



# CAPE COD COMMISSION

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Date: February 3, 2005

To: Mr. Myer Singer, Esq.  
Singer and Singer, LLC  
26 Upper County Road, P.O. Box 67  
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From: Cape Cod Commission

RE: Development of Regional Impact  
Cape Cod Commission Act, Sections 12 and 13

Applicant: W.J.G. Realty Trust  
1385 Hancock Street  
Quincy, MA 02169

Project #: TR #20074

Project: Harwich Commons Redevelopment  
East Harwich, Massachusetts

Book/Page: 10368/151  
Certificate #: #126299  
Lot/Plan: 68/39774-H; C/277/88; 387/66

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## **DECISION OF THE CAPE COD COMMISSION**

### **SUMMARY**

The Cape Cod Commission (Commission) hereby approves with conditions the application of W.J.G. Realty Trust (Applicant) as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed redevelopment of the Harwich Commons Super Stop & Shop and construction of an associated retail liner building. This Decision is rendered pursuant to a vote of the Commission on February 3, 2005.

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## **PROJECT DESCRIPTION**

The Applicant proposes to redevelop the existing Harwich Commons shopping plaza located at the intersection of Route 137 and Route 39 in East Harwich, Massachusetts. Existing development is located on an 18.1-acre parcel in the Commercial Highway-2 zoning district, 6.7 acres of which is existing impervious area. Harwich Commons is located within several designated resource areas: wellhead protection area to several public supply wells in the Towns of Harwich and Chatham; Water Quality Impaired Area; Marine Water Recharge Area; and Significant Natural Resource Area. It is however, also within a growth/activity center certified in the Harwich Local Comprehensive Plan (East Harwich Village Center) and development is proposed only on previously disturbed land.

The existing 74,415 square foot (SF) Super Stop & Shop supermarket building is proposed to be expanded by 22,214 SF. A 9,000 SF one-story, freestanding, commercial frontage (or liner) building, with associated parking, is proposed to be constructed on what is presently a lawn area along the northwest side of the existing parking field (hereinafter referred to as Retail A). Both the proposed Super Stop & Shop supermarket expansion, the new construction of Retail A, and all associated site work hereinafter constitute the Project that is the subject of this Decision.

Construction of the Super Stop & Shop building is proposed to occur under two local Building Permits. Building Permit #1 encompasses the construction of the northwest elevation and expansion, enclosing the receiving docks, and reconstructing the existing interior space of the supermarket. Building Permit #2 encompasses the construction of the front façade of the building along with the new greenhouse and entrances, and the reconstruction of the front mezzanine and office space.

Proposed site work includes significant landscaping, pedestrian amenities such as walkways to improve pedestrian circulation onto and through the site and benches, additional parking, use of an innovative/alternative denitrifying septic system, and stormwater management improvements. Roadway improvements are also proposed including signalization and driveway realignment at Route 137 and the site driveway, construction of a modern roundabout at Route 39/Queen Anne Road, vegetation trimming at Route 39/Depot Road, and construction of a sidewalk along Route 39 from Route 137 to Bay Road. Also the Applicant is proposing to protect open space both on- and off-site through the use of a conservation restriction, deed restriction, and a cash contribution to the Harwich Land Bank Fund.

## **PROCEDURAL HISTORY**

The existing Super Stop & Shop building and present site layout were originally approved by the Cape Cod Commission as a Hardship Exemption (#90002) on September 5, 1990. Since this approval W.J.G. Realty Trust twice proposed redevelopment at Harwich Commons (TR#99010 and TR#20022), however those applications were ultimately withdrawn for procedural reasons. W.J.G. Realty Trust, the Applicant, filed plans for expansion for a third time. This application was referred to the Commission by the Harwich Town Planner, on behalf of the Harwich

Planning Board, on September 19, 2001. The Commission received the DRI referral on September 19, 2001 (TR#20074).

A duly noticed public hearing was conducted for TR#20074 by the Commission pursuant to Section 5 of the Act by an authorized Subcommittee of the Commission on March 20, 2002 at the Harwich Town Hall, Harwich, MA. The public hearing was closed on March 20, 2002 and the record was left open for submission of written materials. Significant changes were made to the proposed project and a second duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized Subcommittee of the Commission on November 19, 2003, at the Harwich Town Hall, Harwich, MA. The public hearing was closed on November 19, 2003, and the record was left open for submission of written materials until the final public hearing before the full Commission on February 3, 2005. At the Applicant's request, extensions of the 60-day decision period were granted on February 19, 2002, August 23, 2002, May 22, 2003, November 25, 2003, and May 14, 2004, which ultimately extended the decision period until April 29, 2005.

The Subcommittee held public meetings to deliberate on this project on August 22, 2002, May 13, 2004, October 7, 2004, November 19, 2004, and December 30, 2004. At the November 19, 2004 meeting the Subcommittee voted to direct staff to draft a Decision for approval with conditions. At the December 30, 2004 meeting the Subcommittee reviewed the draft Decision and voted unanimously to recommend approval of the proposed project to the full Commission.

A final public hearing was held before the full Commission on February 3, 2005. At this hearing, the Commission voted 12 in favor and one opposed to approve the project as a DRI, subject to conditions.

In addition to the list of materials submitted for the record (see Table 1 below) and the project plans (see Table 2 below) the application and notices of public hearings relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

<b>TABLE 1: Materials Submitted for the Record</b>	
<b><i>Materials From the Applicant</i></b>	<b><i>Date Submitted</i></b>
Applicants comments on draft Decision (via electronic mail)	12/29/04, 1/12/05
Revised figures depicting Proposed and Existing Buildings Areas (VHB Inc.)	1/7/2005
Revised Draft Conservation Restriction and Restrictive Covenant	12/15/2004
Harwich Common Drainage System Operation & Maintenance Plan (VHB Inc.)	12/14/2004
Revised Figures 2 and 3 for Open Space Statistics and Restrictions	12/14/2004
Revised trip generation Memorandum	11/18/2004
Lighting design specs. (VHB Inc.)	11/3/2004
Letter re: wastewater proposal	10/21/2004
Letter re: outstanding review issues	10/7/2004
Mark-up of Site Electrical Plans & lighting specs (VHB Inc.)	10/6/2004
Specs on lighting, noise, landscaping	5/14/2004
Letter re: issues and project details	5/11/2004

Letter Re: Response to Staff report	5/7/2004
Transportation Mitigation Calculations	11/19/2003
Trip Generation Calculations	11/13/2003
Memorandum Re: Transportation issues (VHB Inc.)	11/6/2003
Statement of Scott Pollack re: Community Character	10/20/2003
Letter filing new plans & new project details	9/8/2003
Landscape Maintenance Contract, draft	8/26/2003
Letter re: lease language, fixture plans	8/26/2003
Traffic Memorandum Appendix (VHB Inc.)	5/19/2003
Roof Plan submitted	5/19/2003
Memorandum re: modifications & project details	5/19/2003
Traffic Memorandum/ Impact report (VHB Inc.)	3/20/2003
Nitrogen calculations, Elevation plans, Roof Plans	2/11/2003
Letter re: project details	8/20/2002
Supplemental Materials submitted	3/1/2002
Memo driveway interconnection	3/1/2002
Conservation Restriction, draft	3/1/2002
Restrictive Covenant, draft	3/1/2002
Letter Re: supplemental materials benefits list	1/28/2002
Mass. Historical Comm; Project Notification Form	12/6/2001
DRI Application for project:	11/14/2001
Regional Policy Plan Consistency Statement	11/14/2001
Traffic Impact and Access Study	11/14/2001
Traffic Technical Appendices	11/14/2001
<b><i>Correspondence re Driveway Interconnection with Lot 63</i></b>	
Letter from abutter Rose Cottage	12/16/2003
Letter from abutter Rose Cottage Shop	12/13/2002
Letter re: driveway interconnect (VHB Inc.)	12/2/2002
<b><i>Materials from Commission Staff</i></b>	<b><i>Date Submitted</i></b>
Revised Draft Decision	1/10/2005
Draft Decision	12/23/2004
Memo fr. G.Belfit: non-residential NO3-N Loading Calculations	12/16/2004
Memo to subcommittee: project update	11/15/2004
Memo to applicant re: wastewater	10/28/2004
Memo to subcommittee: project update	9/30/2004
Ltr. to applicant re: Extension agreement	5/25/2004
Ltr. to applicant re: Extension agreement	5/14/2004
Memo to subcommittee re Staff report	5/6/2004
Ltr. to VHB re: transportation issues	12/22/2003
Ltr. to architect re: design elevations	12/19/2003
Ltr. to applicant re: extension agreement	12/15/2003
Extension Agreement	11/25/2003
Ltr. Re: Natural Resources & Open Space	11/19/2003
Memo to Subcommittee re: project update	11/13/2003
Staff Report	11/13/2003
Memo re: meeting summary & app. status	7/22/2003
Memo re: Traffic report	7/21/2003
Memo re: community character	7/10/2003

60 day Extension agreement	5/22/2003
Extension agreement until July 2003	9/20/2002
Draft extension agreement to 7/03	8/23/2002
Ltr re: comments on design	3/18/2003
Ltr re: Status of project issues	3/19/2003
Fax requesting groundwater permit	3/19/2003
Ltr. re: 45 Day notice	8/6/2002
Ltr re: status of DRI	7/29/2002
Ltr. re: correction to staff report	3/26/2002
Staff Report	3/13/2002
Ltr. re: Extension Agreement	2/19/2002
Ltr. re: Hearing officer notice	2/8/2002
Memorandum: Subcommittee assignment	12/19/2001
Ltr re: Hearing officer notice	12/19/2001
Ltr re: Requesting application materials	12/4/2001
Ltr re: Explaining DRI process	9/25/2001
<b>Correspondence from the Town of Harwich</b>	<b>Date Submitted</b>
Memo from Harwich Town Planner re: consistency with local zoning	1/25/2005
Ltr. from Harwich Disability Rights Committee re: pedestrian movement at Rte. 39 intersection	1/12/2005
Mandatory referral	9/19/2001
Application for Special Permit	9/19/2001
Application for Site Plan w/maps	9/19/2001
<b>Correspondence from Pleasant Bay Homeowners Association</b>	<b>Date Submitted</b>
Second Amendment to the Agreement, between the Pleasant Bay Homeowner's Association and W.J.G. Realty Trust/Stop & Shop, dated November 18, 2004 (the Second Amendment to the Agreement)	12/1/2004
Memo re: Lighting concerns	10/4/2004
Memo re: General Concerns about project	5/11/2004
Letter re: concerns w/parking for Handicapped	11/19/2003
Letter re: concerns w/noise	11/19/2003
Letter re: noise concerns addressed	11/17/2003
Letter re: noise reduction suggestions	9/2/2003
Outline of agreement between Homeowners & Trustees	7/5/2002
<b>Correspondence from Abutters/Residents/Others</b>	<b>Date Submitted</b>
39 Form letters of support (hand delivered at final Public Hearing)	2/3/2005
Ltr re: traffic impact from project	11/26/2004
Ltr: Marie E. Snyder re: concerns	5/11/2004
Ltr. Virginia H. McCann	5/11/2004
Ltr. from APCC comments	11/20/2003
Ltr. from Francis X. & Alice Kilmurray	11/19/2003
Ltr. Frank Gay in favor of	11/18/2003
Ltr. Dawn & Joseph Lorenzo w/ concerns	11/11/2003
Ltr. Virginia Nickerson opposition of expansion	4/5/2002
Ltr. James & Barbara Duke in favor of project	5/29/2002
Ltr. Beth & Ted Nelson in opposition of project	4/5/2002
Ltr. Preston Smith w/ concerns	3/28/2002
Ltr. APCC w/ concerns	3/20/2002

Ltr. Don Keeran APCC w/ concerns	3/20/2002
Ltr. William Doherty re: Housing and jobs	3/20/2002
Ltr. Daniel & Christine George in opposition	3/18/2002
Ltr. D.B Hutton in favor of expansion	3/20/2002
Ltr. owners of Szchhuan Delight in favor	3/20/2002
Ltr. owners of Cranberry Liquors in favor	3/20/2002
Ltr. Paul Bunnel in favor	3/20/2002
Ltr. from The Mason Jar in support of	3/20/2002
Ltr. Judy Caldwell Harwich Realty in favor	3/20/2002
Ltr. 400 East, Inc. in favor	3/20/2002
Ltr. Ray Wright Wright's Appliance, in favor	3/20/2002
Ltr. Lawrence Biron, owner of Cove Art, in favor	3/20/2002
Ltr. Jon L. Alger Harwich East Liquors, in favor	3/20/2002
Ltr. Sylvan Learning in favor	3/20/2002
Ltr. The Upper Crust in favor	3/20/2002
Ltr. Cape Cod Outlet Mall in favor	3/20/2002
Ltr. Today real Estate in favor	3/20/2002
Ltr. Cape Cod Day Care Inc. in favor	3/20/2002
Ltr. Anne C. Ross Glass in favor	3/20/2002
Ltr. Murray Johnson Dentist in favor	3/20/2002
Ltr. Owner of Bud's Go Cart, in favor	3/20/2002
Ltr. Sandra B. Hall in favor	3/20/2002
Ltr. Richard Dugan in favor	3/20/2002
Ltr. Robert Gleeson of The Stewed Tomato in favor	3/20/2002
Ltr. Mr. Kennedy of Fine Woodworking in favor	3/20/2002
Ltr. Karl's Boat Shop, Inc in favor	3/20/2002
Ltr. Richard & Cathy Morris , concerned abutters	12/17/2001
A petition of support w/921 signatures	undated

**TABLE 2: Project Plans**

<b>Project Plans</b>	<b>Date of Final Project Plan; Commission Receipt Date of Final Plan</b>	<b>Commission Receipt Date of Previous Submittals</b>
Building Permit Phasing Plan for Super Stop & Shop, East Harwich, prepared by Super Stop & Shop	1/27/05; 1/28/05	no earlier drafts
Site Plans for Proposed Retail at Harwich Commons, prepared by VHB Inc. (Sheets C-1 through C-10, EL-1, EL-2 and SE-1)	not part of final approved plans	11/14/01, 1/28/02, 10/7/02, 11/19/02
Site Plans for Proposed Retail at Harwich Commons, prepared by VHB Inc. (Sheets C-1 through C-10 and SE-1)	1/14/05; 1/25/05	8/26/03, 3/26/04, 5/13/04, 9/24/04 (Sheets C-3 to C-6 and SE-1 only), 11/12/2004
Super Stop & Shop Elevations and Section, prepared by Arrowstreet Architects	1/28/05; 2/3/05	9/8/03, 10/20/03, 10/30/03, 11/12/03, 12/15/03, 3/26/04, 10/28/04

Super Stop & Shop Perspective View, prepared by Arrowstreet Architects	12/8/04; 1/28/05	03/26/04, 10/27/04
Roof Plan, Super Stop & Shop Harwich Commons, prepared by Arrowstreet Architects	1/14/05; 2/3/05	no earlier drafts
Roof Plan, Super Stop & Shop Harwich Commons, prepared by Carter Burgess	not part of final approved plans	2/11/03, 10/20/03
Elevations, Super Stop & Shop Harwich Commons, prepared by Carter Burgess	not part of final approved plans	02/11/03
Retail A Building Elevations with Roof Plan, prepared by Arrowstreet Architects	11/20/04; 1/28/05	09/24/04; 10/7/04
Proposed Retail Elevations (S-1) Harwich, MA, prepared by Pinnacle Partners	not part of final approved plans	03/01/02
Retail A Preliminary Elevations and Roof Plan (EL-1 and PA-1), prepared by Landry Architects	not part of final approved plans	05/19/03
Figures 2 (Statistics) and 3 (Restrictions), Open Space for Super Stop & Shop at Harwich Commons, prepared by VHB Inc.	12/10/04; 12/14/04	5/19/03, 8/26/03, 3/26/04, 9/24/04, 10/25/04, 11/12/04
Proposed Site Access Configurations Route 137, prepared by VHB Inc.	5/11/04; 10/7/04	03/26/04
Concept Plan Roundabout, Route 39 and Queen Anne Road	5/10/00; 11/20/03	05/18/00
Lighting Proposal for Stop & Shop, Harwich, MA, prepared by LSI Industries, Sheet 1 of 1	10/21/04; 10/25/04	no earlier drafts
Fixture Plan, Super Stop & Shop Lake Ronkonkoma, NY (as example of proposal), by the Stop & Shop Companies Inc.	not part of final approved plans	08/26/03
Fixture Plan, Super Stop & Shop Harwich Commons (existing layout), by the Stop & Shop Companies Inc.	not part of final approved plans	08/26/03

## TESTIMONY

The following oral public testimony was received on March 20, 2002:

Mr. Singer, attorney for the applicant presented the project to the Subcommittee and public. At this time the plans are for an expansion of the existing Stop & Shop supermarket to house what is planned to be a TJ Maxx store. Also, there would be a two-story, free standing liner building and additional parking added. The proposal also includes having residential housing above Retail A, for housing of Stop & Shop employees. Commission staff summarized the Commission Staff Report, dated March 13, 2002, and discussed the staff's position regarding the following issue areas: land use, natural resources and open space, economic development, hazardous materials/waste management, solid waste management, affordable housing, and heritage preservation and community character. Staff noted particular concerns with water resource issues.

Susan Rather, John Reveruzzi, George Morris, Frank Kilmurray, Jack DeGroft, Karen Hidoo, Peggy Gabor, Bob Warner, and Roberta Warren spoke in favor of the project noting good business, the need for the development, traffic issues that exist regardless of Stop & Shop's presence, the asset of the added shopping convenience specifically related to the proposed TJ

Maxx store, needed mitigation that the company is offering the Town, the inevitability of development at this site because of its location in a commercial growth area.

Don Keeran, Association for the Preservation of Cape Cod, expressed concerned about the area to absorb added growth. Eileen Flood, Sheila Smith, Margaret Cox, Colleen St. Pierre, Lincoln Turner, Fred Monroe-Ferguson, Al Rosenberg, Dee Butler, Ted Nelson, and Ed Davis spoke against the project or noted their concerns relating to traffic, pedestrian safety, on-site housing, lighting, negative impacts on existing businesses, and the fact that this is generally considered the wrong location for such development. Summer Rain spoke regarding concerns with lawn chemicals. David Marshland encouraged the developers to look instead to the vacant Bradlees site in Orleans. Barbara Yamamoto, Harwich Traffic Safety Committee, said a TJ Maxx would be an asset to the plaza.

The following oral public testimony was received on November 19, 2003:

Commission staff discussed the project as it stands today, its history and procedural issues, as well as water resource, natural resource, open space, and exterior noise issues, transportation issues, and community character and building design. Since the time of the last public hearing the project has changed substantially to now include an expansion of the existing supermarket building, a 9,000 square foot one-story liner building, additional parking, and significant landscaping. Significantly, the previously proposed TJ Maxx building and the second story apartments above the liner building have been withdrawn from the proposal.

Walter Steinkrauss, representing Stop & Shop and the Applicant, discussed a recent meeting held with the Pleasant Bay Homeowners Association and other neighbors. Issues he spoke to included: noise from exterior roof top equipment; idling trucks at loading dock; sealing the loading docks; exterior lighting; trees and other landscaping around the property; upkeep of existing perimeter fencing; and convening annual meetings to discuss concern of neighbors. The Applicant's project team then spoke to the present proposals for transportation, open space mitigation, building design, and landscaping. Importantly, regarding transportation, the mitigation package offered remains the same though the project area has decreased. Therefore they ask that this be considered a project benefit.

Susan Leven, Harwich Town Planner, disagreed with the cost per acre of open space that was quoted by the applicant and stated that the true cost is significantly higher and asks the applicant to research it further and talk with the Town about it. Gerald Melvis, Harwich Traffic Safety Commission, discussed attempts to work with Rose Cottage Antique Shop owners regarding a vehicle interconnect. He also expressed concerns regarding the Mobil Station's right-turn-only exit lane.

Don Keeran, Association for the Preservation of Cape Cod, expressed concern about including traffic islands as open space. Erika Boerger and Greta Tyson, of Pleasant Bay Homeowners Association, expressed concerns about noise and building design. Virginia McCann expressed concerns about pedestrian circulation. George Vermilyea and Eileen Flood expressed local traffic concerns. Edward Davis expressed concerns with existing landscaping. Frank Gay expressed traffic concerns and architectural concerns about looking like Hyannis. Al Rosenberg has concerns about Smart Growth issues generally.

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## **JURISDICTION**

The proposed Harwich Commons redevelopment project qualifies as a Development of Regional Impact (DRI) under Section 3(e) of the DRI Enabling Regulations governing review of DRIs, which requires review of *new construction or additions with a gross floor area greater than 10,000 square feet*.

## **FINDINGS**

The Commission has considered the application of W.J.G. Realty Trust for the proposed Harwich Commons redevelopment project 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 Findings:**

- F-G1.** The proposed Project consists of the redevelopment of Harwich Commons shopping plaza located at the intersection of Route 137 and Route 39 in East Harwich, Massachusetts. Existing development is located on an 18.1-acre parcel in the Commercial Highway-2 zoning district, 6.7 acres of which is existing impervious area. The Project includes expanding the existing 74,415 square foot (SF) Super Stop & Shop supermarket building by 22,214 SF and constructing Retail A, which is proposed to be a 9,000 SF one-story, freestanding, commercial frontage (or liner) building on what is presently lawn area along the northwest side of the existing parking field.
- F-G2.** Construction of the Super Stop & Shop building is proposed to occur under two local Building Permits. Building Permit #1 encompasses the construction of the northwest elevation and expansion, enclosing the receiving docks, and reconstructing the existing interior space of the supermarket. Building Permit #2 encompasses the construction of the front façade of the building along with the new greenhouse and entrances, and the reconstruction of the front mezzanine and office space.
- F-G3.** Harwich Commons is located within several designated resource areas including a wellhead protection area to several public supply wells in the Towns of Harwich and Chatham; a water-quality impaired area; a Marine Water Recharge Area; and Significant Natural Resource Area due to the presence of a public water supply protection area. However, the Project is within East Harwich Village Center, a growth/activity center certified in the Harwich Local Comprehensive Plan, and development is proposed only on previously disturbed land.
- F-G4.** The Project does not lie within a District of Critical Planning Concern.

- F-G5.** The Project was reviewed by the Cape Cod Commission for its consistency with the Goals and Minimum Performance Standards (MPS) of the 1996 Regional Policy Plan (RPP).
- F-G6.** According to a memorandum submitted by the Harwich Town Planner on January 25, 2005, the Project is consistent with the Town of Harwich's Local Comprehensive Plan and is allowed within the Commercial Highway-2 zoning district.

**Water Resources Findings:**

- F-WR1.** The Project is in the wellhead protection area to several public supply wells in the Towns of Harwich and Chatham. The Project is located within a Water Quality Impaired Area (MPS 2.1.1.2.D) and is also within the contributing area to the Muddy Creek sub-embayment of Pleasant Bay, a Marine Water Recharge Area (MWRA; MPS 2.1.1.2.C). These classifications of the project site result in further classification as a Water Quality Improvement Area (WQIA; MPS 2.1.1.2.E), where water quality improvement is a major goal.
- F-WR2.** The critical nitrogen load for Muddy Creek has been evaluated by the Cape Cod Commission (Eichner et al., 1998) and it has been determined that current development exceeds the critical nitrogen load to this embayment.
- F-WR3.** This proposed Project is required to meet the MPSs that address protection of public water supplies and marine waters, including:
- MPS 2.1.1.2 A.1 – meet the basic 5.00 parts per million (ppm) nitrogen loading standard;
  - MPS 2.1.1.2.A.2 - prohibit hazardous materials in greater than household quantities;
  - MPS 2.1.1.2.A.4 C.2 and C.3 - require a Massachusetts Department of Environmental Protection (DEP) approved innovative/alternative (I/A) wastewater system with denitrification;
  - MPS 2.1.1.2.E. - improve existing levels of nitrate nitrogen loading; and,
  - MPS 2.1.1.6 - minimize stormwater runoff and maximize stormwater quality treatment and include a maintenance schedule.
- F-WR4.** The proposal to upgrade the existing wastewater treatment facility by installing a Massachusetts DEP approved I/A denitrification system improves the nitrogen loading from the existing on-site septic system as required by MPS 2.1.1.2.C.2, C.3, and E.1. Calculations show the existing wastewater flow of 6,033 gallons per day (gpd) results in a nitrogen loading concentration of 6.96 ppm. The nitrogen calculations with the advanced treatment result in a concentration of 5.37 ppm with the addition of the new development and a wastewater flow of 7,841 gpd. This calculation was made using the Massachusetts DEP approved effluent concentrations of 25 ppm total nitrogen for commercial applications. Using the 25 ppm effluent concentration, the nitrogen loading is improved but still exceeds MPS 2.1.1.2.A.1.

In order to comply with MPS 2.1.1.2.A.1, a nitrogen loading limit less than the 25 ppm approved concentration must be met. The Applicant has proposed to address 2.1.1.2.A.1 by establishing an operation, management and compliance policy (OMCP) to monitor the effluent quality. The program/policy would be administered through the Harwich Board of Health, in cooperation with the Cape Cod Commission. A draft copy of the OMCP, entitled *OMCP Requirements for Onsite-Wastewater Management at W.J.G. Realty Trust/Harwich Commons Super Stop & Shop at Route 137 and Route 39, Harwich* (undated), is attached hereto as Attachment #1.

The proposed project requires use of the flexibility clause as an appropriate mechanism to justify application of the OMCP. The Commission hereby finds that, because compliance with the OMCP would provide an alternative approach to protecting the interests of MPS 2.1.1.2.A.1, it is appropriate to invoke the flexibility clause for this MPS. Also, this approach will not be more detrimental to the protected resource than would be allowable under the MPS.

- F-WR5.** In a letter dated September 19, 2000, the Harwich Board of Health has agreed in concept to monitor the project's septic system influent and effluent quality in accordance with the draft OMCP proposed for the project. Compliance with the provisions of the OMCP will ensure consistency with the goals of MPS 2.1.1.2.A.1.
- F-WR6.** Stormwater disposal facilities have been upgraded with the installation of three Stormceptor centrifugal stormwater devices and shutoff valves in the loading dock areas. A maintenance plan for the stormwater system, entitled *Harwich Common Drainage System Operation and Maintenance Plan* dated as received December 14, 2004, has been submitted and meets MPS 2.1.1.6.
- F-WR7.** Improved wastewater treatment, the OMCP, and an improved stormwater disposal design result in a net decrease in nitrogen loading.

#### **Natural Resources and Open Space Findings:**

- F-NR1.** This Project is located within a Significant Natural Resource Area due to the presence of a public water supply protection area. No wetlands are located on or within 100 ft of the project area. The proposed project area includes previously developed area, and as such the Applicant was not required to provide a natural resources inventory.
- F- NR2.** As sited, the Project complies with the MPS 2.4.1.2 and 2.4.1.3 requiring minimizing site disturbance, clustering development with existing development, and minimizing alteration of wildlife habitat.
- F- NR3.** The existing area of open or green space is 14.9 acres, or 69% of the site. Based on the Project's location within a Significant Natural Resource Area and the fact that the Project is redevelopment, pursuant to MPS 2.5.13, the Applicant is required to

provide 65%, or 14.08 acres of permanently protected open space. The Applicant has provided a plan entitled *Figure 3, Super Stop and Shop at Harwich Commons, Open Space Restrictions*, as prepared by Vanasse Hangen Brustlin, Inc. (VHB), and dated 8/11/03, as revised 12/10/04, proposing 12.7 acres open space to be protected on-site. According to the plan, 10.77 acres of this area will be provided as natural or minimally maintained areas and protected through a conservation restriction, and 1.93 acres will be provided as landscaped buffer areas and protected through a restrictive covenant. The Applicant has agreed to meet the remaining 1.38-acre open space requirement through a contribution of cash calculated based on recent conservation purchases in the Town of Harwich. The cash contribution is \$115,339.

#### **Air Quality / Noise Abatement Findings:**

**F-AQ1.** MPS 2.6.1.1 requires DRIs to be in compliance with the state's air pollution control regulations. Under state regulations, noise is considered to be an air contaminant. A May 11, 2004 memorandum from Epsilon Associates, Inc., the Applicant's consultant, describes the noise abatement activities and noise measurement studies conducted by the Applicant. Discussion at the May 13, 2004 Subcommittee meeting indicated that Super Stop & Shop made changes to the mechanical devices associated with the supermarket prior to conducting a sound assessment. These changes were estimated to decrease the total overall sound energy by 2 to 3 decibels. Neighbors and abutters to the property also commented at the May 13, 2004 Subcommittee meeting that additional changes could be made to further improve the existing supermarket's noise signature, including repairing the fence behind the property, adding landscape plantings to reduce noise impacts, limiting or prohibiting the idling or long-term running of delivery trucks (particularly refrigeration trucks), adding sound-deadening matting to the loading dock surfaces, scheduling any future construction activities to prevent exacerbating temporary noise impacts, and conducting further sound assessments post-construction. The Second Amendment to the Agreement dated November 18, 2004 between the Applicant and the Pleasant Bay Homeowners Association (as further referenced in Finding F-CC7) addresses issues of noise abatement.

#### **Economic Development Findings:**

**F-ED1.** The Applicant estimates that construction will create 200-250 jobs, 30% of which are expected to be held by Cape Cod residents.

**F-ED2.** The Applicant estimates that the expanded Super Stop & Shop supermarket will add 20-25 part-time jobs with hourly wages in the range of \$7.50 – \$11.00 per hour. The Applicant expects that Cape Cod residents will fill 90-95% of these positions. Individuals in these positions would be eligible for benefits on the first day of the month following 36 months of continuous part-time employment with the company.

- F-ED3.** Because of the design of Retail A, the Applicant estimates that up to four distinct businesses will ultimately locate there, though no tenants have yet been identified. They estimate that the businesses will require up to eight new part- or full-time managerial positions, and up to 16 part-time hourly positions. To the extent that these businesses are new to the region, these would be a net increase in jobs; however, there is no guarantee that this would be the case.
- F-ED4.** According to the Applicant, full and part-time workers at Super Stop & Shop would be eligible for training through the company's Associate Modular Training Program.
- F-ED5.** The Applicant estimates that this Project will generate an annual increased property tax payment of \$24,400 to the Town of Harwich while not requiring services in excess of this estimated revenue increase.
- F-ED6.** Information provided above in Findings F-ED1 to F-ED5 by the Applicant does not show that the Project will advance either economic or employment diversity on Cape Cod as envisioned in RPP Goals 3.1 and 3.3. However, this Project is located on an existing commercial site within a certified growth/activity center, which is consistent with the development policies under Goal 3.2 of the RPP.

**Transportation Findings:**

- F-T1.** Site access is to be provided from the two existing site driveways on Route 137 and Route 39. Route 137 and Route 39 are regional roads as defined in the RPP.
- F-T2.** As outlined in a technical memorandum dated November 18, 2004 by VHB, trip generation for the proposed project was based on 28,497 SF, which excludes the enclosed receiving areas from the total new building area. Trip generation for the proposed project was calculated based on data provided in the Institute of Transportation Engineers (ITE) Trip Generation manual. The proposed expansion is expected to generate an additional 1,744 vehicle trips on an average weekday (872 in/872 out). The expected net increase in traffic from the project, after allowing for a "pass-by" rate of 25% (those vehicles accessing the site as part of a multi-purpose trip), is as follows:

Average weekday	1,360 trips
Average afternoon peak hour	92 trips
Average Saturday	1,819 trips
Average Saturday peak hour	130 trips

- F-T3.** The Harwich Commons driveway is located on a section of Route 137 that has had numerous turning conflicts due to the existing curb cuts in the area. The Applicant has discussed design alternatives at this driveway to address safety and congestion concerns. Alternatives included police officer control and driveway turning restrictions and the installation of a modern roundabout, both of which are found to be infeasible at this location. Police officer control was not acceptable to the Town,

driveway turning restrictions would have a negative impact on the residential area east of the site and/or place a heavy burden on the left turn lane at the Route 137/Route 39 intersection. The Applicant has recommended signalizing the existing Route 137/Harwich Commons site driveway to address its safety and congestion issues, which would require the Applicant to realign the Mobil gas station driveways on the opposite side of Route 137. The proposal is shown in the conceptual traffic signal plan entitled *Proposed Site Access Configurations, Route 137*, dated March 2004 by VHB. The existing Harwich Commons/Mobil gas station driveways are poorly designed and over capacity given the existing geometry and controls at that location, causing driver confusion and unsafe access and egress. The Applicant, by realigning the Mobil gas station driveways, will provide an access management benefit to the regional roadway network.

The proposed signal will control the Harwich Commons site driveway and the Mobil gas station driveway, one of the worst access management locations in East Harwich. The new signal interconnected with the existing Route 137/Route 39 signal will adequately address traffic backups (vehicle queues) along the Route 137 corridor.

The Route 137/Super Stop & Shop site drive signal plans incorporate ornamental mast arms and/or ornamental signal post, ornamental signal heads, and related ornamental signal equipment and traffic monitoring devices with remote access capability.

- F-T4.** MPS 4.1.1.1 states that DRIs shall mitigate all year-round and summer transportation impacts created by such development at all regional intersections and on all regional road links where the project traffic is expected to add 25 new vehicle trips (50 or more vehicle trips in growth centers) or more during the project's typical peak hour.

The Applicant has agreed to design and construct a modern roundabout at the Route 39/Queen Anne Road intersection, according to the plan entitled *Concept Plan Roundabout*, prepared by VHB, dated May 10, 2000 and received by the Commission on November 20, 2003. The roundabout installation would improve the level of service from F to B. In addition to the congestion improvements, safety improvements are also anticipated from the installation of this roundabout. At the Route 39/Queen Anne Road intersection, a total of eleven crashes were identified over a three-year period, including a fatality that occurred at this intersection. This intersection was included in the highest 1,000 accident locations by the Massachusetts Highway Department.

The expected vehicle delay improvement resulting from this roundabout offsets the project's expected vehicle delay impacts at other off-site locations requiring analysis under MPS 4.1.1.1. Therefore, the requirements of MPS 4.1.1.1 for off-site traffic impacts are met.

- F-T5.** The thresholds of MPS 4.1.1.1 are exceeded on the regional road links and at the regional intersections shown below. The mitigation costs at these locations, based on RPP Other Development Review Policy 4.1.1.20 are also shown:

Regional intersection	Peak hour trips	Mitigation Cost
Route 137 between Route 6 eastbound and Pleasant Bay Road	26	\$2,600
Route 137 between Route 39 and Queen Anne Road	40	\$4,000
Route 39 between Route 137 and Bay Road	32	\$3,200
Route 137/Route 6 eastbound ramps	26	\$2,600
Route 137/Pleasant Bay Road	26	\$2,600
Route 137/Queen Anne Road	32	\$3,200
	<b>Total</b>	<b>\$18,200</b>

The Applicant has agreed to pay the mitigation costs totaling \$18,200, which will serve to provide a transportation benefit to the Town of Harwich.

- F-T6.** MPS 4.1.1.7 states that DRIs must not degrade traffic safety. Based on accident data submitted in the March 7, 2003 Traffic Memorandum, two intersections impacted by this project have significant crash frequency. The threshold for crash frequency at an intersection, above which corrective actions should be considered, is five crashes per year.

The Route 137 and Route 39 intersection had 13 crashes in a two-year period (2000 & 2001). A safety analysis has been conducted at this location that shows that six of those 13 recent crashes are attributed to the driveways located in close proximity to the intersection. This traffic signal was recently reconstructed to accommodate left turn lanes.

The other intersection of concern is the Route 39 at Depot Road intersection, which had 13 crashes over the two-year period analyzed (2000 & 2001). As stated in the March 7, 2003 Traffic Memorandum, poor sight distance may be a contributing factor to the crashes at this location. The Applicant has proposed trimming vegetation in the vicinity of this intersection; particular attention should be given to the Route 39 eastbound approach to the intersection. With the proposed trimming discussed herein, the requirements of MPS 4.1.1.7 for off-site safety impacts will be met.

- F-T7.** MPS 4.1.1.1.6 states that adjacent commercial uses shall share access points and provide connections between parcels so as to minimize curb cuts, driveways, and vehicular turning maneuvers, where appropriate. As shown on the Site Plan sheet C-3, Layout and Materials Plan, prepared by VHB, as revised November 5, 2004, the Applicant has designed the Project to incorporate a future connection between the Super Stop & Shop property and adjacent Lot 63. At the time of this Decision, the owner of Lot 63 has not agreed to this offer by the Applicant.

**F-T8.** Regardless of project size, all DRIs are required to meet the 20% trip reduction requirement under MPS 4.1.2.1. The average daily vehicle trips for the development are 1,744 daily vehicle trips. The Applicant must reduce the average daily automobile trips by 20% or 349 trips. The Applicant has proposed a trip reduction plan that includes a combination of in-kind strategies and a payment to offset vehicle trips. The Applicant has proposed several strategies that will comprise a Transportation Demand Management Program (TDM Program) that is intended to reduce traffic by 140 trips. The proposed TDM Program includes:

- Secure bicycle storage.
- On-site break room including microwave and refrigerator.
- An incentive program for each employee who arrives at work in anything other than a single occupancy automobile. The incentive will include a coupon good for a sandwich and beverage from the store's prepared food area.
- Two marked preferential parking spaces will be provided for carpool vehicles.
- East Harwich Super Stop & Shop shall appoint a coordinator for the rideshare program.
- The rideshare coordinator will be responsible for maintaining a database of employees interested in ridesharing. Ridesharing information will be posted at a location visible to employees including mention of [www.gocapecod.org/tdm](http://www.gocapecod.org/tdm) in published material.
- The management of the East Harwich Super Stop & Shop will implement a "guaranteed ride home program" for all employees involved in the rideshare program during unexpected personal emergencies.

The Applicant has also proposed a monetary contribution of \$220,593.33 to offset the remaining 20% trip reduction requirement (or 209 daily trips). This monetary contribution and the proposed TDM Program together will satisfy the trip reduction requirements of MPS 4.1.2.1.

**F-T9.** The Applicant has offered to construct a sidewalk along Route 39 from the existing Harwich Commons driveway to Bay Road. This sidewalk was not required as part of the review process or to satisfy the Minimum Performance Standards of the RPP. Therefore the sidewalk would be considered a project benefit.

#### **Solid Waste Findings:**

**F-SW1.** MPS 4.2.1.1 requires the Applicant to address how waste will be diverted away from disposal facilities (landfills and incinerators), and be composted and/or recycled, to the maximum extent possible. As such, the Applicant should describe the proposed retail facility's recycling program that will serve to divert such material away from disposal facilities. Also, MPS 4.2.1.2 states *development and redevelopment shall allocate adequate storage space for interim storage of materials to be recycled.*

According to the information provided by the Applicant (dated May 19, 2003), Super Stop & Shop operates a cardboard recycling program, and will accept used plastic and paper grocery bags from customers. Also, the Applicant will provide an automated

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bottle return area for machines to take plastic and glass containers, as well as aluminum cans. As such, the Applicant has met the requirements of both MPS 4.2.1.1 and 4.2.1.2.

- F-SW2.** MPS 4.2.1.3 requires that *construction and demolition debris from development and redevelopment shall be removed from construction sites and disposed of in accordance with the integrated solid waste management system in Section 4.2.1.1.*

According to information submitted, the Applicant will be contracting with a general contractor to transport and dispose of all construction and demolition materials in accordance with all applicable regulations. Prior to construction, the Applicant should submit a copy of the contract with a licensed general contractor outlining those specific practices for how construction wastes associated with the construction of the proposed project will be recycled or disposed. Specifically, the Applicant should identify those measures that will be implemented to ensure that construction materials slated for either a recycling facility or disposal are not subject to becoming a physical or visual nuisance to local neighbors.

**Hazardous Materials/Wastes Findings:**

- F-HM1.** A portion of the project site is located within an existing Wellhead Protection Area. Specifically, the existing Super Stop & Shop and proposed Retail A building are within this area while a large part of the parking lot is not. As such, this project is subject to conformance with MPS 4.2.2.3 which limits the amount of hazardous materials or wastes used, treated, generated, stored or disposed of within wellhead protection areas to household quantities. An October 7, 2003 letter from Attorney Singer states that the proposed supermarket expansion will involve changes to the loading dock meat and produce coolers, new interior refrigerated cases, and modifications to some of the refrigerant used in these devices. These devices may produce limited additional quantities of compressor oils, lubricants and other hazardous materials/wastes.
- F-HM2.** The proposed tenant(s) for the Retail A building has not been determined, and this building has enough space to allow a maximum of four (4) commercial tenants. In a narrative provided on July 2003 the Applicant committed to prohibiting restaurants, dry cleaners and laundromats (except for drop-off service), and beauty salons. The Applicant also agreed in an August 26, 2003 letter to implement lease/use restrictions for the Retail A space to ensure compliance with MPS 4.2.2.3.
- F-HM3.** MPS 4.2.2.1 requires that *development and redevelopment shall make reasonable efforts to minimize their hazardous waste generation through source reduction, reuse, material substitution, employee education and recycling.* The Applicant addressed this MPS in part by including a statement in the application materials that "the project will be in conformance with the hazardous waste regulations" and that tenants will "be encouraged to recycle their solid waste." On March 1, 2002, the Commission received the applicant's *Solid and Hazardous Waste Management* narrative which

deals primarily with recycling of bottles, cans, cardboard and paper. No information was submitted on *hazardous waste* minimization techniques, or management of hazardous materials or wastes from construction activities other than to acknowledge in an additional *Solid and Hazardous Waste Management* narrative (July 2003) that project construction will involve paints and solvents.

- F-HM4.** MPS 4.2.2.2 requires that *development and redevelopment shall be in compliance with Massachusetts Hazardous Waste Regulations*. The July 2003 *Solid and Hazardous Waste Management* narrative states that development of the site will conform to these regulations. A September 8, 2003 letter from the Applicant states that “there will be an appropriate designated non-customer area” for storage of used fluorescent bulbs.

### **Heritage Preservation and Community Character Findings:**

#### ***Heritage Resources***

- F-CC1.** The proposed project is not located within an historic district and is not adjacent to individual historic buildings listed on the National or State Register of Historic Places. The Massachusetts Historical Commission (MHC) reviewed the proposed project and determined in a letter dated December 6, 2001 that the project is unlikely to affect significant historic or archaeological resources.

#### ***Architectural Design***

- F-CC2.** Goal 6.2 of the RPP encourages redevelopment and seeks to ensure that future development respects the traditions and character of Cape Cod consistent with the Commission’s design manual, Technical Bulletin #96-001. The proposed project involves redevelopment and expansion of an existing Super Stop & Shop supermarket and construction of Retail A. The Project addresses traditional character concerns by constructing the large supermarket building to the rear of the site behind a series of traditional, small-scale buildings. In addition, the front façade of the supermarket building is varied to make it appear as a series of attached masses more consistent with traditional scale. The proposed Retail A acts as a traditionally-scaled frontage, or liner, building consistent with Goal 6.2.
- F-CC3.** MPS 6.2.1 states that *no new development shall include a single structure which has a footprint greater than 50,000 square feet unless it can be demonstrated through the design of the building and vegetative or other screening methods that the project will not have adverse visual impacts on the surrounding community*. The proposed Project involves redevelopment and expansion of an existing building that is proposed to have a footprint of 78,729 SF and will be largely screened by existing frontage buildings along Route 137. The Applicant has addressed the potential for adverse visual impacts from the project through variation in the front façade of the Super Stop & Shop building, construction of an additional frontage or “liner” building (Retail A) on the north end of the parking field, and additional site landscaping to limit views from Route 39 and Route 137.

- F-CC4.** MPS 6.2.2 requires *in all cases, where new buildings and additions are proposed, that 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.* The proposed Super Stop & Shop building is large in comparison with surrounding buildings and with proposed Retail A, but those smaller buildings will provide adequate screening for the larger structure. The design of the supermarket building includes several setbacks and projections in the front façade, as well as changes in roof form, roof height, and building materials to break down the structure into distinct elements and reduce the apparent size of the building. Gable roof forms and wood siding materials are incorporated into the design to make it more consistent with traditional Cape architectural styles.

The mass and scale of the proposed Retail A building are consistent with traditional regional styles. Retail A incorporates gable roof forms, varied façade detailing, and pedestrian-scale features to create a successful frontage building.

#### ***Landscaping and Site Design***

- F-CC5.** MPS 6.2.5 requires *landscaping that integrates buildings with their environment, enhances architectural features and provides amenities for pedestrians.* In addition, MPS 6.2.6 requires *all development to implement a landscape plan which addresses the functional aspects of landscaping, such as drainage, erosion prevention and buffering.* The proposed landscape plan includes plant materials that are suitable for the site. Proposed landscaping for Retail A includes tree and shrub planting to help integrate the building with the site, consistent with MPS 6.2.5 and 6.2.6. Considerable landscaping is also provided between the northern site drive and the side of the Super Stop & Shop building to help to break down the mass of the building as viewed from Route 39. The Applicant has proposed replacement of existing plant material at the ends of three parking aisles closest to Route 137 and additional trees along the Route 137 site drive to help break down the mass of the building. The applicant has provided additional sidewalks and crosswalks throughout the site, linking existing and proposed retail uses. Benches have also been incorporated into the design for the facility. The proposed Landscape Plan, Sheet C-6 as revised January 14, 2005, is therefore consistent with MPS 6.2.5 and MPS 6.2.6.

- F-CC6.** The Applicant submitted a draft Landscape Maintenance Contract dated received May 17, 2004 which covers all plantings on the Applicant's property for a period of three years based on guidelines provided by Commission staff. The provision of a maintenance contract is considered a project benefit.

- F-CC7.** The previous owner of the Super Stop & Shop site entered into an Agreement with the Pleasant Bay Homeowner's Association in March 1990 to address various community character and other impacts from development of the site on the surrounding residential neighborhood. The Agreement was amended in January 1992 at the time of the original DRI approval of the Super Stop & Shop project (TR#90002) by the Cape Cod Commission and was executed between the Pleasant

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Bay Homeowner's Association, Inc. and the then owners of Super Stop & Shop. W.J.G. Realty Trust, as current owner of the Super Stop & Shop site, executed a Second Amendment to the Agreement with the Pleasant Bay Homeowner's Association on November 18, 2004 (the Second Amendment to the Agreement) to address additional areas of concern to the residential neighborhood from both the existing supermarket and proposed Project. The areas of concern include noise abatement, lighting, and landscaping. The Applicant has agreed to carry out the terms of the Second Amendment to the Agreement.

- F-CC8.** MPS 6.2.10 states in part that *parking shall be located to the rear or the side of a building or commercial complex in order to promote traditional village design*. Additional parking is proposed to the side of buildings, consistent with MPS 6.2.10. In addition, the placement of smaller-scale retail facilities between the supermarket and the adjacent roadways and the continuation of buffer planting as proposed between new parking areas and the roadways are also consistent with MPS 6.2.6 as noted in finding F-CC-5.

#### ***Exterior Lighting***

- F-CC9.** MPS 6.2.7 requires that *exterior lighting in new development or redevelopment shall comply with standards including design, light source, total light cutoff and foot-candle levels defined in the Exterior Lighting Design Standards, Technical Bulletin 95-001*. In October 2004, the Commission received information on proposed new fixtures, and a foot-candle plan showing estimated foot-candle levels. This information also described which existing fixtures would be modified as a result of the proposed Project. The lighting plan for the previously approved Harwich Commons Super Stop & Shop construction (#90002) was also provided. Based on this information, the proposed lighting design complies with Standards 2.3, 2.4, 2.5 and 2.6 of lighting Technical Bulletin, 95-001 (as revised 2/21/02).

## **CONCLUSION**

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

- The benefits of the Project outweigh the detriments as supported by findings F-T3, F-T5, F-T9, F-CC6, and F-CC7.
- The Project complies with the Minimum Performance Standards of the 1996 Regional Policy Plan.
- The Project is consistent with local zoning and with the Harwich Local Comprehensive Plan.

The Commission hereby approves with conditions the application of W.J.G. Realty Trust for the proposed Harwich Commons redevelopment project as a Development of Regional Impact, provided the following conditions are met:

## CONDITIONS

### General Conditions:

- C-G1.** The proposed Harwich Commons redevelopment project shall be constructed in accordance with the following final plans:
- Building elevations: Super Stop & Shop Elevations and Section prepared by Arrowstreet Architects, dated January 28, 2005, received February 3, 2005, and to be finalized in accordance with Condition C-CC1 herein;
  - Roof Plan for Super Stop & Shop, Harwich Commons, prepared by Arrowstreet Architects dated January 14, 2005 and received February 3, 2005;
  - Building elevations: Retail A building elevations with roof plan prepared by Arrowstreet Architects, dated November 20, 2004, and received January 28, 2005;
  - Figure 3, Super Stop & Shop at Harwich Commons, Open Space Restrictions, dated August 11, 2003 as revised December 10, 2004, prepared by VHB;
  - Site Plans for Proposed Retail at Harwich Commons, Harwich, MA, prepared by VHB, dated November 13, 2001 as revised January 14, 2005 (Sheets C-1 through C-10 and SE-1);
  - Lighting Proposal for Stop & Shop, Harwich, MA, prepared by LSI Industries, dated October 21, 2004, Sheet 1 of 1;
  - Building Permit Phasing Plan for Super Stop & Shop, East Harwich, dated January 27, 2005, prepared by Stop & Shop.
- C-G2.** This DRI decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written Decision.
- C-G3.** Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Decision.
- C-G4.** The Applicant shall obtain all necessary federal, state, and local permits for the proposed project. The Applicant shall forward to the Commission copies of any and all permits and approvals issued in relation to this project and issued subsequent to this Decision.
- C-G5.** No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods relating to the Project have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.
- C-G6.** Prior to issuance of a building permit for any phase of proposed construction, the Applicant shall submit final plans as approved by local boards for review by Commission staff to determine their consistency with this Decision and/or information submitted as part of the DRI review. If the final plans approved by local boards are inconsistent with this Decision and/or supporting information, then they shall be reviewed subject to Section 7 of the Cape Cod Commission Administrative Regulations, Modifications to Approved DRIs, dated 5/30/02 and as amended from time to time.

- C-G7.** Prior to issuance of Building Permit #1 from the Town of Harwich in accordance with the Building Permit Phasing Plan for Super Stop & Shop, East Harwich, dated 1/27/05, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission.
- C-G8.** Prior to receiving a temporary Certificate of Occupancy for the expanded northwest elevation of the Super Stop & Shop building (construction associated with Building Permit #1) from the Town of Harwich, the Applicant shall obtain a Partial Certificate of Compliance #1 from the Commission.
- C-G9.** Prior to receiving the Partial Certificate of Compliance #1 from the Commission, the exterior structure of Retail A shall be constructed according to the Retail A building elevations with roof plan prepared by Arrowstreet Architects, dated November 20, 2004 and received January 28, 2005.
- C-G10.** Prior to the issuance of Building Permit #2 from the Town of Harwich in accordance with the Building Permit Phasing Plan for Super Stop & Shop, East Harwich, dated 1/27/05, the Applicant shall obtain a Partial Certificate of Compliance #2 from the Commission.
- C-G11.** Prior to receiving a temporary or permanent Certificate of Occupancy for Retail A and a final Certificate of Occupancy for the reconstruction/expansion of the Super Stop & Shop building constructed in its entirety, from the Town of Harwich the Applicant shall obtain a Final Certificate of Compliance from the Commission. Unless otherwise stated in this Decision, the Project shall be constructed in accordance with final plans listed above in C-G1 and all conditions of the Decision shall be met prior to issuance of a Final Certificate of Compliance for the proposed Project.
- C-G12.** The Applicant shall provide a minimum of 30 days notice of the intent to seek a Certificate of Compliance prior to issuance of all certificates associated with this Decision. The Commission is under no obligation to issue any Certificate of Compliance unless all conditions, including transportation improvements, are complied with or secured consistent with this Decision.
- C-G13.** The Applicant shall be responsible for providing proof of recording of the Decision prior to issuance of a Preliminary Certificate of Compliance.
- C-G14.** The Applicant shall demonstrate that a copy of this Decision has been provided to the general contractor prior to the start of construction.

**Water Resources Conditions:**

- C-WR1.** Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall submit to Cape Cod Commission staff written confirmation of the I/A denitrifying septic system to be installed and a copy of the application and supporting materials

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submitted to the Massachusetts DEP for piloting approval. Prior to issuance of a Partial Certificate of Compliance #1, the Applicant shall install the I/A denitrifying septic system.

**C-WR2.** Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall provide the Cape Cod Commission with an approved Operations, Management and Compliance Policy (OMCP) signed by the Harwich Board of Health. The Applicant shall implement all provisions of the final OMCP on an ongoing basis.

**C-WR3.** Prior to the issuance of a Partial Certificate of Compliance #1, the Applicant shall pay a \$5,000 administrative fee to Barnstable County/Cape Cod Commission for implementation of the OMCP referenced in Finding F-WR5. The \$5,000 fee will cover the annual costs associated with implementing the Harwich Board of Health's oversight of the OMCP for the first five years of the treatment system. The Board of Health and the Cape Cod Commission are the respective local and regional authorities responsible for administrative and regulatory oversight of the project's onsite-wastewater management. Funds will be dispersed to the Town of Harwich upon approval by the Executive Director of the Cape Cod Commission.

Following the initial five-year period of operation, system performance shall be jointly reviewed by the Commission staff, the Harwich Board of Health, and the Applicant. Upon a recommendation of the Commission staff, the Commission's Regulatory Committee and Harwich Board of Health shall jointly determine the need for further compliance oversight.

**C-WR4.** The Applicant shall implement the *Harwich Common Drainage System Operation and Maintenance Plan*, dated as received December 14, 2004, on an ongoing basis. Records of operation, incident response, and maintenance shall be maintained and made accessible to the Harwich Board of Health upon their request.

#### **Natural Resources and Open Space Conditions:**

**C- NR1.** Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall provide the Cape Cod Commission with a conservation restriction that is acceptable to the Town of Harwich and consistent with Massachusetts General Laws Chapter 184, §31 – 33 and accompanying plan which provides that 10.77 acres located within the project site and identified as “conservation restriction” on the plan entitled *Figure 3, Super Stop and Shop at Harwich Commons, Open Space Restrictions*, as prepared by VHB and dated 8/11/03, revised 12/10/04, shall be preserved as permanent open space. The conservation restriction and accompanying plan shall also be approved by Commission counsel prior to the issuance of a Preliminary Certificate of Compliance.

The Applicant shall execute and record the conservation restriction and accompanying plan at the Registry of Deeds or Registry District of the Land Court and proof of recording shall be provided to the Commission prior to the issuance of a Partial Certificate of Compliance #1. If, due to the fact that the documents are

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undergoing the Commonwealth of Massachusetts' review and approval process but that process is not yet complete, the Applicant is unable to record the conservation restriction and accompanying plan at the time it seeks a Partial Certificate of Compliance #1, the Applicant may seek permission from the Regulatory Committee of the Commission to comply with this requirement at the time the Applicant seeks Partial Certificate of Compliance #2.

- C-NR2.** Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall provide the Cape Cod Commission with a restrictive covenant and accompanying plan which provides that 1.93 acres located within the project site and identified as "deed restriction" on the plan entitled *Figure 3, Super Stop and Shop at Harwich Commons, Open Space Restrictions*, as prepared by VHB and dated 8/11/03, revised 12/10/04 shall be preserved as permanent open space. The covenant and accompanying plan shall be approved by Commission counsel, executed and recorded at the Registry of Deeds or Registry District of the Land Court by the Applicant, and proof of recording shall be provided to the Commission prior to the issuance of a Preliminary Certificate of Compliance.
- C-NR3.** Prior to the issuance of a Preliminary Certificate of Compliance, the Applicant shall provide the Cape Cod Commission with a \$115,339 check made payable to the Barnstable County Treasurer in compliance with the open space requirements for this project. The Cape Cod Commission shall in turn disburse \$115,339 to the Town of Harwich Land Bank Fund, or an equivalent open space fund in the Town of Harwich, following receipt of a proposal for the acquisition of open space consistent with Commission requirements and upon approval by the Cape Cod Commission staff.

**Transportation Conditions:**

- C-T1.** Prior to issuance of a Preliminary Certificate of Compliance, the Applicant shall submit all necessary plans and permits (including all Town of Harwich permits) to implement the following safety and congestion mitigation, in accordance with Findings F-T3, F-T4 and F-T9. Commission staff shall review and approve the proposed plans for their consistency with the conceptual plans listed below. Modifications made during development of the final design plans that are in accordance with the operation characteristics planned for the project shall be approved by Commission staff as a Minor Modification #1.



Item #	Intersection	Safety and Congestion Mitigation
1.	Route 137/Super Stop & Shop site drive	Install traffic signal control and intersection geometric improvements as shown in the conceptual traffic signal plan entitled <i>Proposed Site Access Configurations, Route 137</i> , dated March 2004 by VHB. The Route 137 Super Stop & Shop site drive signal plans shall incorporate ornamental mast arms and/or ornamental signal posts, ornamental signal heads and related ornamental signal equipment, signal coordination with the existing Route 137/Route 39 traffic signal and traffic monitoring devices with remote access capability, a crosswalk on Route 137, and a separate pedestrian phase with visual countdown timer in the signal phasing.
2.	Route 39/Queen Anne Road	Install a modern roundabout and associated landscaping as shown in the conceptual roundabout plan entitled <i>Concept Plan Roundabout</i> prepared by VHB, dated May 10, 2000 and received November 20, 2003.
3.	Route 39 Sidewalk	Construction of a sidewalk along Route 39 from Route 137 to Bay Road.

- C-T2.** Prior to issuance of a Partial Certificate of Compliance #1 the Applicant shall implement the safety and congestion mitigation items #2 and #3 in accordance with the mitigation table in Condition C-T1.
- C-T3.** Prior to issuance of a Partial Certificate of Compliance #2 the Applicant shall implement the safety and congestion mitigation item #1 in accordance with the mitigation table in Condition C-T1.
- C-T4.** If, prior to the Applicant's constructing mitigation at locations specified in Condition C-T1, any other parties (public or private) construct traffic improvements at any of these locations that make the Applicant's proposed mitigation unnecessary or impractical, the Applicant shall pay an amount equivalent to that proposed mitigation cost at those locations to the County of Barnstable/Cape Cod Commission. Such payments in lieu of in-kind traffic mitigation are necessary to comply with MPS 4.1.1.1 and shall be used to support transportation improvements in the Town of Harwich. Any such payments shall be made by the Applicant prior to the issuance of a Partial Certificate of Compliance #1 and disbursed upon approval by the Executive Director of the Cape Cod Commission.
- C-T5.** In accordance with Finding F-T5, prior to the issuance of a Partial Certificate of Compliance #1, the Applicant shall make a monetary payment to the Barnstable County Treasurer in the amount of \$18,200. These funds will be held by the Cape Cod Commission/Barnstable County and applied to transportation improvements in the Town of Harwich and dispersed upon approval by the Executive Director of the Cape Cod Commission.
- C-T6.** In accordance with Finding F-T6, prior to the issuance of a Partial Certificate of Compliance #1, the Applicant shall trim vegetation in the vicinity of the Route 39/ Depot Road intersection to improve the sight distance to AASHTO standards; particular attention should be given to the Route 39 eastbound approach to the intersection.

- C-T7.** In accordance with Finding F-T7, the Applicant shall provide a future vehicle interconnection, within the limits of Lot 68, between the Super Stop & Shop property and adjacent Lot 63 if agreed to by the present or future owner of Lot 63.
- C-T8.** Prior to the issuance of a Partial Certificate of Compliance #1 the Applicant shall provide the TDM Program according to Finding F-T8.
- C-T9.** The Applicant shall provide to Commission staff for a period of five years commencing with the issuance of the Partial Certificate of Compliance #1, an annual report regarding employee participation in the TDM Program. The report shall include the total number of employees participating in the TDM Program; the total number of employees working at the site; the type of incentives offered for participation; and the reduction in traffic for an average summer weekday for the various strategies of the TDM Program.
- C-T10.** In accordance with Finding F-T8, prior to the issuance of a Partial Certificate of Compliance #1, the Applicant shall make a monetary payment to the Barnstable County Treasurer in the amount of \$220,593.33. These funds will be held by the Cape Cod Commission/Barnstable County and applied to trip reduction projects in the Town of Harwich and dispersed upon approval by the Executive Director of the Cape Cod Commission.

**Solid Waste Conditions:**

- C-SW1.** Prior to the issuance of a Preliminary Certificate of Compliance by the Commission, the proponent shall submit a draft contract for Cape Cod Commission staff approval specifying the disposal method that contractors shall use to dispose of all asphalt, brick, concrete (ABC), untreated wood, metals and other solid waste generated by demolition and construction activities. These materials shall be managed according to an integrated waste management system so as not to be a physical or visual nuisance to neighbors, and disposed of at a facility permitted to dispose of construction demolition materials.

**Hazardous Materials/Waste Conditions:**

- C-HM1.** The Retail A building or any space in it shall not be leased to any business or use that uses, treats, generates, stores or disposes of hazardous materials and/or hazardous waste in excess of 25 liquid gallons or approximately 200 pounds dry weight equivalent at any time. Prior to issuance of a Final Certificate of Compliance the Applicant shall submit a copy of the model lease for the Retail A building for review and approval by Commission staff.
- C-HM2.** Any change in the use of the supermarket building that results in the use, treatment, generation, storage or disposal of hazardous materials and/or hazardous waste in

excess of 25 liquid gallons or approximately 200 pounds dry weight equivalent at any time shall be subject to Commission review.

- C-HM3.** Prior to issuance of the Preliminary Certificate of Compliance, the Applicant shall submit a copy of construction bid documents, or other relevant documents, that indicate that the Applicant has taken efforts during the redevelopment and construction of the Project to segregate hazardous materials (including paints, stains and solvents) from general construction debris.
- C-HM4.** Any hazardous waste generated during demolition, building renovation or construction activities shall be removed from the site by a licensed, permitted hazardous waste transporter. The proposed project shall also implement a program to recycle used fluorescent bulbs. Prior to issuance of the Partial Certificate of Compliance #1, the Applicant shall submit to the Commission for staff review and approval evidence of a contract to recycle used fluorescent bulbs. Prior to issuance of the Partial Certificate of Compliance #1, Commission staff shall also conduct an inspection of the fluorescent bulb storage area to insure it is consistent with the requirements of 310 CMR 30.1000.

**Heritage Preservation and Community Character Conditions:**

- C-CC1.** Relating to the final design details of the Super Stop & Shop building, the final location of display windows, functional windows, location of decorative/patterned shingles, clapboards and other exterior building materials on the building façade shall be approved by Commission staff prior to receiving a Preliminary Certificate of Compliance.
- C-CC2.** Should unexpected conditions arise during demolition and/or construction that require redesign of the Project, the Applicant shall obtain approval from Cape Cod Commission staff prior to the start of construction consistent with the Commission's policy on modifications to Approved DRIs, Section 7.0 of the *Administrative Regulations*. Modifications made during demolition and/or construction that are in accordance with the approved elevation drawings, landscaping plans, and lighting plans and related information shall be considered as Minor Modifications #1 and be approved by Commission staff.
- C-CC3.** Detailed signage plans for pylon sign and building signage shall be submitted for Commission staff approval prior to the issuance of a Preliminary Certificate of Compliance. The installation of billboards, off-site advertising (excepting approved directional signs) and internally lit or flashing signs shall be prohibited. In addition, any pylon or freestanding signs shall be down-lit in conformance with Technical Bulletin 95-001. Also, the Applicant must comply with Harwich local zoning regarding signage.
- C-CC4.** If all required site work and/or landscape improvements are not complete at the time a Partial Certificate of Compliance #1 is sought from the Commission, any work which

is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The check shall be payable to the Barnstable County Treasurer with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work. All site work and/or landscape improvements and an inspection of the same shall be completed within one year of issuance of a Partial Certificate of Compliance #1 from the Commission.

- C-CC5. Prior to issuance of a Partial Certificate of Compliance #1 from the Commission, the Applicant shall provide a fully executed landscape maintenance contract for three full growing seasons from each respective date of installation.
- C-CC6. Plant materials specified by this Decision may be substituted with prior written approval of Commission staff. Any Commission staff approved plant material changes are subject to approval from the Harwich Planning Board.
- C-CC7. The Project shall be constructed consistent with the information on exterior lighting submitted to the Cape Cod Commission in an October 6, 2004 letter from VHB, the *Lighting Proposal Plan* from LSI Industries dated October 21, 2004, the Second Amendment to the Agreement between the Applicant and the Pleasant Bay Homeowners Association, Commission Technical Bulletin 95-001, and using the *Challenger* wall sconce for any wall-pack fixtures. This shall include but not necessarily be limited to re-lamping, replacement and shielding of existing fixtures as shown in the above-referenced sources. In all cases, the most restrictive standards on exterior lighting shall govern.
- C-CC8. Prior to issuance of the Partial Certificate of Compliance #1, Commission staff shall conduct an in-the-field verification of the exterior lighting design and foot-candle levels to insure consistency with this Decision and Technical Bulletin 95-001 (as amended). Should any part of the exterior lighting design be found to be inconsistent with this Decision or Technical Bulletin 95-001, the Applicant shall adjust or replace fixtures or other components as needed prior to issuance of the Partial Certificate of Compliance.

The Cape Cod Commission hereby approves with conditions the application of W.J.G. Realty Trust as 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 Harwich Commons redevelopment project located in East Harwich, Massachusetts.



2/8/05

Vice Chairman of the Commission

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

2/8/05, 2005

Before me, the undersigned notary public, personally appeared ALAN PLATT in his/her capacity as Chairman 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:

