CAPE COD COMMISSION

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DATE: May 17, 2007

TO: Attorney John W. Kenney
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FROM: Cape Cod Commission

RE: Modification of Development of Regional Impact decision (*Cape Cod Aggregates/TR96020, May 21, 1998 as amended*).
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: The Tarkinow Group, Ltd.

PROJECT #: MOD06026

PROJECT: Cape Cod Aggregates/BJ's ANR DRI Modification
Attucks Lane
Hyannis, MA

BOOK/PAGE: Book 18448, Page 18. (Formerly Book 5041, Page 284; Book 6656, Page 147; Book 10212, Page 145; Lots 7 & 8 on Plan recorded with Barnstable County Registry of Deeds in Plan Book 547, Page 1.)

MODIFICATION TO DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of the Tarkinow Group (Applicant) for a Major Modification (Modification) to the Development of Regional Impact (DRI) decision for the Cape Cod Aggregates subdivision pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, and Section 12 of the DRI Enabling Regulations, Barnstable County Ordinance 90-12. This decision is in addition to the DRI decision *Cape Cod Aggregates/TR96020, May 21, 1998 as amended* which remains in full effect except as modified by this decision.

PROJECT DESCRIPTION

In March 1998 the Commission approved the Cape Cod Aggregates DRI, which allowed for the subdivision of 108 acres of land off of Kidd's Hill Road in Hyannis. In April 2003,

the Commission approved the BJ's Wholesale Club DRI which allowed for the construction of a 69,000± s.f. retail store on a 15.78 acre site on Attucks Lane (then Hadaway Road) in Hyannis. The BJ's Wholesale Club site is part of the Cape Cod Aggregates subdivision plan (Lots 7 and 8).

The Applicant proposes to divide the 15.78 acre parcel where BJ's Wholesale Club is located into two lots: an 11.66 acre "Lot 1" and a 4.12 acre "Lot 2." The lots are configured such that Lot 1 would contain BJ's and Lot 2 would be a new vacant lot. Both lots would have their access on "Stub Road A" which serves as the current access for BJ's. No building plans are proposed for Lot 2 at this time; however, the Applicant anticipates that a building will be proposed there in the future.

PROCEDURAL HISTORY

The Commission's Regulatory Committee determined on November 13, 2006 that the proposed division of land constitutes a Major Modification to the previously approved DRI pursuant to Section 12(c)(iii) of the Cape Cod Commission Enabling Regulations. The Commission voted to assert jurisdiction over this project on November 30, 2006. The Applicant submitted a DRI modification application on December 28, 2006.

A hearing officer of the Commission opened the public hearing for procedural purposes on January 23, 2007 at the First District Courthouse in Barnstable Village. The hearing was continued to March 29, 2007 at the First District Courthouse in Barnstable Village, where a duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission. The public hearing was closed on April 19, 2007 and the record was left open for submission of written materials until May 17, 2007.

At the April 19, 2007 public hearing, the subcommittee voted unanimously to recommend to the full Commission that the project be approved as a DRI, subject to conditions. A final public hearing was held before the full Commission on May 17, 2007. At this hearing, the Commission voted unanimously to approve the Modification as a DRI, subject to conditions.

Materials submitted for the record

From the Applicant:	*Date received:*
• Modification application	12/28/06
• Portions of BJ's lease	3/29/07
• Email regarding approval conditions	4/11/07

From Cape Cod Commission	*Date sent:*
• Letter to Attorney John Kenney re: jurisdiction	10/31/06
• Memo to Regulatory Committee re: modification	11/7/06
• Letter to John Kenney re: Commission review	11/14/06
• Memo to Commission re: jurisdiction	11/24/06
• Letter to John Kenney re: project review notice	12/5/06
• Staff report and cover memo to subcommittee	1/17/07
• Staff report and cover memo to subcommittee	3/23/07

- Memo to subcommittee re: April 19 meeting 4/12/07

From state and local officials: *Date received:*

- Email from Patty Daley, Barnstable Director of Comprehensive Planning re: ANR approval 11/3/07
- Letter from Christopher Olsen, Barnstable Deputy Fire Chief re: concerns about access 1/23/07
- Memo from Ruth Weil, Barnstable Director of Growth Management re: access, conditions 3/29/07
- Memo from Ruth Weil re: conditions, support of staff recommendations. 4/19/07

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

At the March 29, 2007 public hearing Attorney John Kenney presented the modification request and described the Approval Not Required (ANR) plan. Martha Hevenor presented a summary of the staff report. Raymond Lang of Barnstable noted he is a member of the Planning Board but was speaking as a citizen. He explained the history of Stub Road A and submitted a letter identifying his questions and concerns. David Munsell, Planning Board member, explained the reasons for the Planning Board's endorsement of the ANR plan, noting that it met legal requirements. The subcommittee discussed the lots' access and intersection alignment. At the April 19, 2007 public hearing, the subcommittee and staff clarified recommendations regarding intersection alignment and access. Attorney Kenney agreed with the recommendations.

JURISDICTION

The proposed land division qualifies as a Development of Regional Impact pursuant to Section 12(c)(iii) of the Enabling Regulations Governing Developments of Regional Impact as a Major Modification to DRI decision *BJ's Wholesale Club/TR20031, April 10, 2003* and DRI decision *Cape Cod Aggregates/TR96020, May 21, 1998.*

FINDINGS

The Commission has considered the application of the Tarkinow Group for the proposed Cape Cod Aggregates/BJ's Wholesale Club ANR DRI Modification, 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 Sections 12 and 13 of the Act:

General

The following findings are added to the Cape Cod Aggregates DRI decision (TR96026, May 21, 1998 as amended).

G-5. The Applicant proposes to divide a 15.78 acre parcel on Attucks Lane. where BJ's Wholesale Club is located, into two lots: an 11.66 acre "Lot 1" and a 4.12 acre "Lot 2."

The lots are configured such that Lot 1 would contain BJ's and Lot 2 would be a new vacant lot. Both lots would have their access on "Stub Road A" which serves as the current access for BJ's. No building plans are proposed for Lot 2 at this time; however, the Applicant anticipates that a building will be proposed there in the future.

BJ's Wholesale Club is located on what was Lots 7 and 8 of the Cape Cod Aggregates Subdivision. The proposed lot division would require modifications to the Cape Cod Aggregates DRI decision and the BJ's Wholesale Club DRI decision. In addition, any future development on the lots is subject to Commission review.

G-6. Prior to seeking approval from the Commission for the Modification, the Applicant submitted to the Barnstable Planning Board an ANR plan dividing the BJ's site. The Planning Board endorsed the plan as it met the statutory requirements.

G-7. The Modification was reviewed for consistency with Section 13(d) of the Act and the 2002 Regional Policy Plan, as the date of the first public hearing was March 29, 2007. The Modification presents new and different impacts in the area of transportation and does not present additional impacts in the areas of water resources, open space, community character, economic development, affordable housing, and hazardous materials.

G-8. The Modification does not affect the probable benefits and probable detriments of the Cape Cod Aggregates DRI. As such, the statement in the conclusion of the Cape Cod Aggregates DRI decision that "the benefits of the proposed subdivision outweigh its detriments" remains.

G-9. The Modification as proposed is consistent with the Act.

G-10**.** The Modification involving an ANR plan complies with the current dimensional requirements of the zoning district in which it is located.

G-11. The Modification involving an ANR plan does not change the Town of Barnstable's previous determination concerning consistency with the Local Comprehensive Plan.

G-12. The project is not located within a District of Critical Planning Concern.

<u>Transportation</u>
The following findings are added to the Cape Cod Aggregates DRI decision (TR96026, May 21, 1998).

TRANS-11. Attucks Lane is laid out as a limited access roadway. Limited access roadways typically are the safest, highest capacity roadways available to the motoring public due to minimization of conflict points. The majority of vehicle crashes along a roadway occurs at conflict points (i.e. intersections and driveways).

TRANS-12. In accordance with Finding T9 and as shown on the ANR plan, three side roads (Stub Roads "A," "B," and "C") provide access to Attucks Lane. "Stub Road A"

provides access to BJ's Wholesale Club. "Stub Road B" is located directly opposite "Stub Road A," providing a properly aligned four-way intersection.

TRANS-13. The ANR plan divides the current BJ's lot into two lots. Both lots will access Attucks Lane from "Stub Road A" without creating additional access points, in accordance with Minimum Performance Standard (MPS) 4.1.1.1 (safety); MPS 4.1.1.3 (access management); and MPS 4.1.1.6 (minimization of impacts on adjacent roadways). By using the existing access points approved for the BJ's Wholesale Club DRI, the Modification does not impact safety, access management, or other conditions on adjacent roadways.

TRANS-14. The Commission is currently reviewing a DRI application for a supermarket on Attucks Lane across from BJ's. The applicant for the supermarket, Atlantis Development, has indicated that it is seeking agreement with the Tarkinow Group to relocate Stub Roads "A" and "B" as part of a new roadway connection associated with the proposed supermarket.

TRANS-15. The proposed Modification does not increase vehicle trip generation. As such and in accordance with MPS 4.1.3.4, the Modification does not require traffic mitigation measures.

TRANS-16. The proposed Modification complies with the transportation minimum performance standards of the RPP.

CONCLUSION

Based on the findings above, the Cape Cod Commission hereby concludes:

The Modification is consistent with the Cape Cod Regional Policy Plan requirements as discussed in Findings TRANS-13, 15, and 16. The Modification does not affect the probable benefits and probable detriments of the Cape Cod Aggregates DRI decision, as discussed in Finding G-8. The Modification is consistent with zoning, as discussed in Finding G-10. The Modification does not change the Town of Barnstable's previous determination in the Cape Cod Aggregates DRI decision concerning LCP consistency, as discussed in Finding G-11.

The Commission hereby approves with conditions the application of the Tarkinow Group LLC for the proposed Cape Cod Aggregates/BJ's ANR DRI Modification as a Major Modification, provided the following conditions are met:

CONDITIONS

General

The following condition is added to the Cape Cod Aggregates DRI decision (TR96026, May 21, 1998).

G-5. The division of the 15.78 acre project site parcel into two lots shall be performed in accordance with the "Plan of Land Prepared for Tarkinow Development Group LLC Dividing Land Described in Book 18448, Page 18 Located in Barnstable Massachusetts" dated August 29, 2006

Transportation

The following conditions are added to the Cape Cod Aggregates DRI decision (TR96026, May 21, 1998).

TRANS-6. In accordance with MPS 4.1.1.1 (safety), MPS 4.1.1.3 (access management), and MPS 4.1.1.6 (minimization of impacts on adjacent roadways), if the Applicant, its successors, and/or assigns request to relocate " Stub Road A," it shall be configured with "Stub Road B' such that a properly aligned four-way intersection is provided. The configuration of the four-way intersection is subject to approval by the Town of Barnstable and Cape Cod Commission staff.

TRANS-7. "Stub Road A" shall provide the sole access drive to both Lot 1 (the site of the existing BJ's store) and Lot 2 (the new lot). Creation of a new driveway to access either lot is prohibited.

The Cape Cod Commission hereby approves with conditions the application of the Tarkinow Group as a Major Modification to a Development of Regional Impact pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Cape Cod Aggregates/BJ's ANR DRI Modification located in Barnstable, MA.

_____

W. Bradford Crowell Date
Chair

Barnstable, ss _____, 2007

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

_____
Notary Public

My Commission Expires: