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CAPE COD  
COMMISSION

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**MINOR MODIFICATION TYPE #1**

DATE: JANUARY 22, 2016

TO: DPF MASHPEE LLC (APPLICANT/OWNER)  
C/O ELIZA COX, ESQ.  
NUTTER MCCLENNEN & FISH LLP  
1471 IYANNOUGH ROAD  
P.O. BOX 1630  
HYANNIS, MA 02601

PROJECT: SOUTH CAPE VILLAGE (MOD 02030)

LOCATION: ROUTE 28 (FALMOUTH ROAD) & DONNA'S LANE, MASHPEE

TITLE INFORMATION: BCRD BOOK 29191 PAGE 94/  
BARNSTABLE LAND COURT DOC NO. 1,266,509

**SUMMARY**

Pursuant to Section 13 of the Cape Cod Commission (Commission) Enabling Regulations, the Development of Regional Impact (DRI) decision dated December 14, 2000, which was subsequently modified several times, including two major modifications dated April 10, 2003 and March 31, 2005 (collectively, the "DRI Permit"), for the above-referenced Project is hereby amended as a Minor Modification Type #1 to allow *de minimus* changes to the approved project plans as discussed herein. The term of the DRI decision was extended for five years to March 2021 by decision of the Commission's Committee on Planning and Regulation on October 1, 2015.

All findings and conditions attached to the original decision and subsequent modifications continue to apply except as modified herein.

## DISCUSSION

The DRI Permit approved construction of up to 160,000 square feet of shopping center space in designated building footprint areas, together with associated landscaping, parking, drainage and other site and transportation improvements.

The Commission received a request from Eliza Cox, Esq. of Nutter McClennen & Fish LLP as agent, on behalf of DPF Mashpee LLC, seeking to demolish existing Building F1, which contains approximately 3,000 square feet of gross floor area, and construct additional parking in the general area of the footprint of Building F1 area, as well as other site improvements, and accordingly, to modify the Decision.

The Mashpee Planning Board approved the proposed site changes at the local level by Special Permit Modification decision dated October 7, 2015.

The Owner/Applicant contends that the design, layout and location of Building F1 renders it undesirable and essentially unusable to potential tenants. The prior owner had offered space within Building F1 rent free for one year in an effort to encourage small businesses to locate in the center. The businesses either did not survive the year or were unwilling to pay rent when the year was up. In addition, they did not keep regular business hours and therefore did not contribute any retail vitality to the center. As a result, the building has stood empty for some time. Further, the applicant maintains that removal of this non-functional, vacant building will open access and visibility to existing businesses with more vitality.

14 new parking spaces are proposed in the footprint of Building F1. The applicant maintains that parking in this area of the site is in high demand and that these additional spaces are needed and warranted. A new van-accessible handicap parking space is also proposed in this area. Based on the detailed tenant breakdown and local zoning requirements, a total of 775 parking spaces is within the range of what would be required by the Town depending on the future uses of the vacant space and is appropriate given current site demands.

The applicant is not proposing to add any new exterior lighting fixtures. Some existing light fixtures are proposed to be re-located. The applicant submitted a photometric plan with its modification request, which is consistent with relevant RPP standards and the existing Decision.

The proposed removal of the existing small building F1 will not have a significant impact on the site development's character because the building has a narrow profile and the newly visible building to the rear has an appropriately detailed roofline and façade. The proposed site changes preserve the pedestrian amenities, including the prominent pedestrian route through the development. Proposed landscaping is adequate to buffer the parking areas from the roadway, and the pedestrian area from the parking lot once the building is removed.

As a result of the demolition, there will be no increase in water use or wastewater generation. Though the amount of impervious surface will remain the same, the manner in which stormwater is captured and managed in this particular area will change.

The proposed DRI modification is subject to MPS 2.1.1.6 of the RPP, adopted Nov. 1996, requiring the use of best management practices, such as vegetated swales, to minimize runoff and maximize water quality treatment. The current stormwater management system already utilizes a constructed wetland and vegetated swale to treat stormwater runoff from onsite pavement.

The project site is located within the Mashpee River subembayment watershed, lying within the larger watershed to Popponesset Bay, which is a nitrogen-impaired embayment with an established TMDL. MEP technical reports indicate that a 79% reduction in total watershed nitrogen load is needed from the Mashpee River watershed, specifically. In calculating nitrogen loading from the project site, nitrogen contributions from paved areas is slightly larger than loading from roof areas. Therefore, the conversion of the F1 building footprint to a paved parking area results in an increase (though nominal) in nitrogen loading attributed to the site.

According to the Water Resources Condition #3 of the Phase 1 Modification Decision MODO2030 (modified from original DRI Decision #TR97007), it is noted that: *“An annual review of wastewater treatment performance shall be provided to the Commission within 30 days of subsequent anniversaries of this first review. Identified excess nitrogen loads shall be appropriately addressed prior to Commission approval of any project modifications.”* In accordance with the aforementioned DRI condition and the approval granted hereunder, the Applicant shall submit wastewater treatment performance reports to Commission staff for the past three years of operation (2013-2015), which have not yet been submitted, and submittal of performance reports to the Commission should resume on a monthly performance reports basis simultaneous with regular submittals to DEP in fulfillment of the facility’s groundwater discharge permit requirements.

## **CHANGES TO THE DRI DECISION**

The Decision is hereby modified to allow for the proposed work and site changes described herein, which shall be done in accordance with the following plans, which are hereby incorporated by reference into the Decision, as the context allows, either to substitute for or supplement prior approved project plans.

- Photometric Plan, South Cape Village Re-design, Site Lighting, dated 10/ 19/2015, prepared by V/ Visual
- Site Construction Plan Set, entitled *Demolition of Building F1 at South Cape Market Place, Mashpee, Massachusetts, prepared for DPF Mashpee, LLC*, by Baxter Nye Engineering & Surveying, consisting of sheets Co.0, C1.0, C2.0, C2.1, C6.0 & C6.1, all with revised dates of 10/06/ 15, and sheets C3.0, C4.0, & C5.0, all with revised dates of 1/05/16.

*SEE NEXT PAGE FOR SIGNATURES*

**Signatures**

Executed this 22nd day of January 2016.

Kristy Senatori  
Signature

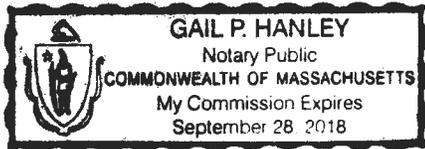
Kristy Senatori, Deputy Director  
Print Name and Title

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

January 22, 2016

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



SEAL

Gail P. Hanley  
Notary Public:

My Commission Expires: 9-28-18