

CAPE COD COMMISSION

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CCC # TR90040

DATE: February 28, 1991
TO: Spring Hill Cranberries, Inc./ Jacob M. Atwood, Esq.
FROM: Cape Cod Commission
RE: Development of Regional Impact

APPLICANT: Spring Hill Cranberries, Inc./ Jacob M. Atwood, Esq.
PROJECT: Norse Pines Cluster Subdivision
MAP/PARCEL: Assessors Map 29, Parcel T-1
Map 30, Parcels; Q-1, Q-2, Q-3, Q-4, Q-5, Q-6, Q-7
and Q-8
Map 32, Parcel B-1

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of Spring Hill Cranberries, Inc. and Jacob M. Atwood, Esq. for a Development of Regional Impact (DRI) under Sections 12 and 13 of the Cape Cod Commission Act (the Act), c. 716 of the Acts of 1989, as amended, for a proposed cluster subdivision of land off of Spring Hill Road and Route 6A in Sandwich. The decision is rendered pursuant to the vote of the Commission on February 7, 1991.

PROJECT DESCRIPTION

The two properties that comprise this proposed project are located to the north of Route 6A and north of the railroad tracks between Spring Hill Road and Beach Road in East Sandwich. The 93.47 + acre site was originally proposed to be divided into a cluster subdivision of 42 single-family house lots of 30,000 sq. ft. or greater. The property was proposed to have access off of both Spring Hill Road and Route 6A.

The proposed road layout for the project includes Roadways "A", "B", "C", "D" and "E". At the westerly portion of the site, Road "A" begins at Spring Hill Road just north of the railroad tracks and runs to the east a distance of approximately 2,400 feet to a terminus with Road "D". A segment of Road "A" would run along an existing gravel access road to active cranberry bogs located to the north of the Spring Hill Cranberries, Inc. portion of the property. This segment (western end of Road "A"), as originally proposed to meet Planning Board street construction

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standards, would require several waivers and fill portions of three wetland areas. Road "A" also intersects with Road "B" approximately 2,040 feet from Spring Hill Road. Road "B" runs east to west for approximately 1,600 feet from Road "B" to a terminus with Road "C". Road "C" runs north from an intersection with Route 6A (Cranberry Highway) for a distance of approximately 650 feet. Road "D" runs north to south for a distance of approximately 1,000 feet with cul-de-sacs at both ends. Road "E", approximately 250 feet long, serves as a short connector road between roads "B" and "D". The existing gravel access road to the cranberry bogs and a home off-site is approximately 12 feet wide and rapidly drops off from Spring Hill Road in the area of the three wetlands. The owner of the cranberry bogs stated that the access road is plowed and maintained year round. A map of the parcel is attached to this decision.

SITE DESCRIPTION

The Norse Pines Subdivision properties contain a variety of wetland, upland vegetation and soils. The site can be generally described as containing an eastern, central and western lobe of uplands surrounded by wetlands. The upland portion consists of open fields, pine and hardwood forests (with various types of undergrowth) and agricultural grazing land. The three upland lobes are surrounded by wetlands and are pocketed by several isolated wetlands and a stream. The wetlands consist of the following: shrub swamps; active cranberry bogs; inactive cranberry bogs in a transitional stage to shrub swamps; forested swamp; wet meadows; and fresh water marsh. Several of the wetlands on the site are directly connected by drainage pipes to a larger fresh water marsh off-site which eventually flows through a one way flood gate located beneath Ploughed Neck Road into the Scorton Creek and the adjacent salt marshes. These salt marshes are part of the Sandy Neck Area of Critical Environmental Concern (ACEC). The site contains diverse wildlife including deer, fox, small mammals, various avian species, reptiles and amphibians. These species typically use both the wetlands and uplands for feeding, nesting and breeding.

The diversity of vegetative areas on the site provides for a large number of transition zones, 'edges', from one habitat to another. These edge areas are extremely important to species diversity since many wildlife species tend to congregate at these edges where they can obtain their requirements from two or more plant communities with a minimum of effort.

PROCEDURAL HISTORY

The applicant filed for a definitive subdivision approval with the Sandwich Planning Board on April 4, 1990. The project was referred to the Commission by the Planning Board on May 1, 1990. The Commission hearing was opened on June 21, 1990. No testimony was taken at this hearing because the Cape Cod Commission regulations for Developments of Regional Impact were not in effect. The hearing was continued to September 17, 1991. A duly noticed public hearing on the project was held by the Cape Cod Commission pursuant to Section 5 of the Act on September 17, 1990 at the Sandwich Human Services Building in Sandwich Massachusetts. The hearing was closed on September 17, 1990. The public record was closed at the close of the business day on October 11, 1990.

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The subcommittee held public meetings in the library of the Cape Cod Commission offices in Barnstable, Massachusetts on the following dates:

November 5, 1990
~~November 26, 1990~~
December 6, 1990
December 17, 1990
January 7, 1991 and
February 4, 1991.

At the November 5, 1990 subcommittee meeting new information was submitted by the applicant, as well as letters from local officials and residents. The subcommittee reopened the public record on November 12, 1990. The record was closed at the close of the business day on November 26, 1990.

The subcommittee conducted a site walk with the applicants' representatives on November 8, 1990. The subcommittee also met with the Sandwich Planning Board and the applicants' representatives at a Planning Board meeting on January 16, 1991 to discuss issues raised at the public hearing.

The applicants and Commission agreed to two extensions of the 60 day decision time frame. Extensions were signed on November 5, 1990, extending the decision due-date to the close of business January 30, 1991, and on January 7, 1991 extending the decision due-date to the close of business March 11, 1991.

The applicant proposed several modifications after the close of the public hearing in an attempt to address concerns identified at the hearing. Plan Modifications dated 12/12/90 showing lot and roadway changes were submitted to the Commission by the applicant. Additional plan changes were shown to subcommittee members and staff at the Planning Board meeting of January 16, 1991 and the subcommittee meeting of February 4, 1991. These February 4, 1991 plan modifications showing several different roadway configurations were not submitted to the Commission for review by the staff, and are not contained in the Commission Record. There was an opportunity for a further extension of the decision time frame however, the applicant did not choose to extend the decision period.

MATERIALS SUBMITTED FOR THE RECORD

A). Materials submitted for the record from the applicant:

1. Certified list of abutters

June 18, 1990

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2. Letter on Commission membership	June 18, 1990
3. Letter on the application	July 9, 1990
4. Endangered habitat information (letter & map)	July 11, 1990
5. Letter on the application	July 24, 1990
6. DRI Application and Deed information	July 25, 1990
7. Form C copy (Sandwich Planning Board)	July 25, 1990
8. Application fee	July 30, 1990
9. Letter on the application	August 7, 1990
10. Letter on curb cut	August 23, 1990
11. Response to staff report	September 17, 1990
12. Draft supplement Information Document	October 9, 1990
13. Supplemental Information Document	October 11, 1990
14. Letter on supplement information document	October 15, 1990
15. Letter on meeting with staff	October 25, 1990
16. Traffic and water quality	October 26, 1990
17. Letter on report	October 29, 1990
18. Request for minutes of 9/17/90	October 31, 1990
19. Letter with attached information	November 5, 1990
20. Fact sheet	November 23, 1990
21. Summary of issues	November 23, 1990
22. Revised site plan (road and lot layout)	December 12, 1990

B). Materials submitted for the record by the staff:

1. Letter to Mr. Atwood on application information	June 6, 1990
2. First Public Hearing Notice	June 7, 1990
3. Letter to Sandwich Assessors Office	June 12, 1990
4. Letter to K. Alexander on Commission	June 25, 1990
5. Second Public Hearing Notice	September 3, 1990
6. Letter to K. Alexander (Re: traffic)	September 6, 1990
7. Interim staff report to Commission	September 13, 1990
8. Update comment sheet	November 5, 1990
9. Staff Report	November 23, 1990
10. Letter extending decision time limit to COB 1/30/91.	November 5, 1990
11. Letter extending decision time limit to COB 3/11/91.	January 7, 1991

C). Materials submitted for the record by the Town:

1. DRI Referral Form	May 1, 1990
2. Preliminary Plan Approval	May 1, 1990
3. Planning Board Minutes (November 15, 1989)	May 1, 1990
4. Sandwich Water Department Letter	June 13, 1990
5. Planing Board Letter	October 23, 1990

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6. Police Department Letter

October 23, 1990

D). Materials submitted for the record by the public:

1. A letter from Bob Prescott	October 23, 1990
2. A letter from Peter Auger	October 27, 1990
3. A letter from David Clapp	November 1, 1990
4. A letter from Ms. Dickerson	November 26, 1990
5. A letter from Lynne MacDonald	November 26, 1990
6. A letter from Susan V. Walker	November 26, 1990

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 our proceedings are incorporated into the record by reference.

TESTIMONY

At the September 17, 1990 hearing the Commission heard oral testimony from Mr. William Stanton, the attorney representing the applicants, and Mr. K.E. Alexander, the planner representing the applicants. Mr. Alexander explained that the applicant had received preliminary plan approval from the Sandwich Planning Board and an Order of Conditions from the Sandwich Conservation Commission. The applicants stated they believed that the project met all local and state laws and regulations, and the project would not have a negative impact on existing traffic conditions.

The Commission staff identified the following concerns with the applicants' proposal:

1. The small amount of usable upland open space;
2. The proximity of proposed houses to active cranberry bogs and potential adverse impacts to human health from pesticide use on the bogs;
3. Stop sight distances at both entrances to the project;
4. The impacts of additional traffic from the project to the Spring Hill/Quaker Meeting House/Route 6A intersection;
5. Incomplete traffic information;
6. No provisions for affordable housing;
7. Incomplete information on nitrate loading and storm water management;
8. The likelihood of adverse impacts on wetlands and wildlife habitat.

Discussion between the applicants' representatives and the subcommittee revealed that there was no aerial spraying of the bogs which might adversely impact on human health. Therefore, this matter was no longer an issue of concern. The remaining issues were not resolved during the course of the public hearing. The applicants' representatives agreed to supply information to the Commission on the outstanding issues.

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ADDITIONAL INFORMATION

In response to the concerns of the applicants' representatives an updated comment sheet was drafted by staff for the November 5, 1990 subcommittee meeting. The staff analysis concluded that the benefits of the proposed project did not outweigh the detriments, citing the following areas of concern:

1. Conservation and preservation of natural undeveloped areas (including wetlands);
2. Conservation and preservation of wildlife;
3. Protection of surface waters and groundwaters;
4. Provisions for a balanced economic growth;
5. Importance of the development to economic development in the region;
6. Provision of adequate transportation facilities;
7. Provisions for affordable housing;
8. Protection of existing agriculture.

As a result of discussions between the applicant and subcommittee, the subcommittee decided not to address the economic issues with this particular project because of the lack of information. Based on the areas of concern listed above, the staff issued another report on November 23, 1990 finding that the proposal was still more detrimental than beneficial. The staff report cited the following concerns:

1. The applicant failed to demonstrate that the project would not have a detrimental impact on the wetland and wildlife values that the Cape Cod Commission is mandated to protect. Specific concerns include individual and cumulative impacts from: (1) filling a portion of the wetland to provide access to the site; (2) introducing road and other runoff to wetlands; (3) altering hydrology; and (4) related construction impacts.
2. Proposed construction within the wildlife/wetland buffer area is likely to have a significant adverse impact on wetlands and associated wildlife habitat.
3. The project as proposed does not provide for safe and adequate ingress and egress at either the East or West proposed entrances.
4. The project has made no provisions for affordable housing.
5. Nitrate-nitrogen loading on a portion of the site exceeds the 5 parts per million (ppm) guideline established by the Commission.
6. Storm water and wastewater flows are likely to adversely impact water resources on the site.

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In discussions at the November 26, 1990 meeting the subcommittee indicated its support for the concerns identified in the November 23 staff report. Based on the discussions at the November 26 meeting and two subsequent meetings with the staff, the applicants modified their plans to address three of the concerns outlined in the November 23, 1990 staff report. The applicant's revised plans, dated 12/12/90, addressed the following concerns:

1. Filling of wetlands.

The 12/12/90 revised plans show no filling of wetlands. They indicate utilization of the existing unpaved cranberry bog access road as a means of emergency access from the cul-de-sac of Road "A" to Spring Hill Road.

2. Wetland and wildlife buffers.

The 12/12/90 revised plans show no construction activity within 100 feet of the wetlands. They indicate limited construction activity within 150 feet of the wetlands including paved access road, and drainage structures for the road site.

The applicant agreed to conservation restrictions to limit uses within the 100 and 150 foot buffer areas.

3. Safe and adequate ingress and egress:

The applicant agreed to provide a safe stop sight distance (350 feet) on Route 6A as recommended by staff, based on actual speed counts undertaken at the proposed site drive taken by the staff. This distance is subject to DPW approval through a curb cut permit. (Impacts to the Spring Hill Road/Quaker Meeting House Road/Route 6A intersection were eliminated since the 12/12/90 revised plan provides for only emergency access to that intersection).

The applicant did not submit any information or address the remaining three issues which included affordable housing, nitrate-nitrogen loading and storm water runoff.

Following the subcommittee meeting of November 26, 1990 the Sandwich Planning Board contacted both the applicant and Commission regarding the proposed changes to Roads "A" and "B" that would have resulted in road realignment away from wildlife/wetland buffer areas and the use of the existing gravel road for emergency access only. The Planning Board expressed concern over the large number of waivers and a possible zoning variance which would have to be granted under the local development by-laws and regulations. At the same time the Planning Board also indicated they felt the proposed project would create a positive tax revenue for the town and therefore, they supported the project.

At the December 6, 1990 subcommittee meeting the concerns of the Planning Board were discussed. Regarding the tax revenue issue, the subcommittee noted that the applicant never supplied the Commission with a fiscal impact assessment of the project or any other economic information, and that the applicant was unable to give staff an estimate of the value of lots or homes. Thus, staff was unable to undertake an assessment of its own. The subcommittee

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members believed that the cost of providing public services for single-family housing are likely to be greater than the tax revenue realized by a town. The subcommittee agreed that the economic impact of the proposed project would not be considered a benefit or detriment due to the lack of information provided on the subject. Information still outstanding on this project included Nitrate-Nitrogen loading data, storm water calculations and an affordable housing proposal.

The staff received information on nitrate-nitrogen loading from the applicant at the December 17, 1990 subcommittee meeting. No information on storm water calculations and affordable housing were submitted. At the December 17, 1990 meeting further changes to the proposed Conservation Restrictions were discussed.

The January 7, 1991 subcommittee meeting started with the staff summary of the six issues outlined in the November 23, 1990 staff report. The concerns about road construction in a wetland, stop sight distance and protection of the wildlife/wetland buffers had been addressed by the applicants revised plans dated 12/12/90. The applicant had not submitted an affordable housing proposal and storm water calculations. Staff also noted that there were differences of opinion between the staff and applicants' representatives on the method of calculating nitrogen loading on the central upland lobe. The applicant used a different method of calculating nitrogen loading for the central upland lobe than the method of calculation he used to determine nitrogen loading for the eastern and western upland lobes.

The Sandwich Planning Board Chairman and Town Planner were present at the January 7, 1991 meeting. It was noted that the Sandwich Planning Board did not like the changes shown on the 12/12/90 revised plans due to the number of waivers which would be required from the Board. The subcommittee members discussed several alternatives to the 12/12/90 revised plans. They discussed on a proposal which would allow the original road "B" alignment as shown on plans dated 4/2/90 which would be acceptable to the Sandwich Planning Board. Although, this roadway alignment would encroach on both the 100 and 150 foot wildlife/wetland buffer areas, the subcommittee felt that a donation of valuable wildlife habitat would favorably balance against the impacts created by the intrusion of the roadway on the wetland and wildlife buffer areas. The subcommittee members felt that the northern portion of the central upland lobe had limited development potential due to the wildlife/wetland buffer areas, but that particular area has great value as a wildlife habitat.

Representatives of both the Sandwich Planning Board and applicant felt they could come up with an alternative solution to the filling of the wetlands at the western entrance with Spring Hill Road (road "A"). The subcommittee members felt that a meeting with the local officials would be helpful to try to resolve the issues discussed at the December 6, 1990 meeting.

The subcommittee met with the local officials (including Planning Board, Conservation Commission and Town Engineer and others) on January 16, 1991 in a public meeting and discussed the issues surrounding the length of the dead end roadway system, roadway construction within a wetland, and roadway alignment. No alternative solutions to avoid the filling of the wetlands to accommodate road "A" were presented by the applicants. No agreements

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were reached between the subcommittee, the applicants and the Sandwich Planning Board regarding these issues.

The subcommittee held its final meeting on February 4, 1991 in order to render a decision on this project. At the February 4th meeting the applicant's representatives presented several alternative proposals regarding the three outstanding issues outlined below. These proposals were not submitted to staff for review prior to the meeting. The subcommittee saw these proposals for the first time at the February 4th meeting.

1. Road "A":

a) The applicant proposed to pave the existing cranberry bog gravel roadway to provide a second access to the site. This option would result in loss of control of storm water flows into the wetlands. The Sandwich Conservation Commission had at the January 16, 1991 meeting, expressed its dissatisfaction with this option due to the likely impacts on wetlands from drainage and construction activities.

or

b) Create a paved one-way roadway. This roadway would fill a small wetland. The subcommittee expressed its dissatisfaction with this option due to the direct alteration of wetlands.

2. The location of road "B": The applicant proposed a new road alignment for roadway B through the wetland buffer areas which was similar to the originally proposed road "B" alignment. This new road location would require some waivers to the Sandwich Planning Board's rules and regulations and was not favored by the Sandwich Town Planner. In addition, this option was not favored by the subcommittee because the applicant also withdrew a donation of wildlife habitat open space, that had been assumed by members of the subcommittee to have been agreed on, which would have saved valuable wildlife habitat to balance against the intrusion of the roadway into the wildlife/wetland buffer areas.

3. Affordable Housing: The applicant offered one residential lot of land, off-site, to be donated to the Sandwich Housing Authority. The lot is approximately 40,000 square feet and lies within a 60,000 square foot residential zone. Although no supporting documentation was submitted by the applicants, they represented that one single-family home could be constructed on the site because it was grandfathered under previous zoning. They also represented that a "perc test" had been done on the property and that the property could accommodate a septic system. The applicant did not have any further information on the lot.

The outstanding issues were discussed but no resolution was agreed on and both parties, having gone through two extensions, did not want to extend the decision due-date again. The applicants' representatives felt the subcommittee should approve the project and attach conditions that would allow the project to go forward. The subcommittee felt the Commission should not attach conditions that applicants' had not agreed to, therefore, voted to deny the project.

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JURISDICTION

The proposed Norse Pines Cluster Subdivision a combination of land owned by Spring Hill Cranberries, Inc. and Mr. Jacob M. Atwood, Esq., qualifies as a development of Regional Impact (DRI) under Section 12 (c)(7) which requires review of:

Any proposed development, including the expansion of existing developments, that is planned to create or accommodate more than thirty dwelling units.

The project was referred to the Commission by the Sandwich Planning Board on May 1, 1990.

FINDINGS

The Commission has considered the application of Spring Hill Cranberries, Inc./Jacob M. Atwood, Esq. for the proposed Norse Pines Cluster Subdivision, and based on consideration of such application and upon the information presented at the public hearing makes the following findings pursuant to section 12 and 13 of the Act:

1. The applicant proposes to build 42 single-family homes in a cluster subdivision.
2. The site of the proposed development is environmentally sensitive. It contains and/or abuts groundwater and surface water bodies, valuable wildlife and plant habitat, and a significant amount of wetland areas.
3. The applicant failed to demonstrate that the individual and cumulative impacts of filling a portion of the wetland to provide a roadway access to the site, introducing road and other runoff to wetlands, altering hydrology, and related construction impacts would not have a detrimental impact on the wetland and wildlife values the Cape Cod Commission is mandated to protect by the Act.
4. Proposed construction within the wildlife/wetland buffer area is likely to have a significant adverse impact on wetlands and associated wildlife habitat.
5. The applicant failed to demonstrate that access to the site from Spring Hill Road would not create adverse traffic and safety impacts (due to the volume of trips generated from the site, accident history, poor sight distances and the intersection geometrics) at the intersection of Spring Hill Road/Quaker Meeting House Road/Route 6A.
6. The stop sight distance at the proposed intersection of roadway C with Route 6A was adequately mitigated as proposed.

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7. The plan as originally proposed complies with Town of Sandwich bylaws and regulations. However, the original proposal adversely impacted upon resources and values protected by the Act including ground and surface water bodies, wetlands and associated wildlife habitat.

8. The plan, as modified on 12/12/90, is more consistent with the values and purposes protected by the Act than the original (4/2/90) plan. However, it required numerous waivers of Sandwich subdivision regulations and a variance from Sandwich zoning bylaws.

9. Reducing the density of development (number of units developed) on the parcels in question would likely result in the ability to protect the values and resource identified in the Act and the ability to gain the necessary local approvals without requiring waivers from subdivision regulations or a variance from local bylaws.

10. The use of "Ruck" septic systems, as proposed, is likely to mitigate concerns about wastewater flows.

11. The 12/12/90 revised plan eliminated "open space area #1" as shown on the 4/2/90 plan which was approved by the Sandwich Planning Board.

12. Only 1% of the current housing stock in the Town of Sandwich meets the Massachusetts Executive Office of Community Development standard for affordable housing.

13. The applicant offered a 40,000 square foot parcel of land, off-site, as an affordable housing donation. However, the applicant failed to provide adequate time and information to determine the suitability of this parcel for the development of affordable housing.

CONCLUSION

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

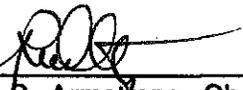
The project as originally proposed is consistent with local development by-laws. This conclusion is supported by the fact the project as originally proposed received preliminary plan approval from the Sandwich Planning Board and Conservation Commission. However, the revised plan dated 12/12/90 is inconsistent with local development bylaws and regulations. This conclusion is supported by the finding that several waivers from Sandwich subdivision regulations and a variance from Sandwich zoning bylaws would be required for local approval of the revised proposal.

The benefits of the proposed project do not outweigh the detriments resulting from the development. This conclusion is supported by the findings that the following detriments are likely to result from the project: the site is environmentally sensitive and contains and/or abuts groundwater and surface water bodies, wildlife and plant habitat, and wetlands; individual and cumulative impact from the project including addition of fill, nitrate-nitrogen loading, road runoff, storm water runoff, changes in hydrology, addition of various pollutants and vehicular access will have a detrimental impact on wetlands and wildlife; and access to the site from Spring Hill Road would create adverse

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traffic impacts due to the volume of trips generated from the site, accident history, poor sight distances and the intersection geometrics, and would adversely affect wetlands. In addition, no benefits were identified such as provisions for open space, recreation, and/or affordable housing. Many of the impacts listed above were addressed in the 12/12/90 revised plans. The subcommittee felt that the revised plans better addressed the values and purposes protected by the Act. However, the revised plan was clearly unacceptable to the Sandwich Planning Board and as such could not be considered consistent with local development bylaws.

The Commission hereby denies the Norse Pines Cluster Subdivision approval to construct a DRI, pursuant to Section 13 of the Act.



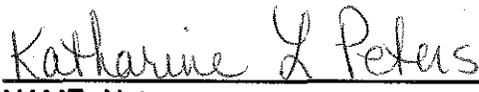
Richard S. Armstrong, Chair

2/28/91
Date

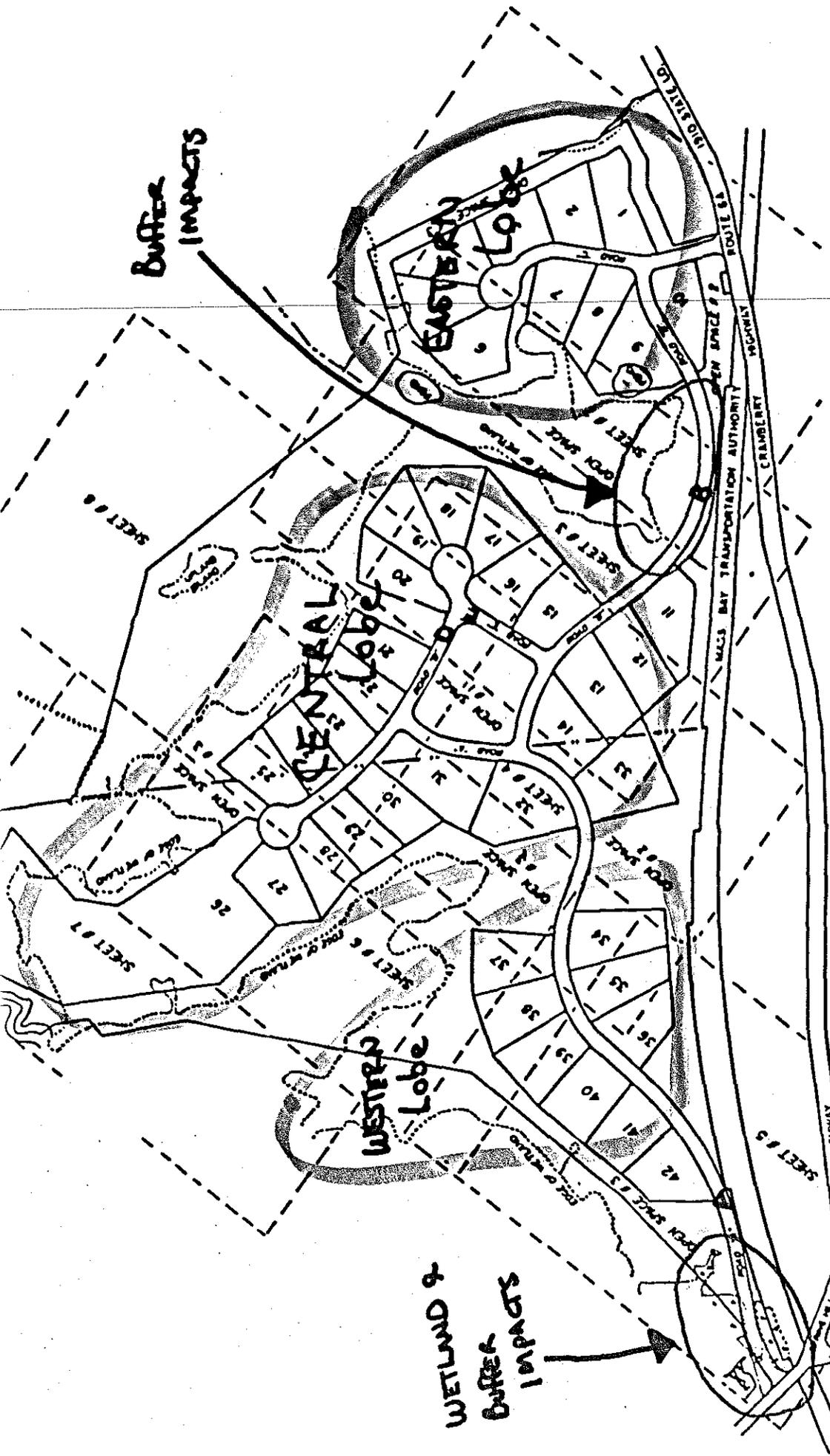
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 28th day of Feb 1991.



NAME, Notary
My Commission Expires: 12/5/97



Buffer IMPACTS

WETLAND 9
Buffer IMPACTS

ALLOWABLE LOT COMPUTATIONS

(Spring Hill, Inc.) (ATWOOD)
 TOTAL APPLICABLE LAND AREA: 34.28 • 33.56 • 69.84 ACRES
 ALLOWABLE LOTS • 89.84 • 43.560 • 42.23 LOTS
 12 • 60,000

KEY MAP
SCALE 1" = 200'

OWNERS
 SPRING HILL CRANBERRIES, INC.
 14 GULLY LAKE RD. #1
 EAST SAUNDERS MASS 02537
 JACOB M. ATWOOD, ESQ.
 281 COMMONWEALTH AVENUE
 BOSTON MASS 02116

LAND USE SUMMARY

DESC	ACRES	%	WETLAND
LOTS	37.52	54%	1.05
OPEN SPACE	28.30	37%	22.23
ROAD	8.02	9%	0.09
TOTAL	69.84	100%	23.63

NOTE: ALL LOT CORNERS TO BE BOUNDED PRIOR TO RELEASE OF ROAD COVENANT OR ROAD BOND.