposed residential units be affordable units; in this case a total of thirteen (13) affordable units would be required. The applicant has proposed that nine (9) of the eighty (80) independent living apartments be affordable. This is four less than required under the RPP. The Applicant has shown that all of the skilled nursing beds are available to Medicaid-eligible patients and the Applicant anticipates that 60% or more of the skilled nursing beds would be used by Medicaid-eligible patients when the facility is operating. The Commission counts nursing beds as affordable units if they are affordable to individuals at or below 80% of area median income and who are Medicaid eligible and also requires that affordable units be deed restricted in perpetuity. The Applicant has shown that federal and state regulations prohibit any skilled nursing beds from being deed restricted in this manner and therefore despite being available as affordable units, the lack of a deed restriction means they are not considered affordable under the RPP.

The decision is conditioned to require that the skilled nursing facility remain a Medicaid Licensed Facility (defined below in AH6) in perpetuity, and that, should fewer than four (4) of the forty-one (41) skilled nursing beds be used by Medicaid-eligible persons, as indicated by the Massachusetts Department of Public Health Report (defined below in AH6), the applicant shall provide a corresponding number of independent living apartments as affordable to individuals at or below 80% of area median income. The Commission finds that although the project is four units short of meeting the minimum requirement of 10% affordable units, that as the skilled nursing beds are all Medicaid eligible it is likely that the project will result in affordable units and/or beds well in excess of 10%. Furthermore, the conditions of this decision ensure that should fewer than four skilled nursing beds be provided, that a corresponding number of independent living units would be made available as affordable units bringing the total number of affordable units to the required 10%.

Therefore, the Commission finds that:

- i. The Applicant has met its burden of showing that a hardship exists,
- ii. Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- iii. Partially relieving the requirements of MPS 5.1.1 to provide less than 10% affordable housing units is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

AH2. The RPP's definition of affordable housing is "dwelling units available at a cost of no more than 30% of gross household income at or below 80% of the county median income...". The Applicant has projected a rent of \$950 per month for the affordable studio apartments, inclusive of \$85 for utilities and \$40 for an emergency response system, and a projected rent for the one-bedroom apartments of \$1,146 per month, inclusive of \$120 for utilities and \$40 for an emergency response system. These rents satisfy the definitional requirement for affordable housing.

AH3. MPS 5.1.8 states that "*On-site affordable housing units created by this section shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units.*" MPS 5.1.9 states that "*the type (i.e. rental, homeownership), bedroom composition, and unit size of the affordable housing units resulting from Minimum Performance Standards 5.1.1 and 5.1.2 shall be subject to the area's priority housing needs as determined by the Commission in coordination with the Five Year Consolidated Plan and Local Comprehensive Plans.*" In the recently completed Five Year Plan, rental housing for both elderly (one to two person) and small related households (two to four person) was identified as a high priority and need.

To be consistent with these standards, the affordable units would have to be proportionately distributed among the various unit sizes, i.e. a minimum of one affordable studio, five affordable one-bedroom units, and two affordable two-bedroom units. The Applicant is proposing that at least three of the one-bedroom apartments and a maximum of six of the studio apartments will be affordable and that entry fees will only be charged for the market rate units and not the affordable units.

The Applicant has shown that meeting the unit distribution requirements would threaten the project's viability as approximately 92% of the cost of developing the care campus will be funded by the entry fees from the market rate independent living units and conformance with the standards of MPS 5.1.8 and 5.1.9 would result in a loss of approximately \$800,000 in revenue for the project.

Therefore, the Commission finds that:

- i. The Applicant has met its burden of showing that a hardship exists,
- ii. Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- iii. Partially relieving the requirements of MPS 5.1.8 and 5.1.9 to allow the proposed distribution of affordable units is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

AH4. The Applicant has proposed that five of the affordable independent living apartments will be included in Phase 1 of the project, and the remaining four affordable apartments will be included in Phase 2 of the project. This rate and timing of the inclusion of the affordable apartments satisfies MPS 5.1.6.

AH5. The Applicant committed to complying with MPS 5.1.7 agreeing to subject the affordable units to a deed restriction substantially similar to the Commission's Affordable Housing Deed Restriction. The intent of the restriction is to preserve in perpetuity the long-term affordability of the units in order to provide housing opportunities for future low-income households.

AH6. The existing skilled nursing facility and the proposed new skilled nursing facility are currently approved as eligible for Medicaid reimbursement under the state/federal program known as MassHealth. The applicant has indicated that, according to the reports it makes each year to Massachusetts Department of Public Health ("DPH"), over the past eleven years, the average bed usage at the existing facility has been 74% Medicaid/MassHealth. In this decision, this Medicaid/MassHealth eligibility arrangement is referred to as the "Medicaid License," and a facility that has obtained a Medicaid License is referred to as a "Medicaid Licensed Facility."

The applicant has agreed that the skilled nursing facility will remain at all times a Medicaid Licensed Facility. The proposed skilled nursing facility has obtained a Determination of Need from the DPH which permits partial recovery of capital costs by means of a payment per day per bed, provided the facility continues to be Medicaid eligible.

The applicant is required pursuant to 114.2 CMR 6:00 to make a financial report each year to DPH, approximately three months after the end of the calendar year, including in this report the Medicaid/MassHealth utilization rate per day/per bed (the "DPH Report"). The applicant has agreed to provide a copy of this report annually to the Commission and to the Monitoring Agent. The applicant agrees that if the Medicaid utilization rates for the skilled nursing beds as shown on the DPH Report for the prior year fall below four beds (defined as the "Minimum Requirement"), the applicant will provide an additional affordable independent apartment for each affordable skilled nursing bed below the Minimum Requirement to persons at or below 80% of area median income on a one-for-one basis, and that if the skilled nursing facility fails to remain a Medicaid Licensed Facility, the applicant shall provide four (4) additional independent units as affordable to persons at or below 80% of the area median income, all as set forth in condition AH7 below.

- AH7. The applicant will be required to submit an affirmative, fair marketing/selection plan, subject to Commission approval, that describes how the units will be made available to, and rented by, eligible households to be consistent with MPS 5.1.10.
- AH8. The decision is conditioned to require the Applicant to demonstrate that the occupants are income eligible prior to occupancy of the affordable units, as required by MPS 5.1.11.
- AH9. In accordance with MPS 5.2.2, at least two of the affordable units will need to be legally handicapped accessible units.

Transportation Findings:

- T1. As defined by MPS 4.1.3.1, area regional roadways include Bradford Street (Route 6A), Shank Painter Road, Commercial Street, Conwell Street, and Route 6.
- T2. The project is expected to generate 254 new weekday daily trips, 21 new morning peak hour trips, and 22 new evening peak hour trips.
- T3. For redevelopment projects, MPS 4.1.1.1 requires that there be no degradation of safety for pedestrians, bicyclists, or motor vehicle operators or passengers. The development is located on a low volume roadway and the increase in trip generation is moderate. Provisions have been made for pedestrian and bicycle access to the facility and very few crashes have been reported in the area. The existing facility driveway will be modified and another driveway added and safe sight distances will be certified by a professional engineer. Consequently, no degradation of safety is expected.

- T4. MPS 4.1.1.2 requires crash review at locations impacted by 25 or more new peak hour trips. The expected increase in trip generation is below this threshold and thus the project is compliant with this standard.
- T5. MPS 4.1.1.3 requires developments to follow access management guidelines. Generally, the facility's driveways are spaced far from nearby intersections and should not affect them. The driveways are spaced relatively close together and close to other driveways on Alden Street, which is in conflict with generally accepted access management guidelines. However, the driveway spacing is consistent with the spacing of other driveways on Alden Street and throughout downtown Provincetown. Consequently, the project is compliant with this standard.
- T6. MPS 4.1.1.5 requires that no human made objects or lighting interfere with driving conditions and requires all utilities to be placed underground. The project as conditioned will meet the lighting design requirements of the RPP, which include light level maximums and 90-degree lighting cut-off. The development sign will be placed 10 feet back from the roadway and all utilities are located underground. Consequently, the project is compliant with this standard.
- T7. MPS 4.1.1.6 requires development site design to minimize impacts on adjacent roadways and provide safe access for all users. The location of the driveways, site circulation, and parking should not interfere with travel on Alden Street. A sidewalk servicing the building will extend to Alden Street. Also, MPS 4.1.1.6 requires pedestrian and bicycle connections to adjacent properties where appropriate. Although the adjoining recreation fields are a common destination for pedestrians and bicyclists, the large grade change makes access difficult. In addition, a pedestrian staircase connects Alden Street to the ball fields further south, behind town owned property currently serving as the DPW building. Consequently, the project complies with the standard and the Commission finds that direct access at the development site to the recreation fields is not appropriate.
- T8. MPS 4.1.1.7 requires acceptable sight distances at all access/egress locations. Preliminary review of the sight distances shows, that with some modification, sight distances will be sufficient. The decision is conditioned to require certification of acceptable sight distances from a professional engineer before project occupancy and after the driveways are substantially complete.
- T9. MPS 4.1.1.9 requires driveway openings to be limited to 24 feet maximum. The site plan shows both driveways comply.
- T10. MPS 4.1.1.10 requires use of the most appropriate trip generation sources. Trip generation for this project was estimated using the Institute of Transportation Engineer's *Trip Generation* manual, 7th ed. Existing trip generation was estimated based on 61 beds of land use code 620 Nursing Home. Future trip generation was estimated based on 121 occupied units of land use code 255 Continuing Care Retirement Community.

T11. MPS 4.1.2.1 requires developments to reduce daily traffic by 25%, or 64 trips. The Applicant requested relief from the analysis of the actual trip reduction and from any additional mitigation. The project is located in a densely populated downtown where, according to census figures, approximately 50% of the population commutes to work by means other than a single occupant vehicle. In addition, all common destinations, including town hall, library, museums, schools, and shopping are located within walking distance. Summer seasonal public transit is located nearby and year-round service is expected to start in 2006. Ferry connections to Boston are also in the downtown area. Furthermore, the project includes a trip reduction program for employees, residents, and visitors and will be required to finalize a trip reduction information package before project occupancy. The Commission finds that the combination of the type of use, the location and the available alternative modes of transit in the vicinity, that it is likely that the project will reduce the daily traffic by 25%. Full compliance with the requirement to analyze the actual trip reduction and provide additional mitigation would result in additional costs and delay that would diminish the benefits of the project. Therefore the Commission finds that:

- i. The Applicant has met its burden of showing that a hardship exists,
- ii. Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- iii. Partially relieving the requirements of MPS 4.1.2.1 to not require an analysis of the actual trip reduction and provide additional mitigation is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

T12. MPS 4.1.2.5 requires transportation consideration and accommodation for all users in site planning, and creation of links for bicycle and pedestrian systems where appropriate. MPS 4.1.3.9 requires provision of rights-of-way along property frontage for expected bicycle and pedestrian needs. As noted in finding T7, a sidewalk extends to Alden Street and other connections across the property were considered but rejected as redundant and inappropriate due to grade changes. In addition, a sidewalk right-of-way was considered along the project frontage but because of the low traffic volumes on Alden Street and narrow right-of-way for Alden Street, town officials indicated construction of a sidewalk on the street was highly unlikely.

T13. MPS 4.1.2.6 requires parking to be limited to town zoning requirements. The site will be built with 74 parking spaces including 41 indoor spaces, which meets, but does not exceed, town requirements and therefore is consistent with MPS 4.1.2.6.

T14. MPS 4.1.3.2 requires Level of Service analysis at all access/egress points onto the regional roadway system. The access to the regional roadway system for the project is at the intersection of Alden Street with Bradford Street and through Jerome Smith Road to Shank Painter Road and through Cemetery Road to Conwell Street. The Applicant has requested

relief from this requirement due to the cost of collecting data and analyzing these locations. MPS 4.1.3.2 also requires new driveways on regional roadways to meet level of service C. Although a new driveway is proposed for the facility, it is not on a regional roadway. Full compliance with the requirement to collect data and analyze the level of service at access/egress points onto the regional roadway system would result in additional costs and delay that would diminish the benefits of the project. Given the moderate increase in peak hour traffic expected from the facility, the Commission finds that:

- i. The Applicant has met its burden of showing that a hardship exists,
- ii. Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- iii. Partially relieving the requirements of MPS 4.1.3.2 for collecting data and analyzing the level of service at access/egress points onto the regional roadway system is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

T15. MPS 4.1.3.4 requires mitigation of all peak hour impacts. The Applicant has requested relief from this requirement due to the cost to analyze and mitigate the impacts. Compliance with the requirement to analyze and mitigate all peak hour trips would result in additional costs and delay that would diminish the benefits of the project. Given moderate increase in peak hour traffic expected from the facility, the Commission finds that:

- i. The Applicant has met its burden of showing that a hardship exists,
- ii. Literal enforcement of the Minimum Performance Standards would be a hardship for the Applicant,
- iii. Relieving the requirements of MPS 4.1.3.4 for analyzing and mitigating all peak hour trips is the minimum relief required to alleviate the hardship, and,
- iv. The relief does not nullify or substantially derogate from the intent of the Act nor will it result in a detrimental impact to the public good.

Economic Development Findings:

ED1. The RPP requires that economic data be provided to allow the Commission to “evaluate the economic impacts of proposed developments, taking into account net job creation, fiscal impact, employee benefits, housing needs, and services and/or products provided”(MPS 3.1.1.). The applicant has provided all the information required in the Economic Development Technical Bulletin (#04-002). Review of the information provided by the applicant indicates that the net economic and fiscal impact will be positive. The project is consistent with several of the Other Development Review Standards under Goal

3.1 (ODRP 3.1.3, 3.1.4, 3.1.5, 3.1.8 and 3.1.9), which are considered benefits of the project.

- ED 2. MPS 3.2.2 states that *“If an applicant does not propose to locate in a Growth/Activity Center or Growth Incentive Zone, the applicant shall justify why an alternative site in a Growth/Activity Center or Growth Incentive Zone was not selected.”* Provincetown has not formally identified growth centers in its Local Comprehensive Plan and no Growth Incentive Zone currently exists. Therefore, compliance with this standard in Provincetown is not possible, however, the project is located within walking distance to downtown Provincetown, and thus is consistent with the intent of the standard. The project is also consistent with several Other Development Review Standards (ODRP 3.2.3, 3.2.4 and 3.2.5), which are considered benefits of the project.
- ED 3. The project is consistent with Goal 3.3 which is to encourage the creation and diversification of year-round employment opportunities and several ODRP (ODRP 3.3.1, 3.3.2 and 3.3.3) in that the project provides permanent, well-paying year-round jobs with benefits, training, and career opportunities, provides financial support for job training or affordable housing benefits to their workers and employs regional contractors and suppliers.

Solid Waste Findings:

- SW1. MPS 4.2.1.1 requires the applicant to address the handling of solid wastes, recyclables and construction/demolition waste. Massachusetts solid waste regulations (310 CMR 19.017(3)) prohibit the incineration or landfilling of metal, glass and plastic containers; newspapers; cardboard; office paper; and yard waste such as leaves, grass clippings and brush. The applicant’s letter dated December 13, 2005 provides information that adequately describes the facility’s recycling program that will serve to divert such material away from disposal facilities.
- SW2. MPS 4.2.1.2 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 4.2.1.2. Per the standard, the applicant’s letter dated December 13, 2005 adequately documents how construction wastes associated with building demolition and construction will be recycled or disposed of.
- SW3. MPS 4.2.1.3 requires the applicant to allocate adequate storage space for interim storage of recyclable materials. The Care Campus will accommodate a 41-bed skilled nursing facility and 80 assisted/independent living units. The applicant has shown on the plans dated December 23, 2005 that the design of the Campus has adequate space for storage, processing and handling of recyclables in areas where service vehicles can access them.

Hazardous Materials/Wastes Findings:

- HM1. According to the 2002 RPP maps, the project site is not located in an existing or proposed Wellhead Protection District/Zone II, or in an area mapped as Potential Public Water Supply. The Applicant has also confirmed that the existing on-site diesel emergency

generator will be replaced with a new emergency generator fueled by compressed gas, which is a project benefit.

- HM2. MPS 4.3.1.1. requires “*reasonable efforts to minimize...hazardous waste generation through source reduction, reuse, material substitution, employee education and recycling.*” This standard applies to both the construction and operational phases of a project. To meet the requirements of MPS 4.3.1.1, the decision is conditioned to require the submittal of protocols for building demolition and construction activities as they are developed. The application describes the facility’s existing biomedical management protocols and the Applicant has committed to update these protocols for the new facility, including a program to discontinue use of medically-related mercury-containing devices (thermometers, thermostats, blood pressure cuffs).
- HM3. MPS 4.3.1.2 requires “*compliance with Massachusetts Hazardous Waste Regulations, 310 CMR 30.00.*” This standard applies to both the construction and operational phases of a project. In a letter dated December 13, 2005, the Applicant provided a narrative from Delphi Construction that states a spill containment mat will be used during fueling of construction equipment. This narrative also states absorbent materials will be stored on site to respond to fuel spills. This information is consistent with MPS 4.3.1.2.
- HM4. In a letter dated December 13, 2005, the Applicant has committed to conducting a pre-demolition survey for the presence of asbestos-containing materials, PCB-containing capacitors, lighting ballasts and devices, mercury-containing devices, lead-based paint and other hazardous materials, and that any hazardous materials or wastes will be removed by a licensed remediation company and will be disposed of per the Massachusetts Hazardous Waste regulations and be consistent with MPS 4.3.1.2.
- HM5. The proposed new facility will generate a variety of wastes that are regulated in Massachusetts as either hazardous or Universal Wastes, and cannot be disposed of in general trash. These include fluorescent bulbs, electronic equipment, used computers, cathode ray tubes, televisions, and possibly wastes from the beauty salon, therapy area and arts programs. The decision is conditioned to require the Applicant to develop protocols to manage the Universal or hazardous wastes that may be generated from the new facility.

Noise Findings:

- N1. MPS 2.6.1.1. requires that DRIs “*shall be in compliance with...DEP’s Air Pollution Control Regulations.*” These regulations deal with noise attenuation. As the existing and proposed facility involves noise-sensitive receptors, the Applicant has already considered sound/vibration attenuation as part of the project’s design. Roof top equipment will be located on the flat roof portion of the structure that run down the center of the building wings, these areas are depressed between five and six feet to attenuate noise. All equipment will be vibration insulated. The Applicant also needs to develop a protocol to deal with concerns expressed by abutters, neighbors or the community related to construction and facility noise.

Community Character Findings:

- CC1. The proposed project is within the boundaries of the Provincetown Local Historic District, which is listed on the State and National Registers of Historic Places. The project is subject to review by the Provincetown Historic District Commission.
- CC2. The Massachusetts Historical Commission (MHC) reviewed the proposed project and, in a letter dated December 9, 2005, determined that the proposed project would have “no adverse effect” on the Provincetown Historic District.
- CC3. MPS 6.2.10 requires that “*exterior lighting in new development or redevelopment shall comply with standards including design, light source, total light cutoff, and foot-candle levels defined in the Exterior Lighting Design Standards, Technical Bulletin 95-001.*” The application includes manufacturers’ technical cuts for six proposed pole-mount fixtures and a 9/1/05 plan (E-1.0) showing maintained foot-candle levels that demonstrate that the proposed pole lights are consistent with the Technical Bulletin’s standards. A December 13, 2005 letter also describes additional site lighting. Commission staff discussed the site lighting with the project architect on December 28, 2005. Based on this discussion, site lighting may include pole mounts, bollards, sopher lights, wall mounts, landscape lights and lights to illuminate four employee parking spaces near a proposed service road but have not yet been finalized. The decision is conditioned to require more detailed technical information to be submitted to the Commission staff review and approval when the overall project exterior lighting design had been finalized.
- CC4. MPS 6.2.4 requires that all new development within historic districts be “*designed to be consistent with the character of the area and to retain the distinctive features of the neighborhood. Elements of the distinctive area's character such as building mass, height, scale, roof shape, roof pitch, building materials, and proportions between doors and windows shall be maintained.*” For buildings with a footprint greater than 10,000 square feet, the RPP (MPS 6.2.5) requires that “*the massing, façade, and roof configuration shall be varied in order to reduce the apparent mass of the building and shall include a minimum of 10 feet of set-back or projection in the façade footprint for every 50 feet of façade length.*” The height and scale of the proposed structure is consistent and harmonious with the surroundings and successfully reduces the apparent bulk and mass of the structure in a manner consistent with MPS 6.2.4 and 6.2.5. The design incorporates variation in the façade and roof height by using overhangs, porches and numerous dormers and by containing the upper level entirely within the sloping roof of the building. The design also incorporates the required 10 foot of variation for every 50 foot of façade and will be constructed with several wings that break down the building into smaller masses. Each of the wings is designed with a double gable that allows a steep-pitch roof while reducing the overall height of the building. The building will be finished using asphalt and wood shingles that is consistent with the Commission’s design guidelines.
- CC6. MPS 6.2.5 allows redevelopments to expand the footprint of a building up to 50,000 square feet without requiring full screening of the building. The proposed building will have a footprint of 41,503 square feet and therefore full screening is not required. In addition, the

proposed landscape plantings exceed the amount vegetation currently existing on-site, and thus improve the appearance of the property and therefore staff believe that the conceptual landscape plan is consistent with the Community Character standards of the RPP.

- CC7. MPS 6.2.9 requires submittal of a landscape plan providing detailed information about proposed plantings and a landscape maintenance plan that includes a maintenance contract and/or irrigation system as appropriate. The decision is conditioned to require the submittal of a maintenance contract that should include provisions for watering, fertilization, replacement of vegetation that dies, re-seeding of lawn and naturalized areas, maintenance of any irrigation system installed, pruning, staking and guying of trees, mulch, and cleanup and repair of eroded areas.

CONCLUSION

Based on the findings above, the Commission hereby concludes:

- 1) That the probable benefits of the proposed development outweigh the probable detriments.
- 2) The Applicant has demonstrated that the proposed project is a Project of Community Benefit as defined under Section 1(c) of the Enabling Regulations. The Cape Cod Commission finds that a Hardship Exemption is appropriate and that the Applicant has fulfilled its burden to show that a hardship exists in conforming with all of the requirements of the RPP, in particular MPS 4.1.2.1, 4.1.3.2, 4.1.3.4, 5.1.1, 5.1.8 and 5.1.9. A literal enforcement of the provisions of the Act would require; the analysis of the actual trip reduction and additional mitigation to reduce trips; collecting data and analyzing the access points onto the regional roadway system; analysis and mitigation of any peak hour trip impacts; the provision of thirteen deed restricted affordable units and the distribution of the affordable housing units proportionately between the unit types that would represent a substantial financial hardship to the Applicant. Relief from these requirements may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. The relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship.
- 3) The project does not fall within a District of Critical Planning Concern, and is consistent with the local development bylaws and the Provincetown Local Comprehensive Plan.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption (Project of Community Benefit) application of the Town of Provincetown for the Cape End Care Campus, provided the following conditions are met:

CONDITIONS

General Conditions:

- G1. All work shall be constructed in a manner consistent with the following plans:
- Plans prepared by Coastal Engineering Company dated October 14, 2005 and revised December 23, 2005 (Sheets SD-1, SD-2 and SD-3)
 - Plans prepared by HBLA Inc. October 14, 2005 and revised December 23, 2005

(Sheet L-1)

- Plans prepared by EGA Architects dated October 14, 2005 and revised December 23, 2005 (Sheets E-1.0, A-1.0, A-1.1 and A-1.2)
- Plans prepared by EGA Architects dated October 14, 2005 (Sheet A-1.3)

Any deviation during construction from the approved plans, including but not limited to changes to the building design, building location, lighting, landscaping or other site work, shall require approval by the Cape Cod Commission through a modification process, pursuant to Section 12 of the Commission's Enabling Regulations. The applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

- G2. This DRI Hardship Exemption 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.
- G3. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.
- G4. The Applicant shall obtain all necessary state and local permits for the proposed project.
- G5. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.
- G6. Prior to issuance of a building permit for any proposed construction, the Applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with this decision and/or information submitted as part of the Hardship Exemption review. If the final plans approved by local boards are inconsistent with this decision and/or supporting information, then they shall be reviewed subject to Section 12 of the Cape Cod Commission Enabling Regulations, as amended, and which are in effect at the time of the review.
- G7. Prior to issuance of a demolition permit or building permit for each phase of construction, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of a Preliminary Certificate of Compliance have been met. The Commission may issue a Preliminary Certificate of Compliance for each phase of construction described in Finding G4 and the Project Description of this decision.
- G8. Prior to receiving either a temporary or Final Certificate of Occupancy from the Town of Provincetown for each phase of construction, and/or prior to receiving either a temporary or Final Certificate of Occupancy for completion of the building, the Applicant shall obtain a Final Certificate of Compliance from the Commission. The Commission may issue a

Final Certificate of Compliance for each phase of construction described in Finding G4 and the Project Description of this decision.

- G9. The Applicant shall provide a minimum of 30 days notice prior to seeking issuance of each certificate associated with this decision from the Commission. 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 Applicants understand that the Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision. The Applicants agree to allow Cape Cod Commission staff to enter onto the property, which is the subject of this decision for the purpose of determining whether the conditions contained in the decision are met.
- G10. The Applicant shall demonstrate to the Commission that a copy of this decision has been provided to the general contractor prior to the start of construction.
- G11. All conditions pertaining to this decision shall remain in effect regardless of any subsequent change in ownership of the property. The term "Applicant" shall be applicable to all legal successors of the current owner of the property, including but not limited to New England Deaconess Association, and shall be complied with to validly execute the terms of this decision.

Water Resources Conditions:

- WR1. Prior to a Preliminary Certificate of Compliance for Phase 1, the Applicant shall provide more detailed information regarding the proposed rain gardens for Commission staff review and approval, including plans, cross-sections and details.

Affordable Housing Conditions:

- AH1. The Applicant shall provide nine (9) of the eighty (80) independent living apartments as affordable to households at or below 80% of area median income. Of the nine affordable apartments, at least three of the one-bedroom units shall be affordable and a maximum of six of the studio apartments shall be affordable. The income limits are established by the U.S. Department of Housing and Urban Development, as may be adjusted from time to time, for Barnstable County- Non Metro Area.
- AH2. For the affordable independent living apartments, no entry fee will be charged. The base rents, exclusive of utilities and the emergency response network expense, shall not exceed 30% of the income of a household at 80% of area median income as established by the U.S. Department of Housing and Urban Development, as may be adjusted from time to time, for Barnstable County- Non Metro Area. The utility allowance will be based upon that of either the Barnstable County Section 8 program administered by the Housing Assistance Corporation or the Provincetown Housing Authority. For the affordable studio apartments, the maximum base rent shall be determined by using the income of a one-person household at 80% of area median income. For the affordable one-bedroom

apartment(s), the maximum base rent shall be determined by using the average of the incomes of a one and two person household at 80% of area median income.

- AH3. The applicant shall maintain a Medicaid License (or a license under any similar program that may supplant Medicaid/MassHealth in the future) for the skilled nursing facility in perpetuity. The applicant shall make additional independent living apartments affordable to individuals at or below 80% of area median income if the number of skilled nursing beds falls below the Minimum Requirement, as set forth in condition AH7 below.
- AH4. Prior to the issuance of a Preliminary Certificate of Compliance for Phase 1, the Applicant shall provide to the Commission copies of the following:
1. A list of the location and type of the five affordable apartments to be included in this phase.
 2. Final construction specifications and plans identifying the location of the two handicapped accessible affordable units.
 3. An affirmative, fair marketing and tenant selection plan that has been approved by Commission staff. The selection plan shall include the policy for balancing eligible internal transfers and external applicants when filling subsequent vacancies in the affordable units. The tenant selection plan may also include a preference for Barnstable County residents (defined as a person who lives, works, grew up, or has immediate family in a town in the County).
 4. Recorded deed restriction requiring the affordability of the nine (9) units as described in Conditions AH1 and AH2. Prior to the deed restriction being recorded, the Applicant shall submit a draft of the deed restriction for review and approval by Commission Counsel.
 5. A monitoring agreement, approved by Commission staff that is executed between the Applicant and an organization with experience in income and rent certifications. This monitoring agreement shall provide for a monitoring agent to prepare and provide for the submission of an annual monitoring report to the Applicant and to the Cape Cod Commission. The monitoring agent shall report on the Applicant's compliance with conditions AH1, AH2, AH3 and AH7. The report shall list each unit occupied within the facility by an income eligible household, the household's income, and the rents charged for the affordable apartments. The agreement shall further provide for the payment of monitoring fees to the selected contractor by the Applicant for preparation of the required monitoring reports. The agreement shall identify the schedule or timing for the payment of the fee and the completion of the report.
 6. A copy of the project's Medicaid License, indicating its effective date and duration.
- AH5. Prior to the issuance of a Preliminary Certificate of Compliance for Phase 2, the Applicant shall provide to the Commission copies of the following:

1. A list of the location and type of the four affordable apartments to be included in this phase.
 2. Final construction specifications and plans.
 3. An affirmative, fair marketing and tenant selection plan that has been approved by Commission staff. The selection plan shall include the policy for balancing eligible internal transfers and external applicants when filling subsequent vacancies in the affordable units. The tenant selection plan may also include a preference for Barnstable County residents (defined as a person who lives, works, grew up, or has immediate family in a town in the County).
- AH6. Prior to the issuance of a Final Certificate of Compliance for each phase, the applicant shall deliver to the Cape Cod Commission a report from the monitoring agent that lists any households who have been selected for the affordable units and that confirms that the households meet the affordability requirements set forth within this decision.
- AH7. The applicant shall provide to the Commission and the Monitoring Agent annually a copy of DPH Report covering each calendar year no later than July 1 of the subsequent year. The applicant agrees that if the Medicaid utilization rates for the skilled nursing beds for the prior year as shown on the DPH Report fall below four beds on average (the "Minimum Requirement"), the applicant will provide an additional independent apartment (the "Additional Affordable Units") for each skilled nursing bed that falls below the Minimum Requirement. Thus, if the Medicaid utilization rate is below three beds, the applicant shall provide two Additional Affordable Units as affordable to persons at or below 80% of area median income; if the Medicaid utilization rate is below two beds, the applicant shall provide three Additional Affordable Units as affordable to persons at or below 80% of area median income three units, and if the Medicaid utilization rate is below one bed, the applicant shall provide four Additional Affordable Units. The applicant also agrees that if the skilled nursing facility fails to remain a Medicaid Licensed Facility, the applicant shall provide four (4) Additional Affordable Units as affordable to persons at or below 80% of the area median income. The Additional Affordable Units shall be provided as they become available (available shall be defined as the next vacant market-rate studio or one-bedroom). However, if multiple units are available at the same time, the Additional Affordable Units may be studios or one-bedroom units, at the discretion of the Applicant. If the utilization rate (as reported in the subsequent DPH Report) increases up to the Minimum Requirement, the applicant may reduce the number of Additional Affordable Units as they become available, provided that the rights of the existing tenants of the Additional Affordable Units are not disturbed.

Transportation Conditions:

- T1. Prior to the Preliminary Certificate of Compliance for Phase 1, the applicant shall submit a plan of the signage to replace the warning sign north of the facility's driveways. This signage plan shall comply with the Manual of Uniform Traffic Control Devices (MUTCD). Prior to the Final certificate of compliance for Phase 1, existing signage north of the

facility on Alden Street warning of the facility shall be replaced with MUTCD compliant signage.

- T2. Prior to the issuance of a Final Certificate of Compliance for Phase 2, but after the relocated driveway and new driveway are substantially complete, the applicant shall provide to the Commission staff a letter describing driveway sight distances in detail and certifying that the sight distances for both driveways meet the American Association of State Highway Transportation Officials requirements for safe stopping sight distances. The letter shall be signed and sealed by a Massachusetts registered Professional Engineer.
- T3. The applicant shall implement a trip reduction program for all employees, residents, guests, visitors, and out-patients in accordance with the program described in Attachment 7 of the Addendum to DRI Application received by the Commission on December 28, 2005. Prior to the issuance of the Final Certificate of Occupancy for Phase 1, the applicant shall submit for Commission staff approval a package describing the trip reduction program (including handout information regarding specific services) and the applicant shall install the bulletin board with posted trip reduction information as proposed in the trip reduction program. The Applicant shall distribute trip reduction packages to all employees and residents upon occupancy of the facility or as new residents move into the facility and shall update the package at least once a year (or as needed to incorporate changes in the program) and distribute it periodically to all employees and residents.

Solid Waste Conditions:

- SW1 Prior to the issuance of a Final Certificate of Compliance, the applicant should provide a narrative that details how the Campus will provide recycling facilities for residents as required in MPS 4.2.1.3.

Hazardous Materials Conditions:

- HM1. Prior to issuance of a Preliminary Certificate of Compliance for each phase, the Applicant shall submit for Commission staff review and approval updated biomedical management or other protocols to address waste minimization during building demolition and construction, consistent with MPS 4.3.1.1. This shall include a program to discontinue use of medically-related mercury-containing devices (thermometers, thermostats, blood pressure cuffs).
- HM2. Prior to issuance of a Preliminary Certificate of Compliance for each phase, and prior to commencement of any demolition activities, the Applicant shall submit for the Commission's files a copy of a pre-demolition survey showing that buildings have been surveyed for the presence of asbestos-containing materials, PCB-containing capacitors, lighting ballasts and devices, mercury-containing devices, lead-based paint and other hazardous materials.
- HM3. Prior to issuance of a Final Certificate of Compliance for each phase, the Applicant shall submit for Commission staff review and approval a program to handle, store and dispose of used fluorescent bulbs, used electronic equipment, used computers, cathode ray tubes, televisions, and any other Universal or hazardous wastes generated on site.


Noise Conditions:

- N1. Prior to issuance of a Preliminary Certificate of Compliance, and prior to commencement of any demolition activities, the Applicant shall submit a copy of a protocol to deal with concerns expressed by abutters, neighbors or the community related to construction and facility noise.

Community Character Conditions:

- CC1. All exterior lighting for the project shall conform to the requirements of MPS 6.2.7, MPS 6.2.11 and Technical Bulletin 95-001. Prior to issuance of a Preliminary Certificate of Compliance for any phase the Applicant shall submit for Commission staff review and approval information on all exterior lights, including lighting for proposed signage. No internally illuminated or flashing signs shall be permitted. This information shall include but not be limited to proposed lighting technical cut sheets, manufacturers' information and a revised foot-candle plan.
- CC2. Prior to issuance of a Final Certificate of Compliance for each phase, Commission staff shall conduct a site visit to verify conformance of the exterior lighting design with MPS 6.2.7, 6.2.11 and Technical Bulletin 95-001.
- CC3. Prior to any construction activity for the project and the issuance of the first Preliminary Certificate of Compliance, the applicant shall submit a final landscape plan for staff review and approval. Prior to issuance of the first Final Certificate of Compliance, landscaping shall be installed as shown on the approved landscape plan. The landscape plan should clearly delineate landscaping to be installed in each of the phases.
- CC4. Prior to any construction activity for the project and the issuance of the first Preliminary Certificate of Compliance, the applicant shall submit a draft maintenance contract for 3 growing seasons (a growing season is defined as the period between March 15 and October 31) for staff review and approval. Prior to installation of any plant material and issuance of the first Final Certificate of Compliance, the applicant shall submit an executed maintenance agreement consistent with the approved draft.
- CC5. If plant material installed in an earlier phase of project construction is substantially damaged or killed (as determined by Cape Cod Commission staff) during later phases of construction, it shall be replaced in kind prior to the issuance of any subsequent Certificates of Compliance and subsequent to the Commission staff's notice to the Applicant that the plant material needs to be replaced.

The Cape Cod Commission hereby approves with conditions the application of the Town of Provincetown as a Development of Regional Impact Hardship Exemption pursuant to Section 23 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Cape End Care Campus in Provincetown, MA.



Alan Platt, Chair


1/12/06

Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 12th day of January, 2006, before me, the undersigned notary public, personally appeared Alan Platt, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Notary Public, Commonwealth of Massachusetts

My commission expires: 10/13/11