



CAPE COD COMMISSION

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DATE: May 21, 1998 #TR-96020

TO: Samuel A. Lorusso, President, Cape Cod Aggregates
P.O. Box 96
Hyannis, MA 02601

FROM: Cape Cod Commission

RE: Development of Regional Impact Application
Barnstable County Ordinance 94-10, Chapter A, Section 3(c)

APPLICANT: Cape Cod Aggregates, Inc.

PROJECT: Subdivision of approximately 108 +/- acres of land in Barnstable
located off Kidds Hill Road into lots

BOOK/PAGE: Book 5041, Page 284
Book 6656, Page 147
Book 10212, Page 145

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Cape Cod Aggregates Inc. for a Development of Regional Impact (DRI) for the subdivision of approximately 108 +/- acres of land off Kidds Hill Road in Barnstable into eight lots and one ANR lot. The project qualifies as a DRI under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10 (as amended): any development which proposes to divide land of thirty acres or more. This decision is rendered pursuant to the vote of the Commission on May 21, 1998.

PROJECT DESCRIPTION

The project consists of the subdivision of approximately 108 +/- acres of land in Barnstable into eight lots and one ANR lot (shown as Lot 1 on the plans noted below). Lots 5 and 9 as shown on the plans entitled "Preliminary Plan of Land in

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Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated 1/23/97" are currently being used for a gravel processing operation. The site is located in three zoning district types (industrial, residential and business) according to the Barnstable Zoning Ordinance. The majority of the area (approximately 40 acres) is zoned IND-Industrial, which allows industrial, commercial and multi-family uses. A 750-foot strip along Phinney's Lane is zoned RG-Residential. A smaller area south of this strip is zoned RF-1-Residential. A fourth area extending from the rear of the lots along Route 132 is zoned B-Business, which allows commercial uses. The site is also located in a Zone II area, with the majority of the site being in Barnstable's Groundwater Protection District. The northern-most portion of the site is located in Barnstable's Wellhead Protection District. There is also a utility easement which runs North to South across the property's Western boundary.

PROCEDURAL HISTORY

The project was referred as a Development of Regional Impact by Mr. Shuman, Chair of the Barnstable Planning Board on September 30, 1996. The referral was received by the Cape Cod Commission on October 4, 1996. The project was also referred as a DRI by Mr. Rutherford, Barnstable Town Manager on October 7, 1996. This referral was received by the Commission on October 9, 1996. In a letter dated October 9, 1996, the applicant and Town officials were informed that the project had been referred to the Commission as a DRI. The letter also informed the applicant of the need to complete a DRI application by November 1, 1996. On November 27, 1996, a hearing officer opened and continued a public hearing on the project. On February 6, 1997, the Commission received an Extension Agreement from the applicant extending the decision period to May 15, 1997. On February 20, 1997, a hearing officer closed the public hearing on the project. In a letter dated April 4, 1997, the applicant was informed that the current Extension Agreement was ending. In a letter dated April 14, 1997, the applicant was informed that the current Extension Agreement was ending and of the possibility of a procedural denial based on the failure to complete an application. On April 17, 1997, the Commission received an Extension Agreement from the applicant extending the decision period to August 13, 1997. On May 15, 1997, the Commission received a DRI application form with attachments from the applicant. In a letter dated June 4, 1997, the Commission noted that a public hearing had been scheduled for June 24, 1997. In a letter dated June 19, 1997, the applicant was informed that the application was sufficiently complete to hold a hearing. On June 19, 1997, a Joint Scoping Session/Site Plan Review meeting was held in Barnstable Town Hall to allow for comments and joint discussion of issues. At the duly-noticed public hearing on June 24, 1997, the Subcommittee voted to hold a public meeting on July 30, 1997 and

to continue the hearing and leave the record open until a regularly-scheduled Commission meeting on August 7, 1997. A site visit was also held on June 24, 1997 before the public hearing. In a letter dated July 10, 1997, the applicant was informed that the current Extension Agreement was ending. On July 14, the Commission received an Extension Agreement from the applicant extending the decision period to September 26, 1997. In a letter dated July 28, 1997, the applicant provided additional information concerning open space issues. The Subcommittee meeting scheduled for July 30, 1997 was canceled to allow the applicant more time to address project issues. In a letter dated August 4, 1997, the Commission staff noted additional project issues had to be addressed. At the August 7, 1997 Commission meeting, the Commission voted to close the hearing. In a letter dated August 21, 1997, the applicant submitted additional information related to open space and transportation issues. In a letter dated August 22, 1997, the applicant was informed that the current Extension Agreement was ending and that the last Commission meeting prior to the end of the Extension Agreement was September 18, 1997. The Commission noticed a public hearing on the project for September 18, 1997. A revised hearing notice indicated a hearing officer would open and continue the public hearing on September 18, 1997. On August 22, 1997, the Commission received an Extension Agreement from the applicant extending the decision period to November 10, 1997. In a letter dated October 2, 1997, the applicant was informed that the current Extension Agreement was ending. On October 3, 1997, the Commission received an Extension Agreement from the applicant extending the decision period to December 19, 1997. At the Commission meeting on October 9, 1997, the Commission voted to close the hearing and keep the record open. In a letter dated November 4, 1997, the applicant was informed that the current Extension Agreement was ending. In a letter dated November 12, 1997, the applicant indicated that an appraiser had been retained to help resolve transportation related mitigation issues. On November 18, 1997, the Commission received an Extension Agreement from the applicant extending the decision period to March 4, 1998. In a letter dated November 19, 1997, the applicant provided additional information regarding transportation-related mitigation strategies. In a letter dated December 15, 1997, the applicant was informed that a public hearing had been scheduled for January 7, 1998. At the January 7, 1998 public hearing, the Subcommittee voted to continue the hearing and the record to the January 29, 1998 regular Commission meeting. The Subcommittee also voted to direct staff to draft a decision with findings and conditions for discussion at a Subcommittee meeting to be held on January 21, 1998 at 4:00 PM at the Commission office. The January 21, 1998 Subcommittee meeting was canceled to give the applicant more time to provide additional information. Staff and the applicant's Attorney met on January 29, 1998 to discuss the project. Staff noted that additional information was needed

on transportation and waste management issues. Based on this meeting, at the January 29, 1998 Commission meeting, the Commission voted to continue the public hearing until the Commission meeting on February 26, 1998. In a letter dated January 9, 1998, the applicant was informed that use of an outdated fee schedule resulted in the calculation of an incorrect fee payment for the project. Additional project-related information was submitted by the applicant on January 26, 1998. A letter dated February 11, 1998 noted that the correct fee for the project would be \$1,600.00. In a letter dated February 17, 1998, the applicant was informed of the need for an additional Extension Agreement. The letter noted that evidence of an Extension Agreement was needed by the Commission no later than noon on February 19, 1998 or a procedural denial of the project was possible. On February 18, 1998, the Commission received a fax copy of an Extension Agreement extending the decision time to April 30, 1998. Additional project-related information was submitted by the applicant on February 25, 1998. At the February 26, 1998 Commission meeting, the Commission voted to close the public hearing. A check for \$1,600.00 was provided by the applicant in a letter dated March 15, 1998 for payment of the remainder of the project fee. In a letter dated March 26, 1998, the applicant was informed of the need for an additional Extension Agreement. On March 26, 1998, the Commission received a faxed copy of an Extension Agreement extending the decision time to May 29, 1998. A site visit was held for Subcommittee members on April 30, 1998. The applicant submitted additional information concerning hazardous materials and wastes related to the existing Cape Cod Aggregates operations in a fax dated May 5, 1998. A Subcommittee meeting was held on May 7, 1998 to discuss draft findings and conditions. The Subcommittee at that meeting instructed staff to draft revised findings and conditions for presentation to the full Cape Cod Commission in a draft decision at its regular meeting on May 21, 1998. At the May 21, 1998 Commission meeting, the Commission voted to approve with conditions the application of Cape Cod Aggregates for a Development of Regional Impact for the subdivision of approximately 108 +/- acres of land off Kidds Hill Road in Barnstable into lots.

MATERIALS SUBMITTED FOR THE RECORD

A. Materials submitted by the Applicant:

Old ANR plan of site	1988
Site maps, large size, four copies	7/19/96
Site maps, two copies, shows utility easement and lots	1/23/97
Site maps, large size, revised - buffer areas and Road A (2 sets)	1/23/97
Fax, from Attorney Butler, extension agreement	4/14/97
DRI application and attachments	5/15/97
DRI application	MHC notification form

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A. Materials submitted by the Applicant (continued):

GIS map of site	Aerial photo of site	
USGS map of site	Deed	
abutters list	Planning Board Form B	
Letter, from Attorney Butler, fee		5/15/97
Yellow site map (2 copies)		6/19/97
Aerial photo (copy)		6/19/97
Photo of site		6/24/97
Letter, Cape Cod Aggregates to Attorney Butler, open space		7/28/97
Letter, from Attorney Butler, describes open space proposal		7/28/97
Site map showing proposed areas of filling		
Table showing open space calculations		
Letter, from Attorney Butler, discussed open space, other issues		8/22/97
Plan depicting off-site open space		
Revised open space calculations and site calculations		
Plan showing per-lot distribution of traffic mitigation credits		
Fax, from Attorney Butler, discusses land appraisals		11/12/97
Letter, from Attorney Butler, mitigation credits		11/19/97
Fax, from Attorney Butler, with easements per Attucks Lane		12/8/97
Letter, from Attorney Butler, easements related to Attucks Lane		12/10/97
Letter, from Attorney Butler, additional information		1/26/98
Letter, from Attorney Butler, additional information		2/25/98
Letter, from Attorney Butler, additional information, extension agreement		3/4/98
Letter, from Attorney Butler, remainder of fee		3/15/98
Letter, from Attorney Butler, additional information		4/14/98
Fax, from Attorney Butler, additional information on hazardous materials		5/5/98
Letter, hand-delivered from Attorney Butler, from Bardon Trimount		5/5/98
Fax, from Attorney Butler		5/13/98

B. Materials submitted by the State:

Mass. Highway, comments on Attucks Lane extension	3/24/97
Executive Office of Environmental Affairs, Certificate on ENF	4/7/97

C. Materials submitted by the Town:

Draft plan of Attucks Lane layout	10/24/95
Letter, from Steven Shuman, Chair of Planning Board to Commission Chair,	
DRI referral of project	10/14/96
Letter, from Warren Rutherford, Town Manager, to Commission Chair,	
DRI referral of project	10/19/96
Copy, from Robert Schernig of Planning Department, comments to the Planning Board from	
the Planning Department on the project	6/12/97
Fax, to Commission, from Planning Board, comments	6/19/97
Notice, site plan review meeting	6/19/97
Copy, minutes of site plan review meeting	6/19/97
Hard copy, to Commission, from Planning Board, comments	6/20/97
Letter, from DRI Liaison, review of existing permits	7/7/97
Letter and comments, from Steven Shuman, Chair of Planning Board	1/21/98

C. Materials submitted by the Town (continued):

Fax, from Planning Department (dated 5/12) 5/14/98

D. Materials submitted by the Public:

Comments from Harry Gerrin, abutter, with attachments 6/24/97
 site map undated
 health department complaint dated 3/17/97
 minutes of public hearing/decision of Barnstable Selectmen dated 6/25/68
 copy of the Town Meeting Report dated 3/3/64
 notice regarding the Industrial District dated 12/10/59
 Article, *Boston after dark* (original dated 12/1/73) received 7/1/97
 Letter, from abutter, concerning open space 5/21/98

E. Materials submitted by Cape Cod Commission:

Letter, intent to review as a DRI 10/9/96
 Notes, preapplication meeting 11/14/96
 Hearing notice 11/26/96
 Minutes, hearing officer 11/27/96
 Notes, preapplication meeting 1/30/97
 Extension agreement 2/6/97
 Hearing notice 2/20/97
 Commission comments on ENF for Old Route 132/Attucks Lane 3/18/97
 Extension agreement 4/4/97
 Fax, to Attorney Butler, cover letter for Extension agreement 4/4/97
 Letter, to Attorney Butler, copy of blank Extension agreement 4/4/97
 Fax, to Attorney Butler, possible procedural denial 4/14/97
 Letter, to Attorney Butler, application incomplete 4/14/97
 Staff Form Q 5/21/97
 Water Resources staff comments 5/28/97
 Letter, from Commission to Jackie Etsten, Planner, concerning ANR of a piece of
 the project site 5/30/97
 Transportation staff comments 6/3/97
 Copy, fax of a letter to Attorney Butler, to Site Plan Review, DRI Liaison and Town
 Clerk 6/4/97
 Fax, to Attorney Butler, letter 6/4/97
 Letter, to Attorney Butler 6/4/97
 Memo, to Subcommittee, project issues 6/11/97
 Staff Report 6/18/97
 Letter, to Attorney Butler, application complete enough to hold hearing 6/19/97
 Fax cover sheet to Attorney Butler 6/20/97
 Fax, to DRI Liaison, copy of Staff Report 6/23/97
 Fax, to Jackie Etsten, Planner, copy of Staff Report 6/24/97
 Fax cover sheet to Attorney Butler 6/24/97
 Sign-in sheet for public hearing 6/24/97
 Fax, to Peter Hickey, Chair, Subcommittee DRI procedures 6/24/97
 Minutes, public hearing 6/24/97
 Fax, to DRI Liaison, comments of abutter and attachments 6/30/97

E. Materials submitted by Cape Cod Commission (continued):

Extension agreement	7/10/97
Letter, Extension agreement	7/10/97
fax cover sheet, blank sample extension agreement	
Letter, to Attorney Butler, correspondence from file to date	7/14/97
Memo, to Subcommittee, draft hearing minutes	7/14/97
Letter, to Attorney Butler, project issues	8/4/97
fax cover sheet	
Letter, Extension agreement (blank extension agreement)	8/22/97
Extension agreement	8/22/97
Hearing notice	9/18/97
Hearing notice (corrected)	9/18/97
Transportation comments	9/18/97
Letter, to Attorney Butler, Extension agreement	9/29/97
blank sample Extension agreement	
site map and map showing applicant's proposal on mitigation credits	
Letter, to Attorney Butler	10/2/97
blank extension agreement	
Extension agreement	10/2/97
Letter, to Jackie Etsten, Planner, correspondence received to date	10/7/97
Memo, to Subcommittee, need for new Chair	10/20/97
Letter, to Attorney Butler, Extension agreement	11/4/97
blank sample Extension agreement	
Extension agreement	11/12/97
Memo, to Subcommittee, public hearing scheduled	12/15/97
Letter, to Butler, public hearing scheduled	12/15/97
Comments on Attucks Lane Extension received from Mr. Travelo	1/7/98
Minutes, public hearing	1/7/98
Letter, to Attorney Butler, fee payment is incorrect	1/9/98
Letter, to Attorney Butler, fee payment is incorrect	2/11/98
Letter, to Attorney Butler, Extension agreement	2/17/98
Fax, to Attorney Butler, copy of latest Staff Report	3/25/98
Letter, to Attorney Butler, Extension agreement	3/26/98
blank sample Extension agreement and fax cover sheet	
Letter, to Attorney Butler, project issues	4/28/98
Fax, to Rick Bryant, Sam Park Associates, transportation calculations	4/28/98
Memo, to Subcommittee, site visit and background information	4/30/98
Videotape (+/- 8 minutes), site visit of Cape Cod Aggregates business	4/30/98
Fax, to Allen Humberger, DEP SERO	5/6/98
Fax, to Bill Surill, DEP Metro Boston	5/6/98
Minutes, public hearing	5/7/98
Fax, to Planning Department	5/8/98
Fax, to Attorney Butler and Ralph Crossen, revised draft decision	5/13/98
Nitrogen loading calculations sheet for Cape Cod Aggregates	Undated
Memo, to Subcommittee	Undated

The application and notice of the public hearing relative thereto, the Commission's staff reports, exhibits, minutes of all hearings and all submissions received in the course of the proceedings, including materials submitted on file #TR-96020 are incorporated into the record by reference.

TESTIMONY

The Commission's Subcommittee received testimony at the June 24, 1997 public hearing on this project at the Assembly of Delegates Chambers, First District Courthouse, Barnstable, MA.

Attorney Patrick Butler presented the project to the Subcommittee. He noted the applicant believes that the primary issues are open space, water resources and traffic. The applicant is proposing to use residential lots on Kidds Hill Road and Phinney's Lane to meet a portion of their open space requirement. The remainder will be met on the subdivision lots. Water resource issues will be addressed primarily when individual projects will be proposed on the sites, however fill brought to the site will be monitored. The traffic issue to be addressed during the subdivision stage of the project will be credit given for funding of the engineering for Attucks Lane. All other traffic mitigation will occur when the individual projects are submitted for DRI review.

The Subcommittee asked questions of the applicant about maintaining vegetated buffers along Phinney's Lane, development of the Attucks Lane extension and the provision of adequate water pressure to future development within the subdivision.

Ms. Andrea Adams presented the Staff Report. She explained staff concerns related to the provision of open space, development of a site restoration plan by the applicant, provision of a vegetated buffer to Phinney's Lane and resolution of transportation issues.

The Subcommittee members asked questions of the staff relating to buffers along Phinney's Lane and provision of open space.

Mr. Hickey asked the public for their comments.

Mr. Paul Rebelle, an abutting property owner, inquired about the location of Attucks Lane Extension in relation to Kidds Hill Road. He explained that traffic on Kidds Hill Road is extremely heavy. He also advocated for the preservation of trees along Kidds Hill Road. Mr. Butler stated that a purpose of Attucks Lane is to take traffic

away from Kidds Hill Road. He also noted that the applicant plans to maintain the trees along Kidds Hill Road.

Mr. Harry Gerrion, an abutter who lives on the corner of Kidds Hill Road and Phinney's Lane, stated that he had submitted a letter for the record. He also said that the blowing of sand is extensive. There is a need to preserve the trees on Kidds Hill Road and Phinney's Lane. He has no objection to the project otherwise. The subcommittee noted that it appears that these trees will be saved.

Mr. Kaufman moved to continue the hearing and leave the record open until the Commission meeting of August 7, 1997, which will take place at 3:00 p.m. at the Assembly Chambers in Barnstable. He also moved that there be a Subcommittee Meeting on July 30, 1997 at 5:00 p.m. in the Commission's offices. Mr. Travelo seconded the motions and they were unanimously approved.

At the August 7, 1997 Commission meeting, Mr. Prince moved to close the hearing. Mr. Olsen seconded the motion and it was unanimously approved.

The Commission's Subcommittee received testimony at the January 7, 1998 public hearing on this project at the Assembly of Delegates Chambers, First District Courthouse, Barnstable, MA.

Attorney Butler, representing the applicant, reviewed the project with the Subcommittee, referring to a plan of the project. He explained that the project consisted of a 109 acre commercial/industrial subdivision in Hyannis. He noted that the applicant and the Commission staff have resolved the remaining transportation issues and have determined a monetary amount for the value of land in the subdivision, enabling an agreement on the amount the applicant is credited for the donation of land for the Attucks Lane extension. He noted the applicant and staff are recommending that a portion of the open space requirement for the Cape Cod Aggregates project would be met by restricting wooded land adjacent to Phinney's Lane. The remainder of the open space will be met by providing thirty percent of each lot as permanent open space. He also noted that the applicant will be defining the current activities of the Cape Cod Aggregates business on Lot 9 for the purposes of determining changes of uses and changes regarding hazardous materials.

Mr. Lambert explained that the applicant has purchased the land which previously contained Shirdan's Restaurant. They are considering building a road on this land which would connect the proposed Attucks Lane extension with Route 132. They

are also discussing the possibility of easements over the land owned by Victory Chapel.

Mr. Travelo distributed a written statement suggesting that Route 132 be one way and paired with the Attucks Lane extension going in the opposite direction. The Subcommittee, Commission staff and the applicants discussed the concept and all agreed to mention the idea to the Town of Barnstable.

Ms. Adams presented the Commission staff report. She noted that substantial work has been completed regarding transportation issues. There is agreement between the staff and the applicant regarding draft transportation findings and conditions. She noted that it is important to insure that other issues are addressed such as open space, hazardous materials and waste and nitrogen loading, since operations of Cape Cod Aggregates on lot 9 of the subdivision are expected to continue after the subdivision of land is completed.

Attorney Butler stated that the applicant would characterize existing activities on lot 9 and submit it to the staff.

Mr. Kaufman moved to direct the staff to prepare a draft decision. Mr. Travelo seconded the motion and it was unanimously approved. Mr. Kaufman moved to continue the hearing until the Commission meeting on January 29, 1998 at 3:00 p.m. at the Assembly Chambers in Barnstable and to hold an interim Subcommittee meeting on January 21, 1998 at 4:00 p.m. at the Commission offices to discuss the draft decision. Mr. Travelo seconded the motion and it was unanimously approved.

The January 21, 1998 Subcommittee meeting was canceled to give the applicant more time to provide additional information.

At the January 29, 1998 Commission meeting, the Commission voted to continue the public hearing until the Commission meeting on February 26, 1998. At the Commission meeting on February 26, 1998, the Commission voted to close the public hearing.

A site visit was held for Subcommittee members on April 30, 1998.

A Subcommittee meeting was held on May 7, 1998 to discuss draft findings and conditions. The Subcommittee instructed staff to draft revised findings and conditions for presentation to the full Cape Cod Commission in a draft decision at its regular meeting on May 21, 1998.

At the May 21, 1998 Commission meeting, the Subcommittee approved Minutes for June 24, 1997, January 7, 1998 and May 7, 1998. The full Commission voted to approve with conditions the application of Cape Cod Aggregates for a Development of Regional Impact for the subdivision of approximately 108 +/- acres of land off Kidds Hill Road in Barnstable into lots.

JURISDICTION

The proposed subdivision qualifies as a DRI under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10 (as amended): any development which proposes to divide land of thirty acres or more.

FINDINGS

The Commission has considered the DRI application of Cape Cod Aggregates Inc. for the subdivision of approximately 108 +/- acres of land in Barnstable off Kidds Hill Road into eight lots and one ANR lot. The ANR lot is Lot 1 as shown on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated 1/23/97". Based on consideration of such application, the information presented at the public hearing(s) and submitted for the record, the Commission makes the following findings:

General

G-1. This was reviewed for conformity and consistency with the 1996 Regional Policy Plan.

G-2. The project consists of the re-subdivision of approximately 108.92 acres of land in Barnstable into eight lots and one ANR lot. The ANR lot is Lot 1 as shown on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997." Cape Cod Aggregates, a gravel processing operation exists on Lots 5 and 9 shown on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997." Cape Cod Aggregates, which does business as Hyannis Sand & Gravel, also leases land to Bardon Trimount, an asphalt processor, the existing operations of which also occur on Lots 5 and 9.

G-3. The site is located in three zoning districts (industrial, residential and business) according to the Barnstable Zoning Ordinance. The majority of the area is zoned IND-Industrial, which allows industrial, commercial and multi-family uses. A 750-foot strip along Phinney's Lane is zoned RG-Residential. A smaller area south of this strip is zoned RF-1-Residential. A fourth area extending from the rear of the

lots along Route 132 is zoned B-Business, which allows commercial uses. There is also a utility easement which runs across the site.

G-4. The project is consistent with the Barnstable Local Comprehensive Plan.

Transportation

TRANS-1. According to testimony at the January 7, 1998 public hearing, the applicant agrees to DRI review for any and all level of development on any all of the lots within the subdivision. As such, the trip reduction as well as other transportation-related requirements of the Regional Policy Plan in effect at the time of the future DRI application(s) will be met at the time development of each lot within the subdivision occurs.

TRANS-2. According to information submitted in conjunction with the DRI application, the applicant has provided an easement over land to the Town of Barnstable and has agreed to fund the design of the Attucks Lane extension. The portion of the site subject to the roadway easement for the Attucks Lane extension is 7.54 acres. The applicant provided a copy of portions of the highway and drainage easements granted by Cape Cod Aggregates to the Town of Barnstable, together with a copy of the Attucks Lane Extension easement plans.

TRANS-3. The applicant and the Commission have agreed to apply credits resulting from 1.) the cost to design the Attucks Lane extension and for 2.) the value of the easements for the Attucks Lane right-of-way and to apply these credits only toward mitigation of roadway impacts incurred by that development. The applicant and Commission have also agreed to apply the credits only toward the initial development of each lot. The applicant and Commission have also agreed that the application of the fair share mitigation shall not relieve any subsequent development from compliance with the trip reduction and other requirements of the RPP.

TRANS-4. The applicant has provided information indicating that the mitigation value of the land subject to an easement for the right-of-way to extend Attucks Lane is \$65,340 per acre (\$1.50 per square foot). The applicant has granted an easement on 7.54 acres of land as part of this project. Thus, the total mitigation value of the land subject to an easement for the Attucks Lane extension is \$493,000. The total mitigation value of the easement will be used to calculate the roadway impact credit.

TRANS-5. The total cost of developing Attucks Lane Extension is \$3,246,000. This includes cost items identified in paragraph (h) of the Fair Share Guidelines of the

Commission such as design (\$178,000), Right-of-Way, and construction. It also includes the total mitigation value of the land subject to an easement for the Attucks Lane extension (\$493,000). It also accounts for information from the Town of Barnstable which indicates that construction costs total \$2,475,000 and that the applicant contributed \$100,000 to the reconstruction of Southwind Plaza. For the purposes of Fair Share analysis, the total cost of developing Attucks Lane Extension is decreased by the amount of the Public Works Economic Development (PWED) grant (\$1,161,000) leaving a "Mitigation Cost" of \$2,085,500. The Mitigation Cost was calculated as follows: (\$493,000) plus (\$178,000) plus (\$100,000) plus (\$2,475,000) minus (\$1,161,000).

TRANS-6. Discussions have taken place regarding the concept of assigning specific percentages of mitigation credit to the various lots shown on the plan. Due to uncertainty as to future specific development scenarios, staff agrees that the credit may be apportioned by the applicant among individual lots within the subdivision; said credits to be used if and when the lots are proposed for subsequent development. The total amount of credit shall not exceed 100% and once a credit has been utilized for a specific lot it cannot be altered or transferred.

TRANS-7. The total credit agreed upon by the applicant and the Commission for the Attucks Lane extension is \$771,000. This figure was calculated as follows: (\$493,000) (land costs) plus (\$178,000) (design costs) plus the applicant's contribution to the reconstruction of Festival Plaza (\$100,000).

TRANS-8. According to testimony of the applicant at the January 7, 1998 public hearing, the applicant's access management plan for the Attucks Lane Extension is set forth in the Easement for Highway Purposes granted by the applicant to the Town of Barnstable. There is no express restriction on access in the language of the Easement, portions of which were provided for the record. The accompanying plan, recorded at Barnstable County Registry of Deeds, Plan Book 537, Pages 4, 5 and 6, shows two curb cuts off of the Attucks Lane Extension. The Engineering and Planning Departments of the Town of Barnstable have asked the Commission to ensure that access off of the Attucks Lane Extension for the Cape Cod Aggregates subdivision lots will be limited to the two curb cuts shown on the accompanying plan. Restricting access will ensure that deterioration in level of service and safety will not result from additional conflicts from driveway access along the roadway and that intended function for mobility will be achieved.

The applicant indicates that where subdivision lots are not directly abutting subdivision roads, access to these lots will be provided through interconnections

with adjacent lots having direct access to subdivision roads, and therefore direct access to Attucks Lane Extension for the Cape Cod Aggregates subdivision lots will be restricted. This is also a requirement of condition TRANS-4, below.

TRANS-9. Traffic currently traveling to and from the site was documented by the applicant in a letter dated January 26, 1998 to the Cape Cod Commission from Nutter, McClennen & Fish, LLP. This traffic represents the peak traffic generated by Cape Cod Aggregates on a weekday. This traffic occurs over lot 5 and lot 9. The applicant identified the peak hours of the business as 5:30 to 6:30 a.m. and 3:30 to 4:30 p.m. Currently the site generates an estimated 466 vehicle trips on a weekday and 46 vehicle trips during the afternoon peak hour. This estimate represents the peak weekday traffic level, an estimated 20% higher than the average weekday traffic level. All other lots within the subdivision are vacant and currently do not generate any traffic.

TRANS-10. For consistency with Condition 3b of the Final Certification of the Barnstable Local Comprehensive Plan (February 12, 1998), a standard Level of Service (LOS) C applies to Attucks Lane Extension. Based on the Level of Service Criteria table (Table 7.1) and Speed Flow Curves with LOS Criteria (Figure 7-3) taken from the Highway Capacity Manual, Special Report 209, Third Edition, Transportation Research Board, Washington, D.C., 1994 as included in a memo addressed to Rick Bryant from Commission staff (January 15, 1998), the capacity of the road at LOS C/D is 2,000 vehicles per hour. This figure is intended to be used in traffic analyses for future DRIs.

Natural Resources/Open Space

NR/OS-1. Given the condition of the site as a result of a use that pre-dated the Cape Cod Commission Act, no Natural Resource Inventory was required.

NR/OS-2. The site is not located within estimated rare species habitat identified by the Massachusetts Natural Heritage and Endangered Species Program. However, the site is located within a Significant Natural Resources Area, due to its location in a Wellhead Protection Area/Zone of Contribution.

NR/OS-3. The proposed project consists of redevelopment of approximately 108.92 acres. As such, the Regional Policy Plan requires the applicant to provide 30% open space or 32.86 acres of open space.

NR/OS-4. According to information submitted as part of the DRI application, the applicant will exceed the Regional Policy Plan's open space requirement by

providing 52.46 acres (48%) of open space through the two methods outlined in a) and b), below:

a). A conservation restriction on 21.66 acres of land along Phinney's Lane. This area consists of 17 residentially-zoned lots and most of this area is currently wooded. A portion of this area is not wooded and will be restored. This area is important due to its proximity to Hathaway's Pond and its associated Conservation Area. Although on the opposite side of Phinney's Lane from the Pond, placing this area under a conservation restriction will ensure that development does not occur on these lots which might adversely affect the water resources, open space and recreation values of Hathaway's Pond; and

b). A set aside of 30% open space on each of the lots in the subdivision (for a total of 30.8 acres) or an equivalent off-site or cash contribution, at the time that development is proposed on these lots.

NR/OS-5. In a letter dated June 19, 1997, the Barnstable Planning Board submitted comments on the Cape Cod Aggregates project expressing concern that the existing natural vegetation adjacent to Phinney's Lane should be augmented to provide a vegetated buffer of not less than 100 to 150 feet.

NR/OS-6. In a letter dated June 19, 1997, the Barnstable Planning Board submitted comments on the Cape Cod Aggregates project expressing concerns that several issues be taken into consideration should the site be reclaimed. These include:

- a.) that fill used meet all federal, state and local requirements,
- b.) final grades be established with a minimum of four (4) feet above high groundwater and greater,
- c.) all slopes be no greater than 4:1, and
- d.) an erosion control and replanting plan should be developed and that plant species used should be those common to Cape Cod and which require little or no maintenance.

NR/OS-7. In a letter dated July 28, 1997 from Nutter, McClennen & Fish, the applicant identified four areas for site restoration, illustrated on an attached sketch plan. The letter also indicated that:

- a.) filled and reclaimed areas of the site would generally be sloped at 3:1,
- b.) the fill used would consist of a clean sand/clay mixture,
- c.) the existing vegetation along Phinney's Lane would be enlarged to approximately 200 feet in depth. Fill used would be clean clay/sand and the area would be re-vegetated with native scrub pines, and

d.) a 35-foot high L-shaped berm would be constructed to shield the proposed new Attucks Lane Extension from the existing Cape Cod Aggregates business which will continue to operate on Lots 5 and 9 as shown on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997."

NR/OS-8. While the applicant has chosen to satisfy the open space requirements of the RPP through a combination of on-site and off-site land, staff note that a letter received from the Barnstable Planning Department dated May 12, 1998 notes that Barnstable's Zoning Ordinance requires that 30% of each lot be retained in natural vegetation and that 50% of each lot be pervious. According to a letter received from the Barnstable Building Commissioner's office dated May 15, 1998, waiving or modifying these requirements would need a variance to be granted by the Zoning Board of Appeals.

Water Resources

WR-1. According to a letter submitted by the Town of Barnstable Planning Board, received on June 20, 1997, virtually all of the site is located within a delineated Zone II area and is in Barnstable's Groundwater Protection Overlay District. Also, the northern-most portion of the site is located in the Wellhead Protection District.

WR-2. According to nitrogen loading calculations performed by the Cape Cod Commission's Water Resources office using information supplied by the applicant, the existing nitrogen loading of the Cape Cod Aggregates business is under one part per million (< 1 ppm).

Hazardous Materials/Wastes

HAZ-1. Barnstable's Zoning Ordinance prohibits underground fuel storage tanks and any use which generates hazardous waste in amounts greater than the Very Small Quantity Generator level in Groundwater Protection (GP) districts. Barnstable's Zoning Ordinance also prohibits any use which uses, generates or stores, including racking for re-sale, toxic or hazardous substances totalling, at any one time, more than 50 gallons by liquid volume or 25 pounds dry weight in the Wellhead Protection (WP) district.

HAZ-2. Article 39 is a general ordinance which established an inventory, registration, licensure and storage controls for businesses in Barnstable which handle or store any quantity of hazardous materials or wastes.

HAZ-3. According to Department of Environmental Protection (DEP) regulations,

gravel processors may process asphalt, brick and concrete (ABC) but are prohibited from processing any other material (such as solid waste, recyclables or construction and demolition debris) without additional permits from the DEP.

HAZ-4. According to a letter from Nutter, McClennen & Fish dated May 5, 1998, Cape Cod Aggregates/Hyannis Sand & Gravel is licensed to process items which include brick, mortar, concrete and asphalt.

HAZ-5. According to letters from Nutter, McClennen & Fish dated January 26, 1998, February 25, 1998, May 5, 1998 and a letter from Bardon Trimount dated May 5, 1998, Cape Cod Aggregates/Hyannis Sand & Gravel and Bardon Trimount have the following types and amounts of hazardous material on Lots 5 or 9 at any one time:

Vehicle oils (10, 15, 30, 40 weights), grease, lubricants	650 gallons
Diesel fuel	10,000 gallon above-ground tank 10,000 gallon underground tank
Gasoline	2,500 gallon underground tank
Welding gases	three tanks, total, of oxygen and acetylene
Liquid asphalt storage	20,000 gallon above-ground tank

Dryden Oil Company, Inc. provides the new oil/grease/lubricant delivery. The applicant has submitted Material Safety Data Sheets from Dryden for the vehicle oils, greases and lubricants. Welding gases are provided by a local vendor.

In addition to these hazardous materials, Cape Cod Aggregates/Hyannis Sand & Gravel has 850 gallons of used oil on Lots 5 and 9 at any one time. Some of this oil is to supply a used oil fired space heater. According to letters from Nutter, McClennen & Fish dated January 26, 1998, February 25, 1998 and May 5, 1998, what is not burned in the space heater is currently hauled off-site by United Industrial Services, a DEP-licensed hazardous waste hauler. Cape Cod Aggregates/Hyannis Sand & Gravel is also registered with DEP as a small quantity generator of hazardous waste. Re-use of used oil in a properly-permitted used-oil fired space heater is in conformance with Minimum Performance Standard 4.2.2.1. According to a letter from Bardon Trimount dated May 5, 1998, maintenance of the asphalt plant is limited to greasing of internal parts, which produces no waste and there is no

generation of used oil.

HAZ-6. According to letters from Nutter, McClennen & Fish dated January 26, 1998 and February 25, 1998, no painting is done on the premises and all batteries and tires are dealt with through a local outside vendors. A vehicle maintenance garage is located on Lot 9 where vehicles associated with the operations of Cape Cod Aggregates/Hyannis Sand & Gravel are repaired. Bardon Trimount does not perform vehicle maintenance on the site.

HAZ-7. Cape Cod Aggregates/Hyannis Sand & Gravel has registered the diesel fuel and gasoline tanks (including the one used by Bardon Trimount) with both the Barnstable Fire Department and the County Department of Health and the Environment.

CONCLUSION

Based on the public hearing(s), the materials submitted for the record, and the above Findings, the Cape Cod Commission hereby concludes:

1. The benefits of the proposed subdivision outweigh its detriments. This conclusion is supported by findings NR/OS-3 and NR/OS-4 and conditions NR/OS-1 through NR/OS-5.
2. The project will likely be in compliance with local zoning requirements provided that the project obtains all approvals as required by the Town of Barnstable.
3. The project is consistent with the Barnstable Local Comprehensive Plan.
4. The project, as conditioned, is consistent with the Minimum Performance Standards of the 1996 Regional Policy Plan.

The Commission hereby approves, with conditions, the Development of Regional Impact application of Cape Cod Aggregates for this subdivision of land located off Kidds Hill Road in Barnstable, MA pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10 (as amended), provided the following conditions are met:

CONDITIONS

General

G-1. The applicant, his heirs and any successors or assigns, shall be bound by the requirements of this Development of Regional Impact Decision.

G-2. A Certificate of Compliance from the Cape Cod Commission shall be obtained by the applicant prior to the sale or conveyance of any lot and prior to the issuance of any building permit and/or foundation permit for a lot within the project site as described on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on a subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board.

G-3. Any level of development as defined by Section 2(e) of the Cape Cod Commission Act proposed for a lot within the subdivision as described on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on a subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board shall be reviewed as a Development of Regional Impact (DRI) by the Cape Cod Commission. Any subsequent DRI Modifications shall be governed by the Code of Cape Cod Commission Regulations of General Application, Chapter C, Section 5, as amended.

G-4. The applicant shall submit to the Cape Cod Commission a copy of the Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board.

Transportation

TRANS-1. The trip reduction and other transportation-related requirements of the Regional Policy Plan in effect at the time that future development for each lot within the subdivision is subsequently proposed, shall be satisfied pursuant to Cape Cod Commission review of that specific development on the lot in accordance with this DRI decision.

TRANS-2. The roadway impact mitigation credit of \$493,000 plus \$178,000 plus \$100,000 (total = \$771,000) as agreed upon by the applicant and Commission resulting from the placement of land under easements to extend Attucks Lane and the applicant's cost to design Attucks Lane shall be:

- a.) applied only toward initial development of each lot within the subdivision per the limitations described in finding TRANS-6,
- b.) applied only after assessment of the impacts on the surrounding roadway system from development of the lot then under review,
- c.) consistent with study area locations prescribed by the then-in-effect Regional

Policy Plan. As each lot is proposed for development, a study area which includes traffic generated by any previously-developed lot within the subdivision shall be defined. Any unmitigated traffic from these lots shall be considered as part of the total subdivision traffic. At such time, the then-pending DRI applicant shall be responsible for mitigating his/her own impacts, as well as any impacts from previously developed lots within the subdivision which were not mitigated at an earlier stage, and

d.) applied toward the fair-share cost mitigation of the off-site impacts of the development of the lot under review. This application of fair share costs mitigation shall not relieve any subsequent development from compliance with the trip reduction and other standards of the Regional Policy Plan.

TRANS-3. The traffic characteristics described in finding TRANS-9 shall be considered when evaluating the traffic impacts of the next level of development proposed over lot 5 and lot 9. The new development traffic shall be reduced by the amount described in finding TRANS-9. Thus, the traffic impacts of the increment of traffic greater than the existing traffic over these two lots will be addressed.

TRANS-4. Direct access to the Attucks Lane Extension for the lots shown on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board shall be limited to two locations, said locations to be shown on a plan approved by the Commission in consultation with the Town of Barnstable and filed with the Commission and the Town. No other direct access from the subdivision shall be allowed along Attucks Lane between Phinney's Lane and Independence Drive. The applicant shall provide copies of the recorded Easement for Highway Purposes, referenced herein and the accompanying plan.

TRANS-5. No building and/or foundation permit shall be issued for any development occurring on Lots 4, 5, 6, 7, 8 or 9 as described on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board unless and until construction of the Attucks Lane Extension has been satisfactorily completed in the opinion of the Town of Barnstable.

Natural Resources/Open Space

NR/OS-1. Prior to the issuance of a Certificate of Compliance, and prior to the sale

of any lot and the application for any building permit and/or foundation permit from the Town of Barnstable for any lot as described on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board, the applicant shall submit a final plan depicting the 21.66 acres of off-site open space and a proposed Conservation Restriction for review and approval by Commission Counsel. The area depicted on the plan shall encompass the area as generally shown on the map submitted with a letter from Nutter, McClennen & Fish dated August 22, 1997. Such submission and approval by Commission Counsel of the Conservation Restriction and plan shall occur prior to any review of the plan or Conservation Restriction by the State and prior to its recording at the Barnstable County Registry of Deeds. Said plan shall be incorporated by reference into the permanent Conservation Restriction referred to in this condition. Future activities within this area shall be governed by the terms of the Conservation Restriction referred to in this condition and Natural Resources and Open Space condition #2 (NR/OS-2), below.

NR/OS-2. Prior to the issuance of a Certificate of Compliance, and prior to the sale of any lot and the application for any building permit and/or foundation permit from the Town of Barnstable for any lot as described on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board, the applicant shall record at the Barnstable County Registry of Deeds and/or Land Court a fully executed and Commission-approved Conservation Restriction as referred to in Natural Resources and Open Space condition #1 (NR/OS-1), above.

Due to the uniqueness of Lots 2 and 3 as shown on the preliminary subdivision plan, the requirements of this Condition shall be deemed complied with upon the applicant's filing of a form of Conservation Restriction with the Executive Office of Environmental Affairs, said Restriction having been first approved in form and content by Counsel for the Commission.

NR/OS-3. Prior to the issuance of a Certificate of Compliance, and prior to the sale or conveyance of any lot and the application for any building permit and/or foundation permit from the Town of Barnstable for any lot as described on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board, the

applicant shall submit a restoration plan for currently unvegetated portions of this area. The restoration plan shall provide for regrading (no greater than 3:1 slopes), loaming and revegetation of this area with native shrubs and trees consistent with the applicant's July 28, 1997 letter and shall be first approved by the Cape Cod Commission.

NR/OS-4. The applicant shall complete all restoration work to the satisfaction of the Commission and record the off-site open space plan and Commission-approved conservation restriction prior to issuance of a Certificate of Compliance.

NR/OS-5. At the time further development is proposed on any of the lots (2-9) in the subdivision as described on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive Plan as approved and endorsed by the Town of Barnstable Planning Board, each applicant shall be required to provide a minimum of 30% permanent open space on each lot or otherwise provide for this open space in a manner consistent with the 1996 Regional Policy Plan and the Barnstable Zoning ordinances.

Hazardous Materials /Wastes

HAZ-1. Cape Cod Aggregates/Hyannis Sand & Gravel and Bardon Trimount, companies with existing operations on Lots 5 and 9 as shown on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive Plan as approved and endorsed by the Barnstable Planning Board shall be limited to their existing hazardous materials and hazardous waste usage, generation, handling, storage, treatment and disposal as described in findings HAZ-5, HAZ-6 and HAZ-7, above, plus an additional Household Quantity of hazardous materials and hazardous wastes as defined in the 1996 Regional Policy Plan. Gases used for welding purposes shall not be included in this limit. Cape Cod Aggregates/Hyannis Sand & Gravel shall enforce this limit in its leases with Bardon Trimount and any other companies which may lease space on Lots 5 and 9 in the future. Any increase over the limit established by this condition shall be reviewed either as a Development of Regional Impact or in accordance with the Cape Cod Commission's Administrative Regulations for DRI Modifications.

HAZ-2. Cape Cod Aggregates/Hyannis Sand & Gravel, Bardon Trimount and any other leasees or companies operating on Lots 5 and 9 as shown on the plans entitled "Preliminary Plan of Land in Barnstable, Massachusetts prepared for Cape Cod Aggregates, revision #3, dated January 23, 1997" or on the subsequent Definitive

Plan as approved and endorsed by the Town of Barnstable Planning Board shall operate in compliance with Minimum Performance Standard 4.2.2.2 of the 1996 Regional Policy Plan.

SUMMARY

The Cape Cod Commission hereby approves, with conditions, the Development of Regional Impact application of Cape Cod Aggregates Inc. for this subdivision of land located off Kidds Hill Road in Barnstable, MA pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10 (as amended).

Vicky Bebout
Vicky Bebout, Chair

May 29, 1998
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 29th day of May, 1998.

Katharine L. Peters
NAME, Notary

My Commission expires:

