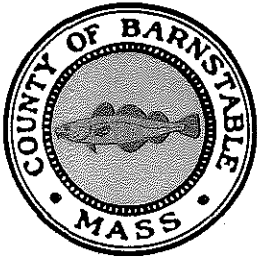


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**Please note that this Decision of the Cape Cod  
Commission was appealed and is superceded  
by a Court settlement.**



# CAPE COD COMMISSION

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

Date: March 5, 1992

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To: Community of Jesus, Inc.  
BayView Drive  
Orleans, Massachusetts

From: Cape Cod Commission

Re: Development of Regional Impact

Project #: TR91036

Project: Chapel of the Holy Paraclete

## Decision of the Cape Cod Commission

### Summary

The Cape Cod Commission (Commission) hereby denies the application of the Community of Jesus, Inc. (Community) for a Development of Regional Impact (DRI) approval under section 13 (d) (1-3) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed construction of the Chapel of the Holy Paraclete and Rehearsal Hall in Orleans, Ma. The decision is rendered pursuant to the vote of the Commission on March 5, 1992.

### Project Description

The proposed project is located in Orleans, Massachusetts on 10.08 acres. An existing chapel, a supporting retreat house and residences occupy the landscaped grounds. The site lies adjacent to the Orleans Town Landing at Rock Harbor and is within the Old King's Highway Regional Historic District. Soils on the site are primarily Carver Series coarse sands underlain by peat under a portion of the site.

The Community has been located in the Rock Harbor area for approximately 33 years. In 1971, the existing chapel was constructed to accommodate the community's religious needs. Additional retreat houses, brother and sister residences and infrastructure have been added over the years. The existing chapel and surrounding complex have provided a worship space to the Community for over 20 years.

There is a bordering vegetative wetland and an isolated vegetative wetland present in close proximity to the proposed development site. The existing chapel footprint in combination with the new construction will provide a project site coverage of approximately 21,210 square feet for the

chapel and the rehearsal hall. The proposed chapel would be of Gothic design with a granite exterior and would have a height of 55 feet to the roof line. A square tower would extend to a height of 89 feet.

### Procedural History

The proposed project was referred to the Commission by the Board of Selectmen of Eastham and the Plan Evaluation Board of Orleans, as a discretionary referral under Section 12 (e) of the Act. The Commission voted to accept the project for DRI review on May 23, 1991. A subcommittee was selected to review the proposed project. The subcommittee and members of the Commission staff conducted a site visit on June 14, 1991. On June 17th, Commission staff met with representatives of the Community to discuss previous denials of local and regional approvals required for the proposed project. The Community decided to pursue Commission review prior to a final determination on appeals of the two local denials discussed in the findings below.

The Commission subcommittee received testimony concerning the proposed project as provided for by Section 5 of the Act, at several public hearings. The first public hearing was held on June 27, 1991 at the Orleans Elementary School. The subcommittee met, at a public meeting, on August 5, 1991, to discuss the standards of review for the project.

A second public hearing was held on August 7, 1991, at 3:00 p.m. and a third public hearing was held on Thursday, August 29, 1991, both by the Commission subcommittee at the Orleans Elementary School. The purpose of the third hearing was to allow public comment from the remaining interested parties who were unable to comment at the earlier hearings. Public meetings were held by the Commission subcommittee on September 5, 1991 at the Commission office and on September 12, 1991 at the Dennis Senior Center in Dennis, Ma. The final public hearing was held by the Commission subcommittee on Tuesday, September 24, 1991 at 4:00 p.m. at the Orleans Elementary School. The record remained open until the close of business on October 23, 1991. Meetings of the Commission subcommittee were held on October 7, in the Cape Cod Commission Offices and on October 31, at the Orleans Town Offices where the subcommittee voted on a recommendation to present to the full Commission at the November 7th Commission meeting. The subcommittee held a final meeting at the Commission office on November 4th to discuss and review the subcommittee report. The full Commission met on November 7, 1991 at the Chamber of the Assembly of Delegates in Barnstable, MA. and voted to support the subcommittee recommendation of denial with two opposed and one member abstaining.

At a meeting on November 21, 1991, the full Commission voted, at the Community's request, to table the decision and to extend the decision due date to March 6, 1992. The Community requested the extension so that they could propose a new chapel design and offer additional information concerning the proposed waste water treatment plant. A new public hearing was noticed and held by the subcommittee on January 22, 1992 at the Orleans Town Hall. A subsequent meeting and hearing were held at the Cape Cod Commission Offices on February 12, 1992, by the Commission's subcommittee for the purposes of reviewing information and taking further public testimony. The second public hearing was closed on February 12, 1992. A meeting of the subcommittee was held on February 20, 1992 at the Orleans Town Hall where the subcommittee voted to recommend denial of the project to the full Commission. The subcommittee voted to extend the time that the record would remain open for an additional 24 hours at the request of the applicant. A subcommittee meeting was then held on February 26, 1992 at the Orleans Town Hall to review the subcommittee report.

## Testimony

As discussed above, 6 public hearings were held by the Commission subcommittee, with approximately 1700 people attending the proceedings. About 120 interested persons offered testimony at these hearings. In addition, testimony was received from the applicant, Commission staff, municipal officials from the Towns of Orleans and Eastham, and non-profit groups. All information, including the application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of the Commission's proceedings are incorporated into this decision by reference.

## Submissions for the Record, Community of Jesus

### Town Submittals

1. -Letter from Michael Ford to Orleans Board of Appeals re: application for special permit, November 2, 1988
2. -Letter from Orleans Board of Health regarding variance request, December 16, 1988
3. -Notice of Intent submitted to Orleans Conservation Commission, March 7, 1991
4. -Application for Old King's Highway Historic District Certificate of Appropriateness, March 21, 1991
5. -Application to Orleans Plan Evaluation Board, April 2, 1991
6. -Denial Order of Conditions of Orleans Conservation Commission, April 23, 1991
7. -Copy of Orleans Wetlands Bylaw
8. -Letter from Eastham Board of Selectmen referring the Community of Jesus project, May 1, 1991
9. -Letter from Orleans Historical Commission to Building Inspector expressing concern about the project, May 7, 1991
10. -Letter from Orleans Plan Evaluation Board with attachments referring the Community of Jesus project, May 10, 1991
11. -Memo from Orleans Board of Health expressing concern about the project, May 10, 1991
12. -Letter from Orleans Board of Selectmen supporting the referral, May 10, 1991
13. -DRI Referral Form from Orleans Plan Evaluation Board, May 13, 1991
14. -Letter from Orleans Planning Board supporting the referral, May 13, 1991
15. -Letter from DEP regarding site visit to consider Superceding Order of Conditions, May 23, 1991
16. -Letter from Orleans Conservation Agent to DEP requesting extension of comments on Superceding Order of Conditions, June 18, 1991
17. -Letter from Orleans Deputy Fire Chief to Plan Evaluation Board with attachments endorsing plans, June 27, 1991
18. -Letter from Orleans Conservation Agent to DEP requesting extension of comments on Superceding Order of Conditions, July 10, 1991
19. -Letter from Orleans Conservation Agent to DEP commenting on project, July 12, 1991
20. -Memorandum from Bob Canning to Orleans Board of Health regarding project flows, July 17, 1991
21. -Letter from Orleans Conservation Commission regarding applicant's statements, July 17, 1991
22. -Letter from Michael Ford to Orleans Building Inspector re: Plan Evaluation Board jurisdiction, July 19, 1991

23. -Letter from Orleans Conservation Commission correcting the date referenced in July 17, 1991 letter with revised letter, July 23, 1991
24. -Memorandum from Bob Canning, Orleans Board of Health regarding sewage design flows, July 25, 1991
25. -Letter from Eastham Conservation Commission supporting findings of Orleans Conservation Commission, August 3, 1991
26. -Letter from Orleans Conservation Commission with attachments citing examples of previous applications of 25' buffer, August 5, 1991
27. -Letter from IEP, Inc. to Michael Ford re: Technical Review of Data, August 5, 1991
28. -Letter from Orleans Board of Selectmen stating that the project will put a strain on town resources, August 27, 1991
29. -Letter from Orleans Conservation Commission regarding land proposed for conservation restriction, September 11, 1991
30. -Memorandum from IEP, Inc. commenting on HWH Sewage Impact study, September 11, 1991
31. -Memorandum from Orleans Assessor to Town Executive with attachments regarding valuation of land proposed for conservation restriction, September 17, 1991
32. -Legal notice from Orleans Planning Board regarding Zoning Bylaw Amendments, Rec'd September 23, 1991
33. -Letter from Orleans Conservation Commission with attachments regarding application of the Commission's buffer policy, September 23, 1991
34. -Letter from IEP, Inc. to Michael Ford regarding water quality issues, September 23, 1991
35. -Letter from IEP, Inc. to Richard Houghton regarding wetland issues, September 23, 1991
36. -Letter from Orleans Conservation Commission supporting IEP's letter, September 24, 1991
37. -Letter from Orleans Board of Health regarding concerns about proposed flows, September 24, 1991
38. -Letter from Orleans Conservation Commission to DEP regarding concerns about wetland issues, October 1, 1991
39. -Letter from the Town of Orleans Planning Board regarding the amendment to the height by-law, December 12, 1991.
40. -Letter from the Orleans Conservation Commission regarding comments on the new plan submitted by the applicant, January 21, 1992.
41. -Letter from the Town of Orleans Board of Selectmen Chairman, Donald Sparrow, regarding the Town's support for the original letter supporting the discretionary referral, February 21, 1992.

**Submitted by Laraja, Kanaga and Bott, P.C. (Attorney for Applicant)**

1. -Letter to Orleans Building Inspector re: project plans, March 22, 1991
2. -Letter to Orleans Building Inspector re: height limitations, April 15, 1991
3. -Letter to Orleans Board of Health re: monitoring wells, April 17, 1991
4. -Letter to Orleans Town Boards re: Cape Cod Commission jurisdiction and project background, April 18, 1991
5. -Letter regarding Cape Cod Commission jurisdiction, April 22, 1991
6. -Letter to Orleans Building Inspector re: height limitations, May 2, 1991
7. -Letter with attachments re: details of projects, May 15, 1991
8. -Letter to Michael Ford re: height restrictions, May 16, 1991
9. -Church Size Comparison sketches, Rec'd May 23, 1991
10. -Letter requesting copies of all Commission reports, May 28, 1991
11. -Letter requesting DRI fee waiver, June 6, 1991
12. -DRI Application Form with Attachments, June 7, 1991
13. -Letter to Donald Connors regarding constitutional issues, June 18, 1991

14. -Letter with attachments regarding video documentary, June 18, 1991
15. -Letter re: request for waiver of filing fee, June 27, 1991
16. -Copy of presentation to the CCC, June 27, 1991
17. -Letter commenting on staff report, June 27, 1991
18. -Letter with attachments transmitting copies of applicant's appeals, June 27, 1991
19. -Letter responding to issues raised at Regulatory Subcommittee hearing, July 5, 1991
20. -Letter regarding scope of Commission's review, July 12, 1991
21. -Letter to Orleans Health Agent with attachment regarding sewage design flows, July 16, 1991
22. -Letter regarding applicability of Regional Policy Plan, July 17, 1991
23. -Letter requesting hearing minutes, July 24, 1991
24. -Letter requesting written materials submitted at hearings, July 24, 1991
25. -Letter transmitting check for copy charges, July 29, 1991
26. -Letter with attachments for distribution to regulatory subcommittee, July 31, 1991
27. -Memorandum re: charter boats, August 1, 1991
28. -Letter transmitting reports on design, August 6, 1991
29. -Matrix of Project Issues, Solutions and Documentation, August 7, 1991
30. -Statement to CCC regarding Constitutional Issues, August 7, 1991
31. -Letter requesting copies of information submitted at public hearing, August 8, 1991
32. -Letter regarding possible conflicts with Dave Humphrey, August 8, 1991
33. -Letter transmitting check for copy charges, August 14, 1991
34. -Letter with attachments answering issues raised in staff report, August 28, 1991
35. -Letter re: attempts to provide information to Commission, August 29, 1991
36. -Note with attachments regarding materials submitted to DEP, August 30, 1991
37. -Letter re: upcoming meetings, August 30, 1991
38. -Letter re: wetland buffer issue, August 30, 1991
39. -Letter confirming proposed mitigation discussed at September 5 meeting, September 6, 1991
40. -Letter with attachments responding to issues raised in September 5 memo, September 11, 1991
41. -Letter re: issues raised at 9/12/91 meeting, September 16, 1991
42. -Letter transmitting copies of applicant's letter to subcommittee, September 16, 1991
43. -Letter re: Visual Impact and Religious Expression, September 23, 1991
44. -Letter with attachments transmitting closing statement at 9/24/91 hearing, September 25, 1991
45. -Letter re: communication with consultants, September 27, 1991
46. -Letter transmitting copies of videotape, October 1, 1991
47. -Letter with attachments regarding Commission decision, October 17, 1991
48. -Letter with attachments concerning the "taking" decision in the Hamilton Case, October 23, 1991.
49. -Letter requesting minutes from previous meetings, November 25, 1991.
50. -Letter regarding statements by subcommittee member Ken Brock, November 26, 1991.
51. -Letter regarding elevation plans being submitted showing new elevations, November 27, 1991.
52. -Letter requesting minutes from previous meetings, December 30, 1991.
53. -Document regarding analysis of benefits and detriments of the project, January 22, 1992.
54. -Document regarding consistency of project with Regional Policy Plan, January 22, 1992.
55. -Document regarding minutes from Mariann D. Heber, January 22, 1992.
56. -Document regarding summary of proceedings, regulations and law, January 22, 1992.
57. -Letter regarding disagreement of Minimum Performance Standards interpretation, January 28, 1992.
58. -Letter regarding definitions in wording of Minimum Performance Standards, February 14, 1992.
59. -Document regarding article by opponent to the project (William Wiggin) in the Business

Lawyer Update, February 19, 1992.

60.-Document regarding analysis of consistency with Regional Policy Plan, February 19, 1992.

62.-Letter regarding rebuttal to Commission staff report of February 19, 1992, February 25, 1992.

### **Court Documents:**

1. -District Court (Orleans) Complaint, Community of Jesus v. Houghton, et al., May 10, 1991
2. -District Court (Orleans) Affidavit of Notice of Complaint, COJ v. Houghton, et. al., May 10, 1991
3. -District Court (Orleans) Answer to Complaint in COJ v. Houghton, et. al, May 30, 1991
4. -District Court (Orleans) Complaint, Community of Jesus v. Old King's Highway Regional Historic District Commission, et. al., June 26, 1991

### **Plans:**

-Chapel of the Holy Paraclete, Site Plan (L-1), March 7, 1991, rev. April 26, 1991, Floor Plan, Elevations and Sections (Sheets A1-A-7) April 26, 1991.

-Partial site plan showing reduction in rehearsal hall size and increase in buffer area, August 23, 1991.

-Elevation drawings A-4, A-6 revised November 27, 1991.

### **Staff Reports/Correspondence**

1. - Letter from Patricia Daley to K.J. Buckland regarding referral of churches, January 8, 1991
2. - Staff Report to Cape Cod Commission, May 17, 1991
3. -Letter from Dennis Finn to Richard Laraja regarding referral of project, May 24, 1991
4. -Letter with attachments from Robert Mumford to Christopher Kanaga regarding traffic counts, May 29, 1991
5. -Letter from Katherine Peters to Laraja and Kanaga re: hearing notice, June 11, 1991
6. -Staff Report to Cape Cod Commission, June 21, 1991
7. -Hearing Notice for June 27, 1991 hearing
8. -Letter from Dennis Finn to Richard Laraja regarding cost for written materials, July 24, 1991. -
9. -Staff Report to Cape Cod Commission, August 7, 1991
10. -Letter from Dennis Finn to Laraja, Kanaga and Bott re: cost for written materials, August 9, 1991
11. -Letter from Dorr Fox to Laraja, Kanaga and Bott re: effective date of Regional Policy Plan, August 12, 1991
12. -Letter from Dennis Finn to Chris Kanaga re: availability of written materials and meetings with applicant, August 12, 1991
13. -Memorandum from Dorr Fox to staff re: effective date of Regional Policy Plan, August 12, 1991
14. -Memorandum from staff to Commission regarding Issues and Concerns still unresolved, September 5, 1991
15. -Memorandum from Kathy Sferra to Dennis Finn regarding wetland buffer policy interpretation, September 9, 1991
16. -Staff Report to Cape Cod Commission, September 10, 1991
17. -Memorandum from Staff to Commission subcommittee re: remaining issues of concern, September 11, 1991
18. -Letter from Dennis Finn to Pat Johnson re: copies of staff memos, September 17, 1991

19. -Staff report to Cape Cod Commission, September 23, 1991
20. -Staff report to Cape Cod Commission, October 3, 1991
21. -Letter from Dennis Finn to Laraja, Kanaga and Bott re: volumetric information and waste water treatment plant, October 16, 1991
22. -Staff report to Cape Cod Commission, October 24, 1991
23. - Subcommittee Report to Cape Cod Commission, November 4, 1991.
24. - Letter from Dennis Finn to Richard Philbrick, Orleans Planning Board Chair regarding December 12, 1991 letter concerning the amendment to the height by-law, January 9, 1992.
25. -Staff report to Cape Cod Commission subcommittee, January 18, 1992.
26. -Staff memo to Cape Cod Commission subcommittee, February 19, 1992.

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**Submitted by Horsley Witten Hegemann, Inc. (Consultants to Applicant):**

1. - Letter re: downgradient water quality sampling of septic system, June 21, 1991
2. - Letter with attachments responding to CCC staff report, June 27, 1991
3. - Letter to Orleans Board of Health re: design flows, July 9, 1991
4. - Report Titled "Evaluation of Sewage Effluent Impacts on Ground Water and Coastal Water Quality, Community of Jesus, Orleans, MA, Phase I: Hydrogeologic Characterization and Nitrogen Transport Modeling, June 1991.
5. -Report Titled: "Evaluation of Sewage Effluent Impacts on Ground Water and Coastal Water Quality, Community of Jesus, Orleans, MA, Phase II: Evaluation of Nitrogen Loading to Little Namskaket Creek," July 24, 1991.
6. -Letter re: wetland hydrology and septic systems, July 25, 1991
7. -Letter re: benefits of proposed project, July 29, 1991
8. -Letter to Orleans Board of Health re: computer model of effluent, July 31, 1991
9. -Memorandum re: Nitrogen Loading to Little Namskaket Creek, August 2, 1991
10. -Memorandum re: On-Site Nitrogen Loading, August 5, 1991
11. -Memorandum re: Extent of Surface Cover Types, September 6, 1991
12. -Letter re: nitrogen recovery wells, September 10, 1991
13. -Memorandum re: nitrogen loading, September 12, 1991
14. -Plan, Location of On-Site Septic Systems, Community of Jesus, undated.

**Submitted by Vanasse Hangen Brustlin, Inc. (Consultants to Applicant):**

1. -Community of Jesus Parking Calculations, Rec'd May 30, 1991
2. -Traffic and Parking Study, June 24, 1991
3. -Letter re: transportation issues discussed at hearing, July 31, 1991
4. -Memorandum documenting phone conversation re: bicycle safety, August 1, 1991
5. -Letter re: bicycle safety issues, September 11, 1991
6. -Letter re: traffic impacts and mitigation funding, September 19, 1991

**Submitted by Kirkegaard & Associates (Consultants to Applicant):**

1. - Letter and attached articles re: acoustics and height of Chapel, July 29, 1991
2. - Reverberation Time Calculations for Chapel, July 31, 1991
3. - Letter and attached articles re: acoustic design of Chapel, August 5, 1991
4. - Letter documenting 9/17/91 phone conversation with Dennis Finn on acoustics, September 20, 1991



**Submitted by Sabatia (Consultants to Applicant):**

1. -Letter responding to 6/21/91 staff report on wetlands/coastal issues, June 27, 1991
2. -Letter regarding wetlands issues with attached soils map, August 1, 1991
3. -Letter with attachments responding to DEP, IEP and CCC reports, August 29, 1991

**Submitted by Architectural Design (Consultants to Applicant):**

1. -Partial Site Plan, Sketch, April 2, 1991
2. -Memorandum re: Floor Area Calculations of Chapel, April 26, 1991
3. -Memorandum addressing Miscellaneous CCC Concerns, June 24, 1991
4. -Letter to Orleans Water Superintendent re: water flow/sprinklers, July 24, 1991
5. -Letter to Orleans Highway Manager re: Road Condition and Traffic Concerns, July 25, 1991
6. -Chapel of the Holy Paraclete, Sun Study, Sketches, July 30, 1991
7. -Letter to Orleans Water Department with attachments re: fire flows/sprinklers, August 2, 1991
8. -Memorandum with attachments re: Orleans/Provincetown Zoning Design Criteria, August 3, 1991
9. -Memorandum with attachments re: Brewster Residence Solar Shading, August 5, 1991
10. -Memorandum re: Increased Buffer Area/Reduced Footprint, September 5, 1991
11. -Buffer Zone Planting Elevation Sketches, September 19, 1991
12. -Structural Pile Layout, Sketch, September 23, 1991
13. -Summary of Visual Impact with Attachments, September 23, 1991
14. -Memorandum regarding scale comparison of Cape Cod Churches, February 19, 1992.

**Submitted by GZA, Inc.**

1. -Laboratory Test Data, undated.
2. -Boring Logs, June 1991
3. -Subsurface Profiles A-A' and B-B', July 1991
4. -Exploration Location Plan, July 1991

**Abutters and Interested Parties**

1. -Letter from Charles Shark opposed to project, April 16, 1991
2. -Letter from George Finch to Rep. Studds opposed to project, May 7, 1991
3. -Editorial from Sheila Bonnell Narusawa regarding project, May 20, 1991
4. -Letter from Stephanie Perrin opposed to project, June 5, 1991
5. -Letter from Sheila Bonnell Narusawa opposed to project, June 6, 1991
6. -Letter from Jacquelin T. Duffek opposed to project, June 18, 1991
7. -Letter from Stephen and Isabel Elmer in support of project, June 19, 1991
8. -Letter from Joan Sweet in support of project, June 20, 1991
9. -Letter from Steven Minninger in support of project, June 20, 1991
10. -Letter from Dan Ford in support of project, June 20, 1991
11. -Letter from Gordon A. Clark in support of project, June 20, 1991
12. -Letter from Alan H. Conklin in support of project, June 20, 1991
13. -Letter from Renee B. Andre in support of project, June 20, 1991

14. -Letter from David and Jane Burnham in support of project, June 21, 1991
15. -Letter from David and Barbara Manuel in support of project, June 21, 1991
16. -Letter from Dean A. and Virginia M. Smith in support of project, June 21, 1991
17. -Letter from Lillian Miao in support of project, June 21, 1991
18. -Letter from William M. Velie, M.D., in support of project, June 22, 1991
19. -Letter from Paul S. and Betty A. Mitman in support of project, June 22, 1991
20. -Letter from Michelle Rich in support of project, June 22, 1991
21. -Letter from Ruth and Donald DeLude in support of project, June 22, 1991
22. -Letter from Dick and Barb Cole in support of project, June 23, 1991
23. -Letter from Rev. R. Kingsbury Chase in support of project, June 24, 1991
24. -Letter from Mike and Lexa Hale in support of project, June 24, 1991
25. -Letter from Albert L. and Jacquelen G. Strobel in support of project, June 24, 1991
26. -Letter from Thomas Nally opposed to project, June 25, 1991
27. -Letter from Christy Haig in support of project, June 25, 1991
28. -Letter from Susan S. Kanaga in support of project, June 25, 1991
29. -Letter from Caleb Paul Stewart opposed to project, June 25, 1991
30. -Letter from Rev. William and Holly Duborg in support of project, Rec'd June 25, 1991
31. -Letter from Mary Ann Jamison in support of project, Rec'd June 25, 1991
32. -Statement by Joseph F. Cleary opposed to project, June 27, 1991
33. -Letter from Cynthia Ingwersen in support of project, June 27, 1991
34. -Letter from J. Robert McNutt, MD, urging denial of project, June 28, 1991
35. -Letter from William Wiggen responding to legal issues, July 19, 1991
36. -Letter from Warren Brewster opposed to project, August 3, 1991
37. -Letter from Alvin H. Behrer, Jr. opposed to project, August 3, 1991
38. -Letter from Douglas Prentiss regarding traffic impacts, August 6, 1991
39. -Statement by Fred Meyer opposed to project, August 7, 1991
40. -Letter from Robert C. Reese opposed to project, August 7, 1991
41. -Statement from David Burnham in support of project, August 7, 1991
42. -Statement from Robert C. Reese opposed to project, August 7, 1991
43. -Statement in support of project, unsigned, undated.
44. -Letter from Sr. Hannah (Judith E.M. Nash) in support of project, undated.
45. -Fact sheet regarding environmental impacts of project, undated
46. -Letter from Nancy and David Fuller and family opposed to project, August 13, 1991
47. -Letter from William Wiggen opposed to project, August 23, 1991
48. -Letter from James Jordan in support of project, August 29, 1991
49. -Statement by James Jordan in support of project, August 29, 1991
50. -Letter from Bev Carney opposed to project, August 29, 1991
51. -Letter from Marshall W. Barnes with attached architectural elevations, August 29, 1991
52. -Statement in support of project, unsigned, undated.
53. -Statement of Sandy Olsen in support of project, Rec'd August 29, 1991
54. -Statement of Mary Shannon in support of project, Rec'd August 29, 1991
55. -Statement of Mary Moore in support of project, undated.
56. -Letter from Elizabeth McCutchen regarding design of church, undated
57. -Letter from Richard L. Brown opposed to project, August 29, 1991
58. -Statement of Barbara Manuel in support of project, Rec'd August 29, 1991
59. -Statement in support of project, unsigned, undated.
60. -Letter from Renee Andre supporting project, Rec'd August 29, 1991
61. -Statement recommending the project be located on another site, unsigned, August 29, 1991
62. -Statement by Helen G. Wesley opposed to project, undated
63. -Statement by William Showalker in support of project, undated

64. -Letter from Bev Carney opposed to project, August 30, 1991
65. -Letter from Daniel B. Ford with attachment supporting project, September 4, 1991
66. -Letter with attachment from S.T. Walker regarding 800 numbers, September 20, 1991
67. -Note from Barbara Cross recommending underground construction, Rec'd September 23, 1991
68. -Letter from Carolyn Cain Iliff opposed to project, September 29, 1991. -Letter from David and Barbara Manuel in support of project, June 21, 1991
69. -Letter from Bob and June Zenks urging rejection of project, September 29, 1991.
70. -Letter from William and Carolyn Gaul opposed to project, September 29, 1991.
71. -Letter from Mrs. Owen Calderwood opposed to project, October 1, 1991.
72. -Copy of newspaper article by Elizabeth Morgan opposed to project, undated.
73. -Copy of newspaper article by Brett Donham opposed to project, October 13, 1991.
74. -Letter from Margaret Meaney opposed to project, Rec'd October 9, 1991.
75. -Letter from Katherine Brigham Callanen opposed to project, October 13, 1991.
76. -Letter from Thomas Nally opposed to project, undated.
77. -Letter from Bev Carney urging denial of project, October 21, 1991.
78. -Petition signed by abutters in support of project, undated
79. -Letter with attachments from Sheldyn Einarson Costa urging denial of project, October 22, 1991.
80. -Petition from CARED with signatures # 1 to # 3918 opposed to project, undated.
81. -Letter from Mrs. Owen Calderwood opposed to the project, January 22, 1992
82. -Letter from Bev Carney opposed to the project, February 8, 1992
83. -Letter from Susan A. Tuttle, From Surroundings Interior Design, discussing the architecture, February 11, 1992
84. -Letter from Bev Carney opposed to the project and with questions concerning the process, February 12, 1992
85. -Letter from William E. Wiggin opposed to the project, February 17, 1992
86. -Letter from the National Council of the Churches of Christ in the USA, discussing the constitutional issues, February 7, 1992.
87. -Letter from the Center For Law and Religious Freedom, discussing the constitutional issues surrounding the project, February 8, 1992.

### Miscellaneous

1. -Final Decision in Adjudicatory Hearing on Wetland File No. 54-57, Town of Orleans, Peter C. Hamilton, February 14, 1980
2. -Letter from Herb Elins regarding site visit, June 18, 1991
3. -Letter from the Association for the Preservation of Cape Cod re: concerns about project, July 8, 1991
4. -Letter to Richard Laraja from Massachusetts Historical Commission re: adverse impact of project, July 9, 1991
5. -Letter with attachments from East Cape Engineering to Laraja, Kanaga and Bott re: stormwater runoff, July 30, 1991
6. -Letter from Aubrey Consulting, Inc. to Peter Haig regarding delineation of coastal dunes, August 6, 1991
7. -Letter from DEP to East Cape Engineering re: Superceding Order of Conditions, August 16, 1991
8. -ACEC Resource Management Plans, Draft Guidance Document, EOEA, August 1991
9. -1:25,000 USGS Quadrangle Map, Orleans
10. -Soils map for property from Soil Survey of Barnstable County

11. -Miscellaneous literature, pamphlets, etc. on Community of Jesus, undated
12. -Copy of Certificate of Title for property
13. -Memo from IEP, Inc. to Ed Eichner re: comments on Community of Jesus proposed expansion, September 11, 1991
14. -Letter from DeFeo, Wait and Associates to Ed Eichner concerning the proposed waste water treatment plant, December 19, 1991.
15. -Sign up sheets from the public hearing on January 22, 1992.

### **Jurisdiction**

The proposed Chapel construction by the Community of Jesus, Inc., in Orleans was referred to the Commission by the Board of Selectmen of Eastham and the Plan Evaluation Board of Orleans, as a discretionary referral under Section 12 (e) of the Act. The Commission voted on May 23, 1991 to accept the project as a development which may have regional impacts and which presented concerns under sections 12 (b),(1),(2),(3),(4) ,(6),(7),(8) and (10) of the Act.

### **Additional Information**

A variety of concerns and issues were addressed by the Commission staff and the subcommittee during the review and hearing process. The following major areas of concern were raised during the DRI review.

1. The visual impact of the proposed project and its non-compliance with the minimum performance standards set forth in the Cape Cod Regional Policy Plan adopted by the Commission, the Barnstable County Assembly of Delegates and the Barnstable County Commissioners pursuant to Sections 7 and 8 of the Act.
2. Location of the project within the 100' buffer area adjacent to the wetlands on the site.
3. Compliance with municipal, regional and state laws, regulations and permitting requirements.
4. Water quality issues including nitrate-nitrogen loading to the groundwater and to the surrounding watershed feeding Little Namskaket Creek.
5. Traffic safety issues with specific regard to traffic increases related to the proposed expansion and bicycle safety on Rock Harbor Road which is part of the Cape Cod Rail Trail Bike Path.

The Community proposed the following alterations to their proposal in response to concerns raised by the Commission subcommittee:

Although a portion of the buffer area would be constructed upon, the Community offered to move the chapel 5 additional feet back from the wetland. This would place the proposed chapel behind the current chapel footprint, restoring approximately 2300 square feet of buffer area. In addition, the Community offered to build a tertiary wastewater treatment plant to assist with the nitrate-nitrogen loading issues on site and within the watershed of Little Namskaket Creek and Rock Harbor. A watershed management plan for Little Namskaket Creek has also been offered by the Community to the Town of Orleans.

In an effort to mitigate the bicycle safety issue, the Community offered the design funding for a bicycle path extension to the Cape Cod Railtrail Bike Path. This would lessen the impact of any proposed increase in automobile traffic on Rock Harbor Road to bicyclists, while enhancing the

neighboring bicycle route. The Community offered to agree to a condition limiting events requiring off site parking to no more than 15 during the months of June through September. If the use exceeds this threshold the condition would have required the Community to perform additional traffic studies for review by the Commission to determine the need for additional mitigation.

The Community also offered to donate a conservation- restricted lot of approximately 40,000 square feet on Cape Cod Bay. Although this is a benefit to coastal resources, it would not mitigate the adverse impacts associated with the alteration of additional buffer area, not already developed, on the site that would result from the proposed expansion.

### **Findings**

Based upon all the information submitted to the Commission concerning the proposed project, including the application, all additional material submitted by the Community and interested parties, and the testimony of approximately 120 witnesses at the 6 public hearings, the Commission makes the following findings pursuant to sections 12 and 13 of the Act:

1. The proposed project would be located on a site between Rock Harbor and Little Namskaket Creek in Orleans, Ma.
2. Rock Harbor and the surrounding community is a small Cape Cod fishing port retaining it's historic significance. Rock Harbor lies within the Old King's Highway Regional Historic District and was the site of a battle between the local militia and an invading British force during the War of 1812. This encounter between the British and Americans distinguishes the site as historically unique on Cape Cod.
3. Structures located in the Rock Harbor area, with the exception of the Community's existing buildings and the two commercial structures located adjacent to the town landing, are single family residences and are of Cape Cod style architecture with wood clapboard and cedar shingle exteriors. Buildings in the area are generally under 25 feet tall. The existing Sister's residence is 29 feet 7 inches in height and the existing Chapel is 29 feet in height. Most, if not all, of the buildings in the area do not exceed the Town of Orleans's by-law restricting non-institutional building heights to a maximum of 30 feet.
4. The Rock Harbor area has a rural character with tree heights in the surrounding area generally not exceeding 55 feet. Residential development is moderately sparse with structures widely spaced on large lots.
5. The architecture and character of the Community's existing institutional structures including the chapel and the sister's residence are compatible and harmonious with the surrounding area.
6. The Community proposes to construct a chapel and rehearsal hall with a footprint totalling 21,210 square feet. The next largest structure in the Rock Harbor area is the Community's own Sister's residence which is between 7000 and 8000 square feet. The Community's proposal originally provided for a height of 65 feet to the roof ridgeline, with a square tower extending to a height of 104 feet. The Community subsequently revised its proposal, so that the structure would have a ridge height of 55 feet with a square tower would extending above the ridgeline to a height of 89 feet. The proposed structure would be of gothic style architecture with an exterior granite facing.
7. The proposed project, due to its height, mass and scale, would be visible in Orleans, Eastham,

and from Cape Cod Bay. The proposed project would be the largest structure in the Rock Harbor area and would be a dominating visual presence in the area.

8. The proposed project would create an adverse visual impact in Orleans, Eastham, possibly other Cape communities, from Rock Harbor itself and from Cape Cod Bay. The reduction in the height of the proposed project was not significant and the Community did not propose mitigation sufficient to address this adverse visual impact.

9. The Massachusetts Historical Commission (MHC) commented on the originally proposed design and had stated that the project's height and mass would have an adverse impact on the "historical, architectural, and cultural characteristics of the Old King's Highway Regional Historic District through the introduction of visual elements that are out of character with and alter the setting of the State Register Historic District". The MHC recommended that the applicant "explore alternatives that would avoid or minimize the visual effect of the new construction on the character and setting of the Rock Harbor Village portion of the historic district".

10. Section 7 of the Regional Policy Plan was developed "to protect and preserve the important historic and cultural features of the Cape landscape and built environment that are critical components of Cape Cod's heritage and economy".

11. The proposed project is not consistent with the Regional Policy Plan. Minimum Performance Standard 7.2.1 of the Regional Policy Plan provides that "the height and scale of a new building or structure and any addition to an existing building shall be compatible and harmonious with its site and existing surrounding buildings". Due to the ridgeline height of 55 feet and a tower height of 89 feet which substantially exceed the height of all other structures in the area, the project is not compatible with existing buildings in the Rock Harbor Area and does not meet the minimum performance standards found in section 7 of the Regional Policy Plan. Minimum Performance Standard 7.2.2 states that "Where proposed development and redevelopment is surrounded by buildings with distinctive architectural styles, building height and exterior materials shall be harmonious with the character of the surrounding area and new construction shall not obscure views of existing historic structures from public ways. In general, where new buildings and additions are proposed, the mass and scale of the building, roof shape, roof pitch, and proportions and relationships between doors and windows shall be harmonious among themselves and consistent with traditional Cape Cod architectural styles".

12. The proposal is surrounded by buildings with distinctive Cape Cod architectural style. The mass, scale and height of the proposed chapel, as well as the architecture and exterior materials are not consistent with Cape Cod architectural styles found in the Rock Harbor area. This incongruence between the proposed structure and current structures on the site and the area leave this project out of compliance with minimum performance standard 7.2.2 of the RPP.

13. The proposed project is not in compliance with the recently adopted Town of Orleans by-law governing height restrictions. The new by-law allows religious structures to attain a height of 45 feet to the ridge and allows steeples, spires and towers to reach a height one and one half times that height to a total maximum of 67.5 feet.

14. The project as originally proposed was not in compliance with either the Town of Orleans wetland by-laws or the State of Massachusetts Wetland Protection Act. The project as originally proposed was denied an Order of Conditions from the Orleans Conservation Commission. That denial is currently being appealed in Orleans District Court and before the Massachusetts Department of Environmental Protection. The proposed modifications would not obviate the need

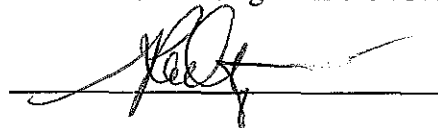
for local approvals under either the Town of Orleans' Wetland By-Law or the State of Ma. Wetland Protection Act.

15. The project as originally proposed was not consistent with the Old King's Highway Regional Historic District Commission regulations. The original project was denied a Certificate of Appropriateness from the Orlean's Historic District Committee. The denial was upheld by the Old King's Highway Regional Historic District Commission. The proposed modifications would not obviate the need for Old King's Highway Regional Historic District Commission approval.

### CONCLUSION

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

As proposed the project is not consistent with Section 7 of the Regional Policy Plan. The project's height, mass, scale and architectural design present a detrimental and regional, visual impact to the surrounding community, to other communities and from Cape Cod Bay. The proposed project's exterior granite facing and architectural style are not in character or harmony with the surrounding community. In addition, the proposed project is not consistent with municipal development by-laws. The benefits of the proposed project do not outweigh the detriments resulting from the development.



Richard S. Armstrong, Chair

Date 3/5/92

### COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 5<sup>th</sup> day of March 19 92

NAME, NOTARY Katharine L. Peters

My Commission expires:

~~My Commission Expires December 5, 1997~~