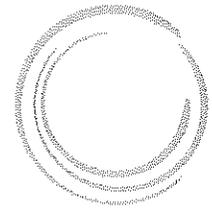


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CAPE COD  
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Date: August 16, 2010

From: Cape Cod Commission

To: Attorney John W. Kenney  
12 Center Place  
1550 Falmouth Road  
Centerville, MA 02632

RE: Modification of a Development of Regional Impact

Applicant: The Tarkinow Group, Limited

Project & Location: BJs Wholesale Club Store  
420 Attucks Lane/Hadaway Road  
Hyannis, MA 02601

Project #: TR-20031

Book and Page: Book: 18448 Page: 018

Map and Parcel: 274/040/001

Lot and Plan: First Hyannis Realty, LLC Lot 1, Plan Book 625, Page 34  
(Former Lots 7 & 8 on Plan at Registry in Plan Book 547, Page 1)

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### Background

In a Development of Regional Impact (DRI) decision dated April 10, 2003, the Cape Cod Commission approved with conditions the construction and operation of a 68,831 square foot BJs Wholesale Club store on a 15.78-acre parcel located adjacent to Attucks Lane/Hadaway Road, Hyannis.

Condition HM4 of the Commission's 2003 DRI decision limited the store to a specific total quantity of Hazardous Materials on site at any time (not more than 3,323 gallons or its dry weight equivalent) and to the *BJs Club/Small Box Store Inventory* submitted on February 26, 2003 as part of the Commission's DRI review.



Keeping a Special Place Special

Condition HM7 of the 2003 DRI decision (as modified) requires BJs to provide the Commission with inventory reports at specific intervals based on when the store received its local Certificate of Use/Occupancy. The store received its Certificate of Use/Occupancy in late 2005, and is now obligated to report its Hazardous Materials inventory to the Commission annually. The most recent inventory report was received by the Commission from BJs in late 2009. Analysis of this information indicates the store has been below the 3,323-gallon limit.

A letter received by the Commission on July 6, 2010 from Attorney Kenney requests a modification to address and/or eliminate the store's Hazardous Materials inventory reporting requirements, and to fill in an outside detention basin on the northeast side of the store and existing parking lot.

### **Other Modification Decisions**

The Commission granted the Applicant modifications to the 2003 DRI decision in Modification decisions dated January 20, 2004, June 7, 2004, June 21, 2004, August 21, 2004, August 25, 2004, November 10, 2004, January 18, 2005, February 14, 2005, and May 17, 2007.

### **Jurisdiction**

Section 13(a)(i) of the Commission's *Enabling Regulations* (revised May 2010, corrected June 2010) provides that an applicant "*who has obtained a favorable decision from the Commission, or a successor in interest to a favorable and transferable Commission decision, may apply for a decision modification.*"

Section 13(c)(ii) of the *Enabling Regulations* describes a Minor Modification 2 as "*a substantially similar proposal to the original project but involves a minor Change of Use, a minor change to the site plan, or a small change to the findings or a condition of the original approval, which does not affect the intent or outcome of the finding or condition. A proposed change shall not result in different increased impacts to the resources protected by the Act and/or RPP.*"

### **Regulatory Committee's Determination**

On July 19, 2010, the Commission's Regulatory Committee considered the proposed changes to the BJs Wholesale Club decision, as amended and voted to approve the requested changes as a Minor Modification Type #2. On August 16, 2010, the Regulatory Committee voted to approve the draft written Modification decision.

### **Modification to the 2003 Decision as Amended**

The following changes shall be made to the findings and conditions of the original DRI decision, as amended, to reflect the requested changes to the project.

### **CHANGES TO FINDINGS** (*Bold is new language, removed language in strikeout*)

HM13. The project provides the following potential benefits under the RPP:

- Voluntary reduction of hazardous materials in the store's proposed inventory from 6,678 gallons to 3,323 gallons;
- Two years of inventory reporting;
- The deeding to the Town of Barnstable of an off-site parcel that uses, handles stores, generates, and/or disposes of hazardous materials and/or hazardous wastes (Cash's Auto body site);

Modification Type 2 – BJs Wholesale Club Store  
Inventory and Outside Basin  
August 16, 2010

- Funding support of \$15,000 annually for five full calendar years either to promote educational efforts in the Barnstable school system concerning hazardous materials and wastes and their impact on the drinking water supply, or to support the inspection and enforcement efforts of the Barnstable Health Department with respect to proper hazardous materials and waste management in the Town of Barnstable;
- Provision of an internal ~~and external~~ containment system in the proposed BJs store as described in the "Hazardous Materials Release & Contingency Program," dated October 1, 2001 prepared by Green Seal, consisting of raised grates in the floor inside the proposed BJs store (approximately 1 inch above the floor surface) ~~that are piped to an additional exterior retention structure. The exterior retention structure is proposed to be equipped with an oil/water separator with a 1,000-gallon holding capacity at its connection to the piping coming from the store, and to be lined with an oil/chemical resistant high density polyethylene (HDPE) liner system (i.e. 40 mil landfill liner) with a clay, hardening or vegetative layer on top.~~ The building will also be lined with this oil/chemical resistant high density polyethylene (HDPE) liner system;
- Permanent removal of a 10,000 gallon underground fuel storage tank;
- Submission of an emergency response plan entitled "Spill Prevention Control and Countermeasure Plan" dated September 5, 2001, which is consistent with Development Review Policy 4.2.2.4.

**CHANGES TO CONDITIONS** (*Bold is new language, removed language in strikeout*)

G5. The proposed BJs Wholesale Club shall be constructed in accordance with the following final plans:

- Layout & Materials, Grading & Drainage, and Utility Plans SD1-SD4 dated 4/4/03
- Landscape and Planting Plans prepared by Coastal Engineering and Abbellire dated 3/7/03
- Building Elevations prepared by Bignell Watkins Hasser dated 2/7/01 (stamped received 4/3/03)
- Conceptual Plan Raised Floor Drain System and Roof Plan dated 1/8/03 **except that the exterior containment basin shown on this plan may be filled in as long as its associated piping from the store to the basin is closed off**
- Revised Pond Grading Plan SK-7 prepared by Coastal Engineering dated 8/6/04
- Architectural Drawings prepared by Bignell Watkins Hasser as referred to on cover sheet CS1, 8/2/04

HM4. The project site shall be limited to not more than 3,323 gallons or its dry weight equivalent of hazardous materials on site at any given time, including all items in the store, inclusive of items on the display/sales floor and in stock. The store shall not have a tire center. The site shall not generate or dispose of any hazardous wastes as defined by 310 CMR 30.000. The Commission recognizes that the actual types or nature of the hazardous materials in the store, inclusive of items on the display/sales floor and in stock, will change as BJs changes suppliers. However, as the types or nature of hazardous materials in the store change, inclusive of items on the display/sales floor and in stock, BJs shall provide the Commission with a written report describing these changes to facilitate on-going compliance with conditions ~~HM7 and~~ WR4. Commission staff may require that the groundwater monitoring plan required by condition WR4 be modified to account for changes in the types or nature of hazardous materials in the store. If the groundwater monitoring plan required by condition WR4 is modified, BJs shall implement these changes before the next round of groundwater sampling.

HM7. The applicant shall provide to the Commission inventory reports of all hazardous materials sold, used, treated, generated or stored on the site as follows: at quarterly intervals for a period of two years from the date of the store's Occupancy Permit; followed by twice annually for a period of two years; and thereafter provided annually.

HM8. The Cape Cod Commission staff shall have the right to enter the project premises at any time during normal business hours upon reasonable notification to the store manager to verify compliance with conditions HM4, **and** HM5 and HM7.

Royden Richardson  
Royden Richardson, Regulatory Committee Chair

8/19/2010  
Date

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

August 19, 2010

Before me, the undersigned notary public, personally appeared

Royden Richardson, in his/her capacity as Chairman of the Cape Cod Commission Regulatory Committee, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness, or  personal knowledge of the undersigned.

Gail P. Hanley  
Notary Public

My Commission Expires:

10.13.11