



# CAPE COD COMMISSION

3225 MAIN STREET  
P.O. Box 226  
BARNSTABLE, MA 02630  
508-362-3828  
FAX: 508-362-3136

DATE: December 1, 1994

TO: Richard S. Bryant, P.E., authorized representative  
Vanasse Hangen Brustlin, Inc.  
101 Walnut Street  
P.O. Box 9151  
Watertown, MA 02272

FROM: Cape Cod Commission

RE: Development of Regional Impact  
Cape Cod Commission DRI Enabling Regulations, Section 3(e)  
Barnstable County Ordinance 90-12, as amended

APPLICANT: Wal-Mart Stores, Inc.

PROJECT: Sam's Club Wholesale Club Store  
Tract 2 & 2A, Communications Way  
Hyannis, MA 02601

PROJECT #: TR92054

BOOK/PAGE: Plan Book 416, Pages 77-84  
Plan Book 469, Page 91

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby denies without prejudice the application of Wal-Mart Stores, Inc. as a Development of Regional Impact (DRI) under Sections 12 & 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed Sam's Club wholesale club store in Hyannis, MA. The decision is rendered pursuant to the vote of the Commission on December 1, 1994.

### PROJECT DESCRIPTION

The proposed project calls for the construction of an approximately 167,000 s.f. wholesale club store on a 29.5 acre site, in two phases of 135,000 s.f. and 32,000 s.f. respectively, with a total of 962 parking spaces. The project site is located within Independence Park, a 508-acre industrial park in Hyannis, MA, at the intersection of Communications Way and Independence Park Drive. The site is zoned for industrial use and is surrounded by office/light industrial development to the

Sam's Club Wholesale Club Store- Barnstable, MA - #TR92054  
December 1, 1994 Decision

east, west and south. U.S. Highway Route 6 is located directly north of the site. The project site is also within a Wellhead Protection Overlay District for the Town of Barnstable.

### **PROCEDURAL HISTORY**

The Applicant filed an application with the Town of Barnstable Site Plan Review Committee on August 13, 1992. The proposed project was referred to the Cape Cod Commission under Section 12(c) of the Cape Cod Commission Act by Joseph DaLuz, Town of Barnstable Building Commissioner on August 13, 1992. Pursuant to Section 5 of the Act, a duly noticed public hearing was opened to scope the Draft Environmental Impact Report in the Barnstable Town Hall, Barnstable, MA on September 9, 1992, continued until October 8, 1992, and again to November 19, 1992. The public hearing was closed on November 19, 1992. An additional public hearing to receive comments on the Final Environmental Impact Report was opened and closed on February 22, 1994. Public meetings were held on September 17, 1992, November 23, 1992, and February 22, 1994. The written record was closed on December 1, 1994.

### **MATERIALS SUBMITTED FOR THE RECORD**

#### **NAME**

#### **DATE RECEIVED**

#### **From the Applicant:**

Letter from James Fuda ,Vanasse Hangen Brustlin Inc.(VHB)	June 10, 1991
Phase I Limited Site Investigation	June 1992
Letter from Rick Bryant VHB	June 23, 1992
Environmental Notification Form and DRI Application Form	August 21, 1992
Proposed Drainage Analysis	September 2, 1992
Letter from Rick Bryant, VHB	September 9, 1992
Letter from Rick Bryant, VHB	September 14, 1992
Letter from Rick Bryant, VHB	September 17, 1992
Memorandum from Rick Bryant,VHB	September 18, 1992
Memorandum from Rick Bryant, VHB	September 21, 1992
Draft Environmental Impact Report (DEIR)	October 19, 1992
DEIR Technical Appendices	October 19, 1992
Letter from Rick Bryant, VHB	October 22, 1992
Letter from Rick Bryant to Susan Rask, VHB	October 30, 1992
Letter from Rick Bryant, VHB	November 9, 1992
Memorandum from Charles Katuska, VHB	November 12, 1992
Memorandum from Rick Bryant	November 13, 1992
Letter from Rick Bryant, VHB	November 18, 1992
Letter from Telemarketing Systems Inc. (VHB) consultant	November 19, 1992
Letter from Adam Last, VHB	November 23, 1992
Letter from Rick Bryant, VHB	November 24, 1992
Letter from Rick Bryant, VHB	November 26, 1992
Letter from Rick Bryant, VHB	July 16, 1993
Letter from Rick Bryant, VHB	September 22, 1993
Final Environmental Impact Report (FEIR)	January 18, 1994
Letter from Rick Bryant, VHB	March 7, 1994

Letter from Rick Bryant, VHB

May 23, 1994

**From State Officials:**

Certificate on the ENF

October 2, 1992

Letter from Henri S. Rauschenbach

October 8, 1992

Letter from Henri S. Rauschenbach

November 5, 1992

Certificate on the DEIR

December 4, 1992

Certificate on the ENF for an interstate project in Marlborough

February 16, 1994

Letter from Mass Highway Department

February 24, 1994

Certificate on the FEIR

March 9, 1994

**From the Town(s):**

Letter from Warren J. Rutherford, Town Manager

June 3, 1992

Memorandum from the Conservation Commission

August 3, 1992

DRI Referral Form

August 14, 1992

Memorandum from Thomas Marcello, P.E.

August 14, 1992

Memorandum from the Health Dept. to the Building Inspector

August 17, 1992

Memorandum from the Conservation Department

August 19, 1992

Letter from Barnstable Fire Department to Building Dept.

August 21, 1992

Letter from Russell Davenport, town engineer to Robert Schernig

September 8, 1992

Letter from Joseph DaLuz, Building Commissioner

September 9, 1992

Memorandum from Warren Rutherford

October 23, 1992

Memorandum from Keith Hamre, planner to Robert Schernig

November 3, 1992

Memorandum from Robert Schernig to George Zoto, LCP Chair

November 4, 1992

Letter from Barnstable Water Company to MEPA

November 12, 1992

Memorandum from Robert Schernig to Planning Board and LPC

November 16, 1992

Memorandum from Robert Schernig to Planning Board

November 16, 1992

Memorandum from Anna Brigham to Robert Schernig

November 1992

Letter from Barnstable Fire District to MEPA

November 19, 1992

Letter from Barnstable Fire District to Lynne Turner, Civic Association

November 19, 1992

Letter from the Conservation Commission

November 19, 1992

Letter from Barnstable Town Council

November 23, 1992

Letter from the Board of Health

November 23, 1992

Letter from Town Councilor Audrey Loughnane

February 22, 1994

Letter from Planning Department

February 22, 1994

Letter from Warren Rutherford to MEPA

February 22, 1994

Letter from Planning Department

February 28, 1994

**Commission Correspondence:**

Staff Memorandum

August 3, 1992

Memorandum to subcommittee

August 20, 1992

Letter to Rick Bryant

August 20, 1992

Letter to Mark Els

September 10, 1992

Letter to Secretary Tierney

September 17, 1992

Letter to Rick Bryant

October 7, 1992

Sam's Club Wholesale Club Store- Barnstable, MA - #TR92054

December 1, 1994 Decision

Memorandum to subcommittee	October 7, 1992
Letter to Henri Rauschenbach	October 16, 1992
Memorandum to subcommittee	October 20, 1992
Letter to Meredith Miller	October 20, 1992
Letter to Rick Bryant	November 9, 1992
Letter to Henri Rauschenbach	November 12, 1992
Letter to Secretary Tierney	November 23, 1992
Letter to Rick Bryant	December 8, 1992
Letter to Rick Bryant	July 7, 1993
Letter to Rick Bryant	July 19, 1993
Letter to Rick Bryant	September 28, 1993
Letter to Rick Bryant	November 15, 1993
Letter to Rick Bryant	December 1, 1993
Letter to William McDonough	January 25, 1994
Letter to Secretary Trudy Coxe	February 24, 1994
Letter to Rick Bryant	March 11, 1994
Letter to Rick Bryant	April 20, 1994
Letter to Rick Bryant	October 19, 1994

**Letters from the public:**

Harriet Casey	August 11, 1992
Marie Ann LaBrie	September 4, 1992
Jean Bowden	September 9, 1992
Ellen Allen	September 14, 1992
E. Heidi Roddis, Mass. Audubon Society	September 16, 1992
Ralph Edwards	September 18, 1992
Jane Eshbaugh	October 1, 1992
P.O. Macdonald	October 1, 1992
Mr. & Mrs. Davis	October 8, 1992
Dorothy & John Ridinger	October 14, 1992
Action Alert, APCC	October 16, 1992
Frank O'Neil, Connecting Point	October 16, 1992
Bert Jackson	October 19, 1992
Robert Smith, Jr., Pres. Osterville Village Assoc.	October 21, 1992
Evelyn Eastwood	November 2, 1992
George Cronin	November 5, 1992
Abbie Jackson	November 5, 1992
Steve Bishop	November 12, 1992
Archer Hoyt, Hoyt's Pharmacy, Inc.	November 12, 1992
Dorothy Doherty	November 13, 1992
Floyd Hafley, Hearne, TX City Manager	November 13, 1992
Robert Smith, Pres. Osterville Village Assoc.	November 16, 1992
Mr. & Mrs. Harold Schomp	November 16, 1992
Mr. & Mrs. Richard Jenkins	November 18, 1992
Louise Leary	November 18, 1992
Joan Terkelsen	November 18, 1992
Victor Phillips	November 18, 1992

A. Schmidt	November 18, 1992
John Deasy	November 18, 1992
Allan Chase	November 18, 1992
Bill Doherty	November 18, 1992
L. Hellebrekers	November 18, 1992
E. S. Lathrop	November 18, 1992
Lynne Turner, Pres. Barnstable Village Civic Assoc.	November 19, 1992
Lorraine LeNoir	November 19, 1992
Elizabeth Nilsson, Pres. W. Barnstable Civic Assoc.	November 19, 1992
Eugene Monay	November 19, 1992
Alice Stark	November 19, 1992
Barbara & Richard Long	November 19, 1992
Peggy Sloan, Asst. Director, APCC	November 19, 1992
Barbara Mitchell	November 20, 1992
George Warren	November 20, 1992
Louise Holly	November 23, 1992
Eleanor Baldic	November 24, 1992
E. Heidi Roddis, Mass. Audubon Society	November 25, 1992
Mr. & Mrs. John Wasierski	December 1, 1992
Dorothy & John Ridinger	December 1, 1992
A. H. Schmidt	December 4, 1992
Peggy Sloan, Asst. Director APCC	December 8, 1992
A.H. Schmidt	December 16, 1992
Philip Chiotellis, M.D.	January 4, 1993
Mavis Phillips	February 16, 1994
Christopher Rigby, Prog. Director APCC	February 20, 1994
Barbara Flinn	February 22, 1994
Alice Fischer	February 23, 1994
Jane Eshbaugh	February 24, 1994

#### **Additional Materials:**

Proposed Retail Development Site Plans, VHB, Inc., 10 sheets	August 13, 1992
Conceptual Grading and Drainage, VHB, Inc., 1 sheet	undated
Building/Lighting Plans, VHB, Inc. 4 sheets	September 1, 1992
Site Plan Alternative Schemes F,G,H, VHB, Inc., 3 sheets	September 21, 1992
Proposed Right Elevation (south), BSW Architects, 1 sheet	September 24, 1992
Conceptual Landscape Plan, VHB, Inc.	November 6, 1992
Jean Bowden, facsimile of articles from Oregon Downtown Development Association	November 13, 1992
Executive Summary, Case Federal Trade Commission Request for Initial Phase Investigation	November 13, 1992
Petition opposing the project w/12 signatures	December 2, 1992
Abstracts from SilverPlatter 2.01, F&S Index U.S. 1991-10/92	December 8, 1992

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of the hearings and all written submissions

received in the course of our proceedings are incorporated into the record by reference.

### **TESTIMONY**

The Commission received testimony from state and local officials and members of the public during the course of our proceedings as noted in the above Procedural History section.

### **JURISDICTION**

The project was originally referred under Section 12(c)(6) of the Cape Cod Commission Act and currently qualifies for DRI review as any ...proposed wholesale business development with a gross floor area greater than 10,000 square feet... under Section 3(e) of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended, which supercedes Section 12(c)(6).

### **FINDINGS**

The Commission makes the following finding subject to Sections 12 & 13 of the Act:

- 1). The Applicant was participating in a voluntary Joint Review Process pursuant to a Memorandum of Understanding established between the Executive Office of Environmental Affairs (EOEA) and the Cape Cod Commission. The Applicant had completed both a Draft Environmental Impact Report and Final Environmental Impact Report on the proposed project. On March 3, 1994, the Secretary of EOEA required the Applicant to prepare a Supplemental Final Environmental Impact Report (SFEIR) for the project.
- 2). On five previous occasions, the Applicant sought and the Commission granted an extension of the decision period in order to allow for the preparation of additional submissions on the project. On May 23, 1994, the Applicant was granted an extension of the decision period for the above referenced project until the close of business on December 2, 1994 in order to complete the SFEIR.
- 3). On October 19, 1994, the Applicant was notified by certified mail of the December 2, 1994 decision period deadline. The Applicant was invited to address the Regulatory Committee of the Commission on November 28, 1994, regarding progress on the SFEIR but did not respond. Cape Cod Commission staff contacted the Applicant's representative, who indicated by telephone that he was not authorized by the Applicant to proceed with the submission of further information as required by EOEA and the Commission.
- 4). The Applicant failed to progress continuously and expeditiously through required regulatory processes, thereby providing no information on which to base a favorable decision.

### **CONCLUSION**

Based on the findings above, the Cape Cod Commission hereby denies the Sam's Club proposed wholesale club store as a Development of Regional Impact, without prejudice. This conclusion is supported by the finding that the Applicant failed to comply with procedures of the Act and

Commission regulations requiring submission of additional information as requested by EOE and the Commission.

The Commission hereby denies without prejudice the application of Wal-Mart Stores, Inc. for the Sam's Club wholesale club store as a Development of Regional Impact pursuant to Sections 12 and 13 of the Act.

*Ken Brock*  
Ken Brock, chair

12/1/94  
Date

**Commonwealth of Massachusetts**

Barnstable, ss.

Subscribed and sworn to before me this 1<sup>st</sup> day of Dec, 1994

*Katharine L Peters*  
Name, Notary Public

My commission expires:

*[Faint notary seal text]*

