CAPE COD COMMISSION

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Date: August 7, 2008

To: Attorney Patrick M. Butler
Nutter, McClennen & Fish
1513 Iyannough Road
P.O. Box 1630
Hyannis, MA 02601-1630

From: Cape Cod Commission

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

Applicant: John Paulding, Trustee
Makedo Realty Trust

Project: Construction of 20,000 square foot commercial building on Lot 31 of Mashpee Industrial Park

Location: 64 Industrial Drive, Mashpee, MA

Project #: HDEX # 07016

Book/Page: Book: 13048 Pages: 134, 141, 143 and 145
Plan Book 411 Page 73

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Hardship Exemption application of John Paulding, Trustee of Makedo Realty Trust, (Applicant) for construction of a 20,000 square foot commercial building on Lot 31 in the Mashpee Industrial Park, located at 64 Industrial Drive, Mashpee, 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 August 7, 2008.

PROJECT DESCRIPTION

The proposed project consists of construction of 20,000 square foot commercial building with internal bays on a 1.91-acre vacant lot at 64 Industrial Drive in Mashpee. The lot is zoned I-1 (Industrial). Industrial Drive is an existing subdivision road accessed off Route 28, and the site is currently wooded. The proposed project will be a prefabricated metal building with colored metal panels and a roof. It has garage-style roll-up access doors, standard size entry doors, and a small window provided for each tenant space.

PROCEDURAL HISTORY

The project site (Lot 31) is located within the Mashpee Industrial Park (Park). It is one of the lots that were subject to the Mashpee Industrial Park Development Agreement (Development Agreement) entered into by and between the Commission and the Mashpee Industrial Park Trust on April 17, 1997.

General Condition 6 of the Development Agreement states that the "*term of this agreement shall be ten (10) years.*" Therefore the Development Agreement expired on April 17, 2007.

A combined Jurisdictional Determination/Hardship Exemption application relative to Lot 31 was filed on July 23, 2007. In a letter dated April 10, 2008, Nutter, McClennen & Fish requested that the Jurisdictional Determination portion of the application be withdrawn. The Commission voted on May 15, 2008 to accept withdrawal of the Jurisdictional Determination application. The remaining Hardship Exemption (HDEX) application was deemed complete on June 20, 2008.

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 July 9, 2008. At this hearing, the Subcommittee voted unanimously (5-0) to hold a Subcommittee meeting on July 14, 2008 beginning at 9:00 AM at the Commission's office to deliberate on the project. At the July 14, 2008 meeting, the Subcommittee voted unanimously (3-0) to direct staff to draft a written decision for their review. The Subcommittee also voted unanimously (3-0) to hold a Subcommittee meeting on July 28, 2008 at 9:00 AM at the Commission's office to deliberate on the project. At the July 28, 2008 meeting, the Subcommittee reviewed and made changes to a draft written decision. The Subcommittee voted unanimously (5 to 0) to recommend to the full Commission that the project be granted a Hardship Exemption, to incorporate findings about the project's probable benefits into the draft written decision, and to authorize the Subcommittee Chair to review the final draft written decision. A final public hearing was held before the full Commission on August 7, 2008, where the Commission voted to grant the Hardship Exemption request subject to conditions.

MATERIALS SUBMITTED FOR THE RECORD

By Applicant:

Letter and attachments, Nutter, McClennen & Fish (Nutter), Hardship/Jurisdictional Determination (HDEX/JD) application	7/23/07
Nutter, additional application materials	8/1/07
Nutter, letter and Massachusetts Historical Commission form	8/27/07
Nitrogen loading calculations and groundwater sampling results	12/5/07
Nutter, additional application materials	1/18/08
Letter, Nutter, to Mashpee Town Planner, open space issues	3/27/08
Letter, Nutter, additional application materials, fees, withdrawal of JD	4/11/08
Copies of fee checks	4/11/08
Letter, Nutter, discussion of hardship request	5/2/08
Letter, Nutter, recording of deed to off-site open space	5/30/08
Letter, Nutter, copies for Subcommittee public hearing	6/13/08
Project chronology (one sheet)	7/9/08
E-mail, Attorney Cox to Glenn Cannon, transportation issues	7/14/08
E-mail, Attorney Cox to Gabrielle Belfit, w/attchs., water resources issues	7/23/08
Letter, Nutter, proposed findings	7/28/08
Proposed project benefits (one sheet)	7/28/08
E-mail, Attorney Cox, comments, draft transportation findings/conditions	7/29/08
E-mail, Attorney Cox, draft landscape plan changes	7/30/08

By Commission:

Letter, to Nutter, combined application incomplete	7/26/07
E-mail, to staff, meeting on project	7/26/07
Phone Log, discussion of application materials	7/30/07
E-mail, to Attorneys Cox and Butler, application materials	8/6/07
Phone Log, conversation with Attorney Cox, application	8/6/07
Memo, to Commission, Subcommittee on Jurisdictional Determination	8/8/07
Fax cover sheet, to Attorney Cox, Memo on Jurisdictional Determination	8/15/07
E-mail to Attorney Cox	8/27/07
Copy, Commission Agenda	8/23/07
E-mail to Attorney Cox	12/6/07
Fax, to Attorney Cox, comments on water resources issues	1/23/08
Memo to Commission, withdrawal of Jurisdictional Determination	5/8/08
E-mail, to Attorney Cox, open space	5/8/08
E-mail, to Attorney Cox, scheduling	5/9/08
Completed facility use form	6/6/08
E-mail, staff update	6/6/08
E-mail, to Subcommittee, scheduling	6/6/08
E-mail, from Renie Hamman, scheduling conflict w/hearing date	6/16/08
E-mail, to Michael Blanton, alternate, scheduling	6/16/08
Letter, to Attorney Cox, HDEX application complete	6/20/08
Letter, to Mashpee Town Planner, seeking comments on project	6/20/08
E-mail, to Attorney Cox, from Glenn Cannon, transportation issues	6/20/08
E-mail, to Attorney Cox, from Glenn Cannon, transportation issues	6/20/08
E-mail, to Ernest Virgilio, scheduling and project information	6/23/08
Staff Report	6/30/08
E-mail, to Attorney Cox and Mashpee Town Planner, staff report	6/30/08

E-mail, to Commission staff, staff report	6/30/08
E-mail, to Subcommittee, staff report	6/30/08
E-mail, to Alternates, staff report	6/30/08
E-mail, to reporter from Mashpee (Kerhl), staff report	7/1/08
E-mail, to Don Keeran, APCC, staff report	7/3/08
E-mail, to Attorney Cox and Mashpee Town Planner, APCC letter	7/8/08
E-mail, to Attorney Cox, from Glenn Cannon, transportation issues	7/8/08
E-mail, to Commission staff, APCC letter	7/8/08
E-mail, to Alternates, attendance at hearing	7/8/08
Copy, PowerPoint presentation of staff report at hearing	7/9/08
Hearing steps for Subcommittee Chair	7/9/08
Hearing Notice	7/9/08
Hearing sign-in sheet	7/9/08
Hearing Minutes	7/9/08
E-mail, to Subcommittee and Alternates, meeting reminder	7/10/08
E-mail, to Attorney Cox, confirming Subcommittee meeting	7/10/08
E-mail, to Commission staff, meeting reminder	7/10/08
E-mail, from Brad Crowell, scheduling conflict with meeting	7/10/08
E-mail, to Subcommittee and Alternates	7/10/08
E-mail, to Glenn Cannon and Gabrielle Belfit, hearing minutes	7/10/08
E-mail, Glenn Cannon	7/10/08
Meeting Notice	7/14/08
Meeting Minutes	7/14/08
Document showing proposed corrections to G. Belfit's comments	7/14/08
Memo, Glenn Cannon, revised transportation comments	7/15/08
E-mail, to Attorney Cox, confirming Subcommittee meeting	7/15/08
E-mail, to Subcommittee and Alternates, meeting reminder	7/15/08
E-mail, to Attorney Cox, copies of applicant's information	7/16/08
E-mail and Memo, Glenn Cannon, revised transportation comments	7/18/08
E-mail, to Attorney Cox, draft written decision, transportation Memo	7/21/08
E-mail, to Subcommittee and Alternates, draft written decision, Memo	7/21/08
E-mail, to Commission staff, draft written decision	7/21/08
E-mail, to Attorney Cox, from Gabrielle Belfit, water resources issues	7/24/08
E-mail, to Attorney Cox, letter from Mashpee Town Planner	7/25/08
Meeting Notice	7/28/08
Meeting Minutes	7/28/08
E-mail, to Attorney Cox, draft decision, transportation findings/conditions	7/30/08
E-mail, to Attorney Cox, landscape plan revision	7/30/08
E-mail, to Subcommittee, Alternates, draft decision	7/30/08
E-mail, from John Harris, comments on draft decision	7/30/08
Memorandum, to Subcommittee, Alternates, draft decision	7/30/08
E-mail, from Ernest Virgilio, no comments on draft decision	7/31/08
Memorandum, to Commission Members, Development Agreement	7/31/08
E-mail, to Attorney Cox, draft decision, Memo to Subcommittee/Alternates	7/31/08
E-mail, to Mashpee Town Planner, draft decision	7/31/08

By Federal, State or Town:

Massachusetts Historical Commission, determination of "no impact"	8/21/07

Fax, Town of Mashpee, room use confirmation	6/6/08
E-mail, Mashpee Town Planner, zoning and Local Comprehensive Plan	7/25/08
Fax, Mashpee Town Planner's comments (same as E-mail)	7/25/08

By Interested Parties:

E-mail, Don Keeran, APCC, project comments	7/8/08
Hard copy of APCC comment letter	7/8/08

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 the Commission's proceedings are incorporated into the record by** reference.

TESTIMONY

July 9, 2008 Public Hearing - Summary

Mr. Zavala opened the public hearing at 7:05 PM. Mr. Virgilio read the Hearing Notice. He noted receipt of a comment letter from the Association to Preserve Cape Cod (APCC), and summarized it for the record. Attorney Butler confirmed that the applicant had received a copy of the APCC letter.

Attorney Butler distributed a chronology of the Mashpee Industrial Park Development Agreement and the project's permitting history. Attorney Butler said that based on the chronology, the applicant had proceeded with local permitting, and believed the Development Agreement was still in force when this was happening, such that Lot 31 was grandfathered before the Development Agreement ended. Attorney Butler addressed project issues.

Mr. Crowell asked how the consensus figure on the proposed transportation mitigation payment had been arrived at.

Attorney Butler noted part of basis for the transportation comments in the June 30, 2008 staff report was Exhibit D from the Development Agreement, which listed a range of land use types and estimated dollar amounts per square foot to achieve a fair share payment to address traffic congestion. He said Commission staff had used the highest of these values to estimate the transportation mitigation cost at $48,200. He noted the staff report also estimated the present cost of infrastructure at $106,800. Attorney Butler said the methodology discussed with Mr. Cannon involved the average of these two figures.

Mr. Harris asked under which Regional Policy Plan the project was being analyzed and reviewed?

Attorney Butler said it was the 2002 (revised) Regional Policy Plan.

Mr. Harris asked what the size was of the proposed project, in that the staff report referred to a 20,000 square foot project, but the February 29, 2008 Board of Health letter in the applicant's packet appeared to be something different.

Ms. Adams said the project was a 20,000 square foot building.

Ms. Belfit addressed the issue of wastewater management based on the size of the building, and the proposed uses in the context of the Board of Health's February 29, 2008 letter. Ms. Belfit noted the Development Agreement would allow up to 1,280 gallons per day with a denitrification system on Lot 31. As submitted, the project design flow is 1,140 gallons per day. The letter from the Mashpee Board of Health states that 1,140 gallons per day shall not be exceeded based upon future uses.

Mr. Harris questioned why the Development Agreement was being referred to at all if it had expired. He expressed a concern that based on this; other lots in the Industrial Park could come forward with development under the expired Development Agreement.

Attorney Butler said even with the Development Agreement in effect, other lots in the Industrial Park could choose to come forward with development as a Development of Regional Impact.

Ms. Seldin asked how the development would comply with the requirements of the Board of Health letter.

Attorney Butler noted that the Commission's decisions typically include language that projects must also obtain all necessary local permits.

Ms. Adams presented a summary of the June 30, 2008 staff report using PowerPoint slides printed out as a handout. She noted staff was still seeking input from Mr. Fudala, Mashpee's Town Planner and the DRI Liaison, as to the project's consistency with local bylaws and Mashpee's Local Comprehensive Plan.

Attorney Butler said he was not sure that benefits/detriments was one of the criteria for a Hardship Exemption approval. He said he would discuss this with Jessica Wilegus, Commission Counsel. Attorney Butler said the granting of the variance by Mashpee's Zoning Board of Appeals and the February 2008 Board of Health letter could be taken as evidence that the project was consistent with local bylaws.

Mr. Zavala asked Mr. Cannon concerning the items listed in the trip reduction program outlined in the June 30, 2008 staff report.

Mr. Cannon said well-run trip reduction programs with strong incentives, including meals vouchers, could achieve as much as a 24% reduction in trips.

Mr. Zavala asked Mr. Cannon about his discussions with Attorney Butler on the fair share congestion mitigation payment.

Mr. Cannon said the three issues for any project, including this one, relative to the Regional Policy Plan were safety, trip reduction and addressing congestion impacts. He said that there was no safety issue in this case, and that by agreeing to a program as outlined in the staff report, the trip reduction issue would be addressed. Mr. Cannon said that this left the congestion issue. He noted that the two figures in the staff report relative to the project' fair share were estimates, and that based the project's actual trip generation, the fair share figure might be $75,000 to $80,000, which was relatively close to the amount that he and Attorney Butler were discussing.

Mr. Zavala said the Commission staff should more clearly articulate the basis for their recommendations, including in the case of transportation issues, how the present fair share cost estimate had been arrived at. He said it was particularly important that the Commission members understand this when they would review the draft decision.

Mr. Virgilio noted that Industrial Park Drive had been extended to form a connector road to SouthCape Village. He said the Subcommittee should take account of this, including the benefit the connector road provides to the Town of Mashpee.

Mr. Crowell asked if the Mashpee Industrial Park or Mr. Paulding had been compensated by SouthCape Village for the connector road.

Attorney Butler said if by this Mr. Crowell meant monetary payments, no.

Ms. Seldin said she agreed with Mr. Zavala and Mr. Blanton that Commission transportation staff needed to describe how the fair share cost estimate had been arrived at.

Mr. Crowell moved to continue the hearing and the record to the August 7, 2008 full Commission meeting, held at the Assembly of Delegates Chambers, beginning at 3:00 PM. Ms. Seldin seconded the motion. The Subcommittee voted unanimously for the motion.

Ms. Seldin moved to hold a Subcommittee meeting on this project on Monday, July 14, 2008 beginning at 9:00 AM the Cape Cod Commission offices. Mr. Blanton seconded the motion. The Subcommittee voted unanimously for the motion.

Mr. Blanton moved to adjourn. Mr. Virgilio seconded the motion. The Subcommittee voted unanimously for the motion.

JURISDICTION

The project site (Lot 31) is located within the Mashpee Industrial Park (Park). It is one of the lots that were subject to the Mashpee Industrial Park Development Agreement

(Development Agreement) entered into by and between the Commission and the Mashpee Industrial Park Trust on April 17, 1997.

General Condition 6 of the Development Agreement states that the "*term of this agreement shall be ten (10) years.*" Therefore the Development Agreement expired on April 17, 2007.

Since the Development Agreement has expired, development on Lot 31 is subject to Commission review as a Development of Regional Impact based on Section 3(e) of the Commission's *Enabling Regulations Governing Review of Development of Regional Impact* (Barnstable County Ordinance 90-12 as amended), as *"[a]ny of the following proposed commercial, service, retail or wholesale business, office or industrial development, as well as any private health, recreational or educational development which exceeds these criteria: (i) new construction of any building or buildings (including accessory and auxiliary structures) with a Gross Floor Area greater than 10,000 square feet."*

FINDINGS

The Commission has considered the application John Paulding, Trustee, Makedo Realty Trust, for the proposed 20,000 square foot commercial building, 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 Section 23 of the Act:

General Findings

GF1. Based on the date of the first substantive public hearing, this project was reviewed subject to the 2002 (revised) Regional Policy Plan.

GF2. References to the Mashpee Industrial Park Development Agreement (Development Agreement) within this decision or the record for this project are for illustrative purposes only, and do not constitute a finding by the Commission that the Development Agreement is in any way in force with respect to this project or future development within the Mashpee Industrial Park. Furthermore, Commission finds that the Development Agreement expired on April 17, 2007.

GF3. Development on Lot 31 is subject to Commission review as a Development of Regional Impact based on Section 3(e) of the Commission's *Enabling Regulations Governing Review of Development of Regional Impact* (Barnstable County Ordinance 90-12 as amended), as *"[a]ny of the following proposed commercial, service, retail or wholesale business, office or industrial development, as well as any private health, recreational or educational development which exceeds these criteria: (i) new construction of any building or buildings (including accessory and auxiliary structures) with a Gross Floor Area greater than 10,000 square feet."*

GF4. The project does not lie within a District of Critical Planning Concern.

GF5. Based on an E-mail received on July 25, 2008 by the Commission from the Mashpee Town Planner, the project is consistent with the Mashpee Local Comprehensive Plan, and is generally consistent municipal development bylaws except that the building does not conform to the required 50-foot rear setback. However, this E-mail also notes that the Zoning Board of Appeals issued a variance of the rear lot setback.

GF6. On February 15, 2007, the Mashpee Zoning Board of Appeals issued the project a variance of the rear lot setback. Based on this, local permitting for the project on Lot 31 had started prior to the end of the Development Agreement on April 17, 2007.

GF7. Prior to the expiration of the Development Agreement, the Mashpee Industrial Park Trust (Trust) implemented mitigation required under the Development Agreement for the benefit of lots governed by the Development Agreement (which included Lot 31). This mitigation included, without limitation, a $50,000 cash payment for transportation impacts, dedication of off-site open space land, and installation of water monitoring wells.

GF8. The lot that is the subject of this decision, Lot 31, is located within the Mashpee Industrial Park Industrial Growth Activity Center as designated on the Mashpee Local Comprehensive Plan.

GF9. The Commission finds that the project's probable benefit exceeds its probable detriment through consistency with Other Development Review Policies (ODRP) 2.5.1.9, 3.2.3, 3.2.6, and 4.4.1.5 of the 2002 (revised) RPP, and including the provision of a vehicular interconnect and allowance of public access between the Mashpee Industrial Park and South Cape Village via an extension of Commercial Street.

Transportation Findings

TF1. The Applicant proposes to construct a 20,000 square foot (SF) commercial building located at 64 Industrial Drive (Lot 31), within the Mashpee Industrial Park. The site plan dated May 12, 2007 by Cape & Islands Engineering shows the 20,000 SF building separated into eleven (11) individual bays. The individual tenants have not been identified; however, the Applicant has stated that the tenants may be a combination of the following uses: light industrial, research and development (R&D), high tech/marine tech, manufacturing, warehousing, general office, or business park (incubator space).

TF2. The Applicant has agreed to limit the type of development within the 20,000 SF commercial building to one of the seven (7) uses outlined above or a combination of these uses. The highest traffic generator of this list is a business park. The trip generation of this project was calculated for this project by the Cape Cod Commission Transportation staff assuming the 20,000 SF building would be used by the highest traffic generation of the list (Business Park). The trip generation calculations are based

on information contained in the Institute of Transportation Engineers (ITE) Trip Generation manual 7th Edition. In addition, Lot 31 is located in a Growth Center as outlined in the Mashpee Local Comprehensive Plan (LCP). A project in a Growth Center is entitled to a ten (10) percent trip generation reduction (MPS 4.1.3.3). Lot 31 has been given a ten (10) percent peak hour trip generation credit. A roadway interconnection exists between the Industrial Park and the SouthCape Village project. The RPP states that an appropriate reduction in site traffic can be applied for a roadway interconnection. The applicant did not engage a traffic engineer to calculate the reduction in traffic, and so, based on past practices, the Commission finds that a five (5) percent trip credit can be applied to the project for the existing roadway interconnection. As shown in Table 1, the net increase in vehicle trips is significant during the morning and afternoon peak hour.

Table 1 – Trip Generation Estimates

Time Period	Vehicle Trips
Average Daily Traffic	242
Morning Peak Hour	26
Afternoon Peak Hour	29

TF3. The Applicant has requested relief from MPS 4.1.3.4 of the 2002 (RPP). MPS 4.1.3.4 requires each Development of Regional Impact (DRI) to submit a traffic study that identifies, analyzes and mitigates all transportation impacts of the project. A traffic study that conforms to the requirement of the 2002 RPP may take significant time to complete. In addition, recent DRIs within the vicinity of the Mashpee Industrial Park (Mashpee Commons, SouthCape Village, Mashpee Place and the Route 151 Shaw's) have provided significant transportation analyses along Route 28 and in the Town of Mashpee. Based on this, additional study of Route 28 would provide limited new information. The Commission therefore finds enforcement of the traffic study requirement would involve a substantial hardship, and that relief from a traffic study may be granted for this project without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Act.

TF4. The closest known high crash location to the Mashpee Industrial Park is the Mashpee Rotary. Assuming a 50-50 split in traffic at the Route 28/Mashpee Industrial Park access roadway, the Mashpee Rotary would not be impacted by twenty-five (25) or more peak hour trips, therefore no further safety analysis is required for compliance with the 2002 RPP.

TF5. The Mashpee Industrial Park Trust has paid $50,000 in traffic mitigation under the expired Mashpee Industrial Park Development Agreement. As required in the Development Agreement, the $50,000 mitigation payment was broken out in two payments of $25,000 each. $25,000 was contributed to offset the trip reduction requirements and $25,000 was contributed to offset the congestion requirements of the Regional Policy Plan. Based on an equal allotment for the seven lots which were developed in accordance with the Development Agreement, $4,166.67 can be applied

to the trip reduction requirements of the RPP and $4,166.67 can be applied to the congestion standards of the RPP.

TF6. All DRIs are required to reduce new vehicle trips in and out of the site by 25 percent over what is typically expected for the land use (MPS 4.1.2.1). Based on the highest traffic generator outlined above (business park), the trip reduction requirements for the proposed project are 60 daily vehicle trips (242 x .25).

The Applicant has agreed to an employee/patron trip reduction program that includes the following in-kind strategies:

- Assemble information regarding carpooling and its benefits to be distributed to tenants and their employees.
- Designate an area where carpool information will be posted for all employees of the project.
- Implement a guaranteed ride home program (taxi service) for use in the case of an emergency for program participants.
- Designate preferential parking spaces for employees that carpool (2 spaces).
- Provide secure bicycle storage areas to accommodate bicycles for both employees and patrons.
- Work with tenants to provide on-site services to decrease employee midday trip making. The on-site services shall include a common area with a microwave, refrigerator, and a vending machine.
- Provide an on-site transportation coordinator. The transportation coordinator shall be responsible for insuring that the complete rideshare program, including car/vanpools; accommodating work shifts; promotions; incentives; preferential parking; and guaranteed ride home program, is consistently promoted and provided.
- Provide flexible work hours for employees that car/vanpool.
- Work with tenants to develop employee work hours to match transit schedules for transit riders.
- Distribute to all employees a new employee information packet that will include information about the various TDM programs that are available and the ways in which employees can participate.
- Provide a quarterly bulletin or newsletter reminding employees about the TDM programs and making the employees aware of any new or modified services.
- Provide bicycle maps indicating the location of bicycle facilities in the area will be posted in central locations within the development to encourage bicycle commuting.
- Provide a reference in all promotional materials or link, in the case of a website, to the Cape Cod Commission transportation information center Travel Demand Management services at www.gocapecod.org/tdm. In addition, website based materials and advertising developed for the project will include listing and links to available public transportation services serving the project site.
- Provide incentives each day for each employee who commutes to work using alternative methods that reduce automotive trips such as bicycling, walking, carpooling or transit. These incentives shall include free meals through coupons/discount cards for use toward the purchase of goods and services within the development or at adjacent retailers and entries into weekly raffles for prizes such as movie tickets, free meals and/or goods and services.

The Applicant has also offered an employee-based trip reduction plan. The Applicant's representative estimated that approximately two (2) employees per tenant would be employed at the proposed 20,000 SF building. Based on the Trip Generation Handbook, An ITE Recommended Practice, March 2001, a 25 percent employee trip reduction credit can be applied to this project. The complete trip reduction standards are calculated as follows 22 employees x 25 percent participation = 6 employee participants, 6 employee participants x 3 daily trips each = 18 daily trips reduced.

Based on the highest potential traffic generator (business park) for the 20,000 SF building, the Applicant would need to offset sixty (60) daily trips (242 x .25). As outlined in finding TF5, $4,166.67 can be applied to the trip reduction standards of the RPP. Based on the trip reduction potential of the employee trip reduction plan and the previous payment of $4,166.67, the Applicant has a shortfall of approximately 42 trips. The Commission finds that enforcement of the trip reduction standards would involve a substantial hardship, and that partial relief from the trip reduction standards may be granted for this project without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Act.

TF7. The transportation section of the RPP requires DRI's to mitigate all traffic-related impacts associated with the proposed project. Appropriate mitigation can be achieved through in-kind strategies (roadway widening, signalization, etc.), non-structural means (transit, preservation of developable land) or a combination of these measures.

As outlined in the Cape Cod Commission Technical Bulletin 96-003, revised January 9, 2003, the cost to maintain the roadway infrastructure for any development is based on the amount of roadway capacity the development is using. The Applicant pays the cost to maintain the portion of roadway infrastructure being used by the development. This is referred to as the "Fair-Share" cost of development. The "Fair-Share" analysis requires the Applicant to perform a traffic study to identify all impacted areas. The Applicant is looking to avoid the time delay associated with performing a traffic study.

An alternative approach to performing "Fair-Share" calculations at all impacted areas is to determine the cost to maintain the roadway infrastructure based on a Vehicle Miles Traveled (VMT) calculation. The VMT approach consists of determining the trip generation of the potential development (from ITE), multiplying the trip generation by the vehicles miles traveled by the typical user of the facility (Cape Cod Commission transportation staff used the trip length guidelines as outlined in the Cape Cod Commission Technical Bulletin 96-003, Revised January 9, 2003). That calculation determines the Vehicle Miles Traveled (VMT) by the users of the development. The cost to determine the roadway infrastructure is conducted by multiplying the VMT by the cost of infrastructure improvements (Cape Cod Commission staff assumed a cost of $500 per linear foot) divided by the capacity increase of the improvements (assumed capacity increase of 5,200 vehicles per hour). Therefore the following equation is used to determine the cost to maintain the transportation infrastructure based on VMT [(trips x length of trip x cost of improvement)/capacity increase].

The Commission has granted relief from MPS 4.1.2.1 (the trip reduction requirements of the RPP), therefore a twenty-five (25) percent credit can be allowed for the project. Cape Cod Commission staff has utilized a Vehicle Mile Traveled (VMT) approach to calculate the cost of this development to the Town of Mashpee transportation infrastructure. As outlined in Transportation Finding TF5, a $4,166.67 traffic congestion credit can be applied. The costs for the seven (7) potential developments within the 20,000 square foot building are outlined in Table 2 below.

Table 2 – Mitigation Cost of Potential Developments on Lot #31

Land Use	Trips	Mitigation Costs	Cost per Square Foot
Industrial, Research and Development and High Tech/Marine Tech uses[1]	13	$36,672	$1.83
Manufacturing[2]	10	$27,248	$1.36
Warehousing[3]	4	$2,816	$0.14
General Office[4]	20	$58,662	$2.93
Business Park (Incubator Space)[5]	26	$64,945	$3.25

[1] Based on ITE Trip generation, 7th edition Land Use Code 110 (General Light Industrial) and a 20,000 SF development.
[2] Based on ITE Trip generation, 7th edition Land Use Code 140 (Manufacturing) and a 20,000 SF development.
[3] Based on ITE Trip generation, 7th edition Land Use Code 710 (Warehousing) and a 20,000 SF development.
[4] Based on ITE Trip generation, 7th edition Land Use Code 710 (General Office) and a 20,000 SF development.
[5] Based on ITE Trip generation, 7th edition Land Use Code 760 (Business Park) and a 20,000 SF development.

Water Resource Findings

WRF1. The project is located within the Mashpee River sub-watershed of the Popponessett Bay embayment system and a Wellhead Protection Area. The project is utilizing a denitrifying septic system with a maximum flow rate of 1,140 gallons per day, as established by the Mashpee Board of Health in its February 29, 2008 permit letter. Nitrogen loading calculations for the project were prepared using lot coverage information provided by the Applicant, and were adjusted to eliminate fertilizer use, and provide a credit for nitrogen attenuation in the bioretention area referenced in Finding WRF3, below. With these adjustments, nitrogen loading for the project (5.71 ppm) slightly exceeds the 5.00-ppm NO3-N standard required by Minimum Performance Standard (MPS) 2.1.1.1 of the 2002 (revised) RPP.

WRF2. Under the 2002 (revised) RPP, no-net nitrogen loading mitigation would apply to this project based on its location in a nitrogen sensitive marine embayment according to MPS 2.1.1.2.C.2. The 43.14 kg/yr of nitrogen that are produced by the project would need to be offset by a monetary contribution equivalent to $1,550 /kg/yr for a total of $66,876.

WRF3. Stormwater will be handled onsite utilizing a biorention area to filter stormwater prior to infiltration. The stormwater design is consistent with the 2002 RPP requirements. According to MPS 2.1.3.6 a stormwater operation and maintenance plan must be provided, identifying specific maintenance practices, schedule and reporting, repair protocol, emergency spill procedures. A turf and landscape management plan is also required under MPS 2.1.1.2.A.5. Incorporating water conservation and minimizing the amount of pesticides and chemical fertilizers through best management practices.

WRF4. The Applicant has provided evidence that organic analysis was completed for all five (5) wells located within the Mashpee Industrial Park and inorganic analysis was completed for the well located on Lot 31. Additional water quality monitoring is proposed

to demonstrate that groundwater quality has not been adversely degraded by existing septic systems.

WRF5. Due to the fact that the project's anticipated nitrogen loading is only slightly higher than the 5.00 ppm limit set by MPS 2.1.1.1, and because other development in the Park was not reviewed for consistency with the no-net requirements of MPS 2.1.1.2.C.2, and because the Applicant will perform groundwater monitoring as described in Water Resources Finding WRF4, the Commission finds that a literal enforcement of all the provisions of MPS 2.1.1.1 and MPS 2.1.1.2.C.2 would involve a substantial hardship, and that relief from compliance with all the requirements of MPS 2.1.1.1 and MPS 2.1.1.2.C.2 can be granted for this project without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Act.

Natural Resources Findings

NRF1. The RPP requires the preparation of a natural resources inventory (NRI) on undisturbed, naturally vegetated sites. However, given the location of this development within the Mashpee Industrial Park, adjacent to previously developed sites, the fact that the site is not mapped rare species habitat, and the relatively small size of the parcel, the Commission finds that enforcement of the NRI requirement would involve a substantial hardship, and that relief from provision of a NRI can be granted for this project without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Act.

Open Space Findings

OSF1. The Mashpee Industrial Park Development Agreement was approved and signed under the provisions of the 1996 RPP. During the Development Agreement review process, and in subsequent modifications, the total area of the lots subject to the agreement, which included Lot 31, was included in the calculations for the provision of open space. Ultimately, the Park acquired an offsite open space parcel, meeting Mashpee's and Commission's approval, to address a large portion of the open space requirement for all of the lots subject to the Development Agreement, with the remaining open space requirement to be provided in onsite setbacks and buffers. Since the open space requirements in the 1996 RPP applied to the entire lot area and not the total development area, the provision of the offsite parcel and onsite building setbacks effectively mitigated the open space requirements in advance of development within the lots subject to the Development Agreement. Consequently, the Commission finds that the open space requirement for Lot 31 has already been provided and permanently protected, even though development on Lot 31 was not constructed within the timeframe of the Development Agreement. Based on this, the Commission finds that enforcement of an open space requirement for this project would involve a substantial hardship, and that relief from provision of open space can be granted for this project without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Act.

Hazardous Materials and Hazardous Waste Management Findings
HMWF1. According to maps created for the 2002 (revised) RPP, all of the Mashpee Industrial Park is overlain by one or more Wellhead Protection Areas.

HMWF2. The exact tenants and uses in the proposed building are not known at this time. In order to be consistent with the Hazardous Materials and Waste Management requirements of the Regional Policy Plan (Section 4.3), the use, generation, treatment, handling and storage of Hazardous Materials and Hazardous Waste on site must be limited, and must occur according to specific management standards. Based on information submitted by the Applicant, the project will abide by limits and other standards similar to those that would be required of the project according to Section 4.3 of the 2002 Regional Policy Plan, given the nature of the project, and because tenants are not known at this time. Based on this, and the Hazardous Materials and Waste Management Conditions shown below, the Commission finds that no relief is needed by this project from Section 4.3 of the 2002 (revised) Regional Policy Plan.

Community Character Findings
CCF1. The project site is buffered from Route 28, a regional roadway, by existing development at the corner of Route 28 and Industrial Drive. Project plans cited in this decision indicate that existing vegetation on the lot will be left in place along the corner closest to Route 28 and that additional landscaping will also be added in this area.

CCF2. MPS 6.2.9 requires development to implement a landscape plan and a maintenance agreement for all project landscaping. Due to the fact that other development in the Park was not reviewed for landscaping, that existing vegetation will be left on the lot as specified on the referenced plans, that additional landscaping will be provided as shown on the referenced plans, the site's location in an industrial area, and is therefore not visible from a regional roadway, the Commission finds that no relief is needed from MPS 6.2.9.

CCF3. MPS 6.2.5 stipulates in part that for all new development, no individual structure shall exceed a footprint of 15,000 square feet unless it is fully screened. Full screening may be achieved through appropriately scaled frontage buildings or a vegetated buffer of at least 200 feet in depth. In addition, Lot 31 is approximately 500 feet away from the intersection of Industrial Drive and Route 28, and views to this Lot from Route 28 are either shielded by existing landscaping or will be at an angle.

CCF4. The size of Lot 31 would make it impossible for the Applicant to meet the requirement to provide a full buffer. Due to this fact, and because of large distance (500 feet) to Route 28, the provision of some vegetated buffers on Lot 31, and because development on Lot 31 will be shielded by existing landscaping or will be at an angle, the Commission finds that a that a literal enforcement of the provisions of MPS 6.2.5 would involve a substantial hardship, and that relief from the requirements MPS 6.2.5 can be granted for this project without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Act.

CCF5. The last part of MPS 6.2.5 also requires that if a building footprint exceeds 10,000 square feet, the massing shall be varied and shall include at least 10 feet of setback or projection in the footprint for every 50 feet of façade length. The proposed building is approximately 200 feet long by 100 feet wide without any setback or projection. The proposed building materials – colored metal panels – are also not consistent with the traditional materials called for in the Commission's *Design Guidelines*.

CCF6. MPS 6.2.6 addresses development in industrial parks and similar areas, and allows use of non-traditional building materials and forms so long as adequate buffers are maintained to limit visual impacts on scenic and regional roads. The building will be set back approximately 76 feet from the corner of the lot, and the existing vegetation, as supplemented by new landscaping will be left in area along the corner, which is closest to views from Route 28. Given the location of this site, the set back from Route 28, and the office and industrial buildings already adjacent to it and along Industrial Drive, the Commission finds that use of non-traditional materials and forms according to MPS 6.2.6 is appropriate in this case.

CONCLUSION

Based on the Findings above, the Commission hereby concludes:

1. The project does not fall within a District of Critical Planning Concern, and is consistent with the local development bylaws (with the exception of a variance of the rear lot setback requirements) and the Mashpee Local Comprehensive Plan.

2. 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 as described in the Findings, above.

3. As described in the Findings, above, a literal enforcement of the provisions of the Act and RPP would represent a substantial 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.

4. The Commission finds that the project's anticipated benefits outweigh its probable detriments as described in Finding GF9.

The Cape Cod Commission hereby approves with conditions the Hardship Exemption application of John Paulding, Trustee, Makedo Realty Trust, for the proposed 20,000 square foot commercial building on Lot 31 of the Mashpee Industrial Park, provided the following conditions are met:

General Conditions
GC1. All work shall be constructed in a manner consistent with the following plans:

Preliminary Septic Plan Located in Mashpee, Mass., Building No. 64 Industrial Drive, Prepared for the Kelliher Group, by Cape & Islands Engineering, dated May 12, 2007

Preliminary Site Plan Located in Mashpee, *Mass., Building No. 64 Industrial Drive,* Prepared for Robert Kelliher, by Cape & Islands Engineering, dated January 5, 2007, also sub-titled *Proposed Conservation Landscape Plan, Building No. 64 Industrial Park Dr., Mashpee, MA,* Michael Talbot & Associates, Inc., latest revision date April 10, 2007

Construction Details, Mashpee, Mass., Prepared for Kelliher Group, by Cape & Islands Engineering, dated April 22, 2007, latest revision April 30, 2007

Building plan, *Pre-Engineered Multi-Tenant Commercial Steel Building,* The Kelliher Group, Lot 31, Industrial Drive, Mashpee, drawn by R. Kelliher, dated February 10, 2007

GC1(a). Any deviation during construction from the approved plans, including but not limited to changes to the building design, building location, landscaping or other site work, with the exception of the possible substitution of landscaping plant materials as provided for in Condition CCFC1, shall require approval by the Cape Cod Commission through a modification process, pursuant to Section 12 of the Commission's *Enabling Regulations* (as amended). The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

GC2. 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.

GC3. 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.

GC4. The Applicant shall obtain all necessary state and local permits for the proposed project.

GC5. 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.

GC6. Prior to issuance of a Building Permit by the Town of Mashpee, 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 Commission's *Enabling Regulations, Modifications to Approved Projects*, as amended, and which are in effect at the time of the review.

GC7. Prior to issuance of a Building Permit by the Town of Mashpee, 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.

GC8. Prior to receiving either a temporary or Final Certificate of Occupancy from the Town of Mashpee, the Applicant shall obtain a Final Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of a Final Certificate of Compliance have been met.

GC9. Should the Town of Mashpee grant individual Temporary or Final Certificates of Occupancy for individual tenant, renter/rented or lessee space(s) within the proposed building, each tenant, renter, or lessee shall also, prior to issuance of such temporary or Final Certificate of Occupancy from the Town, obtain a Final Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of a Final Certificate of Compliance for the individual tenant, rented, or lessee spaces have been met.

GC10. The Applicant and/or the relevant tenant, renter, or lessee, shall provide a minimum of thirty (30) days written notice prior to seeking issuance of each Certificate of Compliance associated with this decision from the Commission. Commission staff shall, as needed, complete an inspection under this condition within fourteen (14) business days of such notification and inform the Applicant and/or the relevant tenant, renter, or lessee, in writing of any deficiencies and corrections needed. The Applicant, tenant, renter, or lessee understands 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 Applicant, the tenants, renters, or lessees agree to allow Commission staff to enter onto the property, after reasonable notice is provided, which is the subject of this decision for the purpose of determining whether the conditions contained in the decision are met.

GC11. Prior to issuance of a Preliminary Certificate of Compliance by the Commission, and prior to issuance of a Building Permit by the Town of Mashpee, 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. Until Commission staff verifies in writing that this has been done, no Preliminary Certificate shall be issued.

GC12. Prior to issuance of the Final Certificate of Compliance from the Commission, and prior to issuance of a temporary or Final Certificate of Occupancy by the Town of Mashpee, Commission staff shall review the project to ensure consistency with the plans of record in accordance with GC1, GC1(a), and/or GC6.

Water Resources Conditions
WRGC1. The Applicant shall comply with the conditions required by the Board of Health letter dated February 29, 2008.

WRPC1. Prior to issuance of a Preliminary Certificate of Compliance by the Commission, and prior to issuance of a Building Permit by the Town of Mashpee, the Applicant shall submit for Commission staff review and approval the following two items noted in this condition, below. Until Commission staff verifies in writing that this condition has been complied with, no Preliminary Certificate shall be issued.

1) A stormwater operation and maintenance plan, identifying specific maintenance practices, schedule and reporting, repair protocols and emergency spill procedures as well as specific maintenance required for bioinfiltration areas, and

2) A turf and landscape management plan incorporating water conservation and minimizing the amount of pesticides and chemical fertilizers through best management practices.

WRFC1. Prior to issuance of the Final Certificate of Compliance from the Commission, and prior to issuance of a temporary or Final Certificate of Occupancy by the Town of Mashpee, the Applicant shall provide baseline inorganic analysis for the remaining four (4) wells located within the Mashpee Industrial Park property. Until Commission staff verifies in writing that this condition has been complied with, no Final Certificate shall be issued.

Hazardous Materials and Hazardous Waste Management Conditions
HMWGC1. The total on-site use, treatment, handling, storage, or generation of Hazardous Materials as defined by the 2002 (revised) Regional Policy Plan shall be limited to no more than 25 liquid gallons or its dry weight equivalent (approximately 200 pounds) at any time.

HMWGC2. The on-site use, treatment, handling, storage, or generation of Hazardous Waste as defined by the 2002 (revised) Regional Policy Plan shall be limited to 27 liquid gallons or approximately 100 kilograms per month. All occupants of the building that use, treat, handle, store, or generate Hazardous Waste shall send a notification to or register with the Massachusetts Department of Environmental Protection according to the requirements of 310 CMR 30.000, the Massachusetts Hazardous Waste Regulations.

HMWGC3. The on-site use, handling, treatment, storage, generation or disposal of radioactive materials or radioactive waste, or of Acutely Hazardous Waste as defined by 310 CMR 30.000 is prohibited.

HMWGC4. Infectious Waste as defined by 105 CMR 480.00, the Massachusetts Department of Public Health Regulations – *Medical or Biological Sanitary Code* shall be handled and stored on site in accordance with 105 CMR 480.00.

HMWGC5. On-site vehicle, boat, airplane or equipment maintenance, repair, servicing or refueling and/or storage as a primary activity or business shall be prohibited. The only exception to this prohibition shall be for limited maintenance of accessory equipment as might be needed for typical, routine functioning. Any such limited maintenance shall be done on an impervious surface, done in a manner that limits the use or release of hazardous materials, the generation of Hazardous Waste or release of Hazardous Materials or Wastes. Storage of any vehicles, boats, airplanes or equipment shall be on an impervious surface. Except during pick-ups and deliveries, parking and/or storage of transport vehicles for fuel and Hazardous Materials and Wastes, including but not limited to oil, coal, and gasoline, shall be prohibited.

HMWGC6. All Hazardous Materials and Hazardous Wastes shall be stored in a manner such that materials or wastes of different types are stored separately by hazard class and/or waste type and such that incompatible materials or wastes are segregated.

HMWGC7: Hazardous Materials and Hazardous Waste shall be stored in accordance with the following requirements:
1. Hazardous Materials or Hazardous Waste shall be stored in separate areas.
2. fenced and/or secured against unauthorized entry.
3. bermed areas with secondary containment adequate to contain 125% of the total volume of hazardous materials stored there at any given time.
4. constructed of an impervious surface.
5. constructed without floor drains.
6. constructed such that such materials are stored under cover or indoors.
7. constructed with sufficient aisle space, if appropriate given the size or number of containers, to allow for inspections.

HMWGC8. Hazardous Waste shall be handled, managed and stored in accordance with the following requirements:
1. be stored in containers, which made of or lined with materials, which are compatible with the hazardous waste stored in the container.
2. be stored in containers kept tightly closed except when waste is being added or removed.
3. stored in containers marked and labeled in a manner which identifies, in words, the Hazardous Waste(s) being stored in the container (e.g. acetone, toluene) and the hazard(s) associated with the waste (e.g. ignitable, toxic, dangerous when wet). Each container shall also be marked with the words “Hazardous Waste”.

HMWPC1. Prior to issuance of a Preliminary Certificate of Compliance by the Commission, and prior to issuance of a Building Permit by the Town of Mashpee, the

Applicant shall submit for Commission staff review and approval copies of proposed leases or other documents to allow for verification that potential building occupants will be aware of the restrictions on Hazardous Materials and Hazardous Waste management as described in the Hazardous Materials and Hazardous Waste Management Conditions, HMWGC1-HMWGC8, above. Until Commission staff verifies in writing that this information has been provided, and is satisfactory, no Preliminary Certificate shall be issued.

HMWFC1. Prior to issuance of the Final Certificate of Compliance from the Commission, and prior to issuance of a temporary or Final Certificate of Occupancy by the Town of Mashpee for each tenant, rented or leased space, Commission staff must conduct a site inspection of each tenant or leased space to verify compliance with the requirements of Hazardous Materials and Hazardous Waste Management Conditions, HMWGC1-HMWGC8, above. Until Commission staff verifies in writing that these inspections have been satisfactorily completed, no Final Certificate shall be issued for the relevant tenant, rented or leased space(s).

Transportation Conditions

TCFC1. Prior to receiving a Final Certificate of Compliance, the Applicant and each individual tenant, renter, or lessee within the proposed building shall implement and maintain the trip reduction plan as outlined in Transportation Finding TF6. Until Commission staff verifies in writing that this condition has been complied with, no Final Certificate shall be issued.

TCFC2. Prior to receiving a Final Certificate of Compliance, the Applicant shall contribute to a transportation mitigation fund to be held by the Barnstable County Treasurer. The amount to be contributed shall be based on the transportation mitigation costs outlined in Transportation Finding TF7. These funds shall be applied to any transportation project within the Town of Mashpee.

Community Character Conditions

CCPC1. Prior to issuance of a Preliminary Certificate of Compliance by the Commission, and prior to issuance of a Building Permit by the Town of Mashpee, the Applicant shall submit for Commission staff review and approval 1) a revised landscape plan which revises the *Preliminary Site Plan/Proposed Conservation Landscape Plan* described in General Condition GC1 so as to show the sizes and quantities of each plant species, and 2) a draft landscape maintenance agreement for three full growing seasons based on guidelines for such maintenance agreements as provided by Commission staff. A growing season is defined as the period between March 15th and October 31st of each year. Until Commission staff verifies in writing that this condition has been complied with, no Preliminary Certificate shall be issued.

CCFC1. Prior to issuance of the Final Certificate of Compliance from the Commission, and prior to issuance of a temporary or Final Certificate of Occupancy by the Town of Mashpee, Commission staff must conduct an inspection of the property to ensure the

landscape materials have been installed consistent with the plans of record. Plant materials specified by this decision may be substituted with prior written approval of Commission staff. Until Commission staff verifies in writing that the landscaping has been satisfactorily installed, no Final Certificate shall be issued.

CCFC2. Prior to issuance of the Final Certificate of Compliance from the Commission, and prior to issuance of a temporary or Final Certificate of Occupancy by the Town of Mashpee, the Applicant shall provide for Commission staff review and approval a final, signed landscape maintenance agreement consistent with Condition CCPC1. Until Commission staff verifies in writing that this final landscape maintenance agreement is satisfactory, no Final Certificate shall be issued.

SEE NEXT PAGE FOR SIGNATURES

SIGNATURES

The Cape Cod Commission hereby approves with conditions the application of John Paulding, Trustee, Makedo Realty Trust, 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 20,000 square foot commercial development at 64 Industrial Drive in Mashpee, MA.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2008

Before me, the undersigned notary public, personally appeared

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

_____
Notary Public

My Commission Expires: