

# CAPE COD COMMISSION

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

Date: November 12, 1992

Applicant: 2882 Realty Trust, Paul DeRuyter, trustee

Project #: #TR90132

Project: 2882 Realty Trust  
P.O. Box 2000  
1990 Main Street  
Brewster, MA 02631

RE: Development of Regional Impact/Hardship Exemption  
Cape Cod Commission Act, Sections 12 and 23

Lot/Parcel: Map 14, Lot 62-11

---

## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of Mr. Paul DeRuyter for a Development of Regional Impact/Hardship Exemption under Sections 12 and 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed seven-lot commercial subdivision in Brewster, MA. The decision is rendered pursuant to a vote of the Commission on November 12, 1992.

### PROJECT DESCRIPTION

The proposal calls for a seven-lot subdivision with up to 25,000 square feet in new construction, including 15,000 square feet of retail space and 10,000 square feet of office space on a 12.47 acre site. The project is located on the south side of Route 6A in Brewster, MA, between the Villages at Ocean Edge condominium development and the Ocean Edge Conference Center. The site is bordered to the south by the Cape Cod Rail Trail. Lots 1 - 6 are zoned Commercial High Density with each lot ranging from 0.4 to 0.5 acres in size. Lot 7 totals 9.3 acres and is zoned Residential Medium Density. Lot 7 contains two shrub swamps totaling approximately 4.2 acres in size.

### PROCEDURAL HISTORY

The proposed project was referred to the Cape Cod Commission under Section 12(e) of the Cape Cod Commission Act by the Brewster Conservation Commission on December 24, 1990. The Commission voted unanimously on February 7, 1991 to review the project as a Development of Regional Impact (DRI). A public hearing was opened on April 4, 1991 and continued to May 22, 1991 by a hearing officer of the Commission. On May 3, 1991 the applicant requested an

2882 Realty Trust Decision - Brewster, MA #TR90132

extension of the Commission's decision until November 8, 1991. Therefore, at the May 22 hearing, the public hearing was closed without receipt of testimony by a hearing officer of the Commission.

An additional public hearing was held by a duly authorized subcommittee of the Commission on October 7, 1991. At this hearing, the applicant again requested an extension of the decision time limit in order to work with local boards to revise the project. The subcommittee voted unanimously at this hearing to close the public hearing and grant an additional extension of the decision until June 30, 1992. Over the next several months, the applicant met with various Brewster boards and officials to redesign the project in order to address local concerns which prompted the project's referral to the Commission under Section 12(e) of the Act in December, 1990.

On June 4, 1992 the decision was again extended until August 7, 1992. On July 15, 1992, the applicant requested withdrawal from Cape Cod Commission review as a Development of Regional Impact (DRI). On July 29, 1992, the applicant withdrew his request to withdraw from Commission review. He then requested another extension of the decision period in order to resolve issues pertaining to the project with the Conservation Commission. An extension of the decision was granted by the Commission on August 6, 1992 until November 13, 1992.

On August 20, 1992, the applicant again requested withdrawal of the project from Cape Cod Commission review as a Hardship Exemption/Development of Regional Impact (DRI). This withdrawal request was also withdrawn by the applicant at the September 3, 1992 Commission meeting with the applicant agreeing to proceed with DRI review.

On October 20, 1992 the applicant expressed his intention not to sign an additional extension of the decision time limit in order to allow the Brewster Planning Board to act on an application recently filed by the applicant for a modification to the subdivision plan.

Materials submitted for the record:

- Road plan and profile, dated August 15, 1988 and revised September 17, 1990, prepared by Coastal Engineering Co.
- Subdivision plan of land in East Brewster, MA, dated June 1, 1988, prepared by Nickerson and Berger, Inc. R.L.S. & P.E., 1 sheet
- Site plan, elevation and landscape plan dated February 18, 1992 prepared by Steven C. Hayes, architect, 2 sheets
- Subdivision plan of land and site plans dated June 19, 1991 prepared by Steven C. Hayes, architect, 4 sheets
- letter from applicant to EOEA, dated December 13, 1989
- agreements to extend decision dated May 6, 1991, October 17, 1991, June 4, 1992, August 6, 1992
- letters from the applicant, dated October 4, 1991, July 29, 1992, August 6, 1992, September 1, 1992, October 20, 1992
- written statement from the applicant to the Brewster Conservation Commission, dated September 8, 1992
- letters requesting withdrawal dated July 15, 1992, August 20, 1992
- preliminary traffic impact assessment, prepared by Vanasse Hangen Brustlin, Inc. dated February 6, 1991
- letter from Denise Maddocks opposed to the project, dated October 2, 1991

Additional materials:

- letters from Commission staff, dated December 27, 1990, January 7, 1991, January 24, 1991, February 12, 1991, March 27, 1991, April 4, 1991, August 12, 1991, July 24, 1992, August 25, 1992, August 28, 1992, September 25, 1992
- Cape Cod Commission staff reports, dated February 1, 1991, August 28, 1992
- Notice of Intent, dated October 25, 1990
- letter from Brewster Building Dept. to attny. William Henchy, dated January 8, 1991
- letter from Brewster Building Dept. with attachments dated February 1, 1991
- letter from Brewster Conservation Commission with attachments, dated February 5, 1991
- letters from Brewster Board of Selectmen dated February 5, 1991, October 2, 1991, August 31, 1992
- letter from Brewster Planning Board dated February 7, 1991
- Brewster Conservation Commission minutes dated April 14, 1992
- letter from Massachusetts Historical Commission dated May 12, 1992
- letter from Brewster Conservation Commission dated December 20, 1990, August 6, 1992, August 27, 1992
- letter from Brewster Old King's Highway Historic District Committee dated August 10, 1992
- Department of Public Works curb cut permit, dated July 18, 1991
- Certificate of the Secretary of Environmental Affairs on the ENF, dated July 12, 1989
- letter from EOEa on project change dated December 26, 1989
- DRI referral form, dated December 10, 1990

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

TESTIMONY

No testimony was received at the April 4, 1991 or May 22, 1991 public hearings on the proposed project. At the October 7, 1991 public hearing, the applicant requested that an extension be granted in order to work with local boards to redesign the project. Mr. Paul Greninger, Vice-Chairman of the Brewster Conservation Commission, stated that there were several unresolved issues related to the project and that he was not opposed to the extension request. The extension request was unanimously granted by the subcommittee on October 7, 1991.

JURISDICTION

The proposed 2882 Realty Trust commercial subdivision was referred to the Commission under Section 12(e) of the Act on December 24, 1990 by William Henchy, Chairman of the Brewster Conservation Commission. The Commission voted unanimously on February 7, 1991 to review the project as a Development of Regional Impact (DRI).

FINDINGS

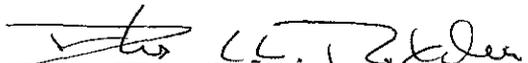
The Commission has considered the information submitted on 2882 Realty Trust for the proposed commercial subdivision in Brewster, MA, and based on consideration of such information and testimony at the public hearings, the Commission makes the following findings subject to Section 12, 13 and 23 of the Act:

1). The Applicant failed to submit a fully completed application for a DRI/Hardship Exemption, therefore the Commission had no information upon which to base a favorable decision.

CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby denies the 2882 Realty Trust application as a Development of Regional Impact/Hardship Exemption. This conclusion is supported by the finding that the proponent failed to submit a fully completed application.

The Commission hereby denies Mr. Paul DeRuyter of 2882 Realty Trust as a Development of Regional Impact/Hardship Exemption pursuant to Sections 12 and 23 of the Cape Cod Commission Act for a proposed seven lot commercial subdivision. This denial is without prejudice.

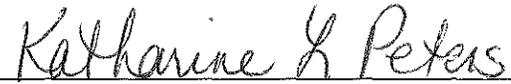
  
Alix Ritchie, Chair

11/12/92  
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

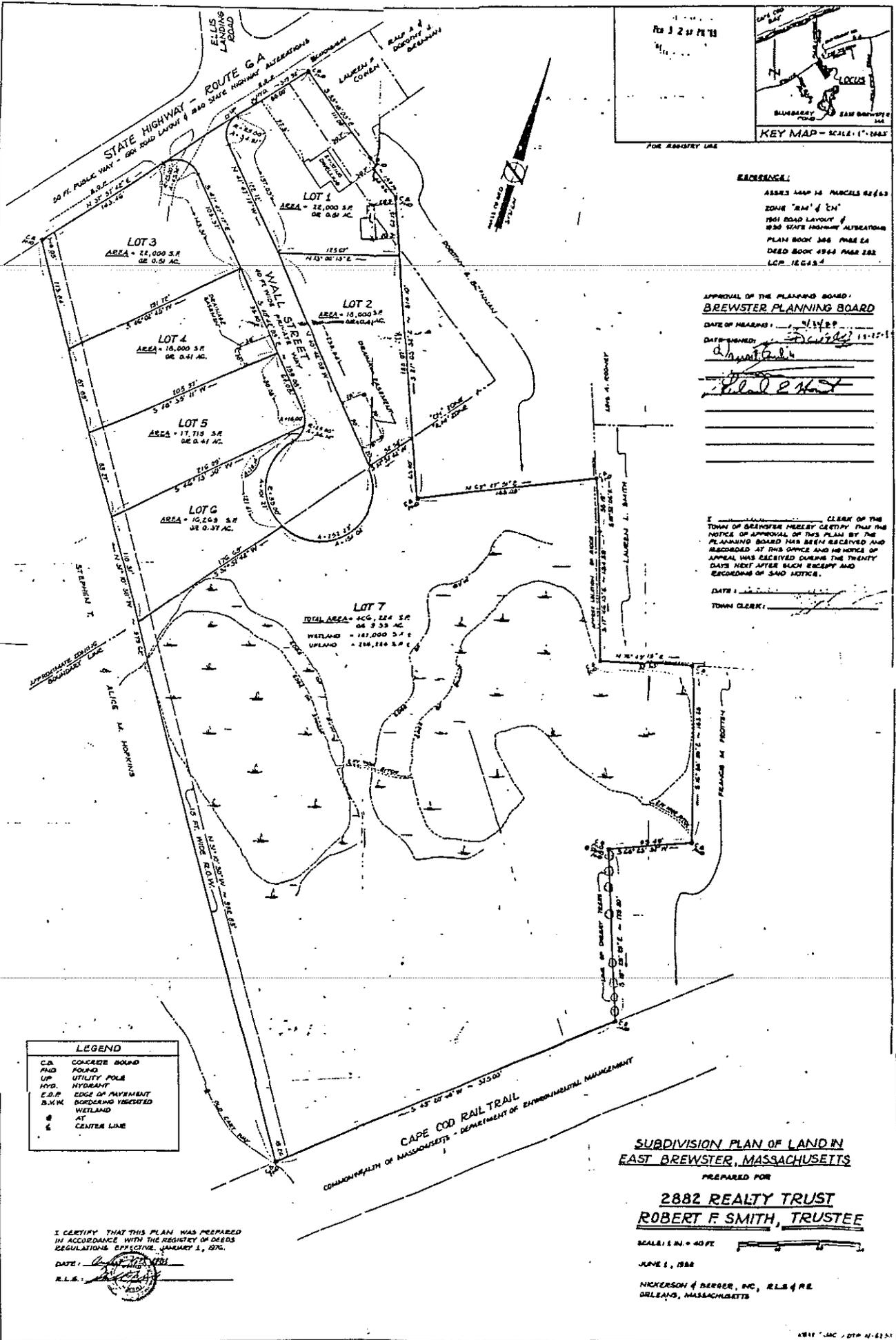
Subscribed and sworn to before me this 12<sup>th</sup> day of November 1992

  
Name, Notary Public

My commission expires:

~~My Commission Expires December 3, 1997~~

BOOK 457 PAGE 43



FOR REGISTRY USE

FILE NO. 217 P. 11

KEY MAP - SCALE: 1" = 2000'

**BACKGROUND:**

ASSES MAP 16 PARCELS 22, 23, 24

ZONE "RM" & "EN"

1961 ROAD LAYOUT & 1960 STATE HIGHWAY ALTERNATIONS

PLAN BOOK 266 PAGE 24

DEED BOOK 4944 PAGE 282

LCR 18243

**APPROVAL OF THE PLANNING BOARD:**

**BREWSTER PLANNING BOARD**

DATE OF HEARING: 11/15/88

DATE DRAWN: 11/15/88

*[Signature]*

*[Signature]*

I, \_\_\_\_\_ CLERK OF THE TOWN OF BREWSTER HEREBY CERTIFY THAT THE NOTICE OF APPROVAL OF THIS PLAN BY THE PLANNING BOARD HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND THE NOTICE OF APPEAL HAS BEEN RECEIVED DURING THE TWENTY DAYS NEXT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.

DATE: 11/15/88

TOWN CLERK: \_\_\_\_\_

**LEGEND**

C.A.	CONCRETE BOUND
F.M.D.	FOUND
U.P.	UTILITY POLE
H.Y.D.	HYDRAUNT
E.D.P.	EDGE OF PAYMENT
B.W.M.	BORDERING WETLAND
W.	WETLAND
C.	CENTER LINE

I CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE REGISTRY OF DEEDS REGULATIONS EFFECTIVE JANUARY 1, 1976.

DATE: 11/15/88

R.L.S. *[Signature]*

CAPE COD RAIL TRAIL  
COMMONWEALTH OF MASSACHUSETTS - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**SUBDIVISION PLAN OF LAND IN  
EAST BREWSTER, MASSACHUSETTS**

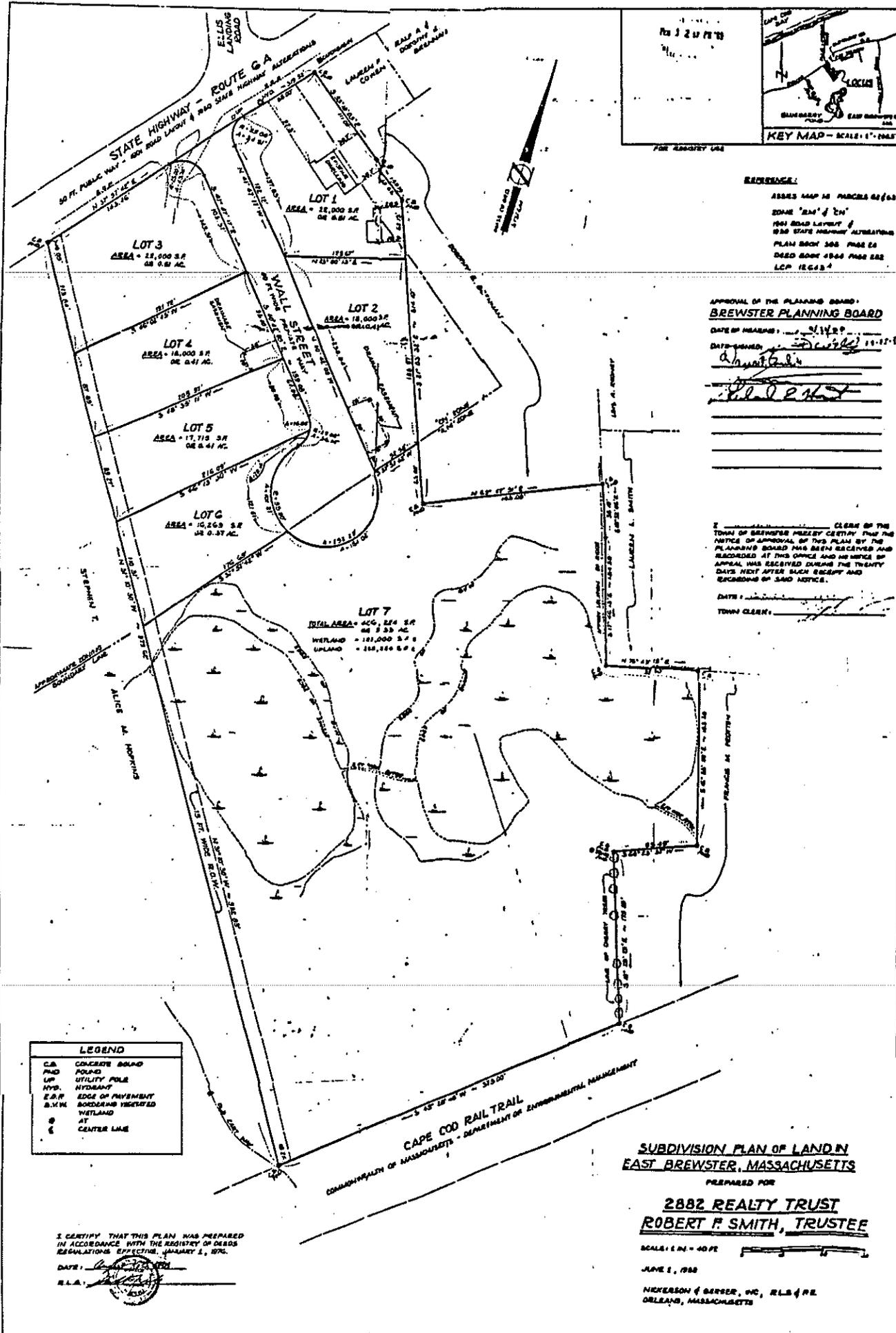
PREPARED FOR  
**2882 REALTY TRUST**  
**ROBERT F. SMITH, TRUSTEE**

SCALE: 1" = 40 FT

JUNE 1, 1988

NICKERSON & BERRER, INC. R.L.S. & P.E.  
ORLEANS, MASSACHUSETTS

BOOK 457 PAGE 43



FOR REGISTRY USE

KEY MAP - SCALE: 1" = 1000'

REFERENCE:  
 ASSES MAP IN PARCELS 62/63  
 ZONE "B" & "C"  
 1981 ROAD LAYOUT &  
 1980 STATE HIGHWAY ALTERNATION  
 PLAN BOOK 308 PAGE 28  
 DEED BOOK 4044 PAGE 282  
 LCP 18245

APPROVAL OF THE PLANNING BOARD:  
**BREWSTER PLANNING BOARD**  
 DATE OF MEETING: 5/14/88  
 DATE SIGNED: 5/17/88  
 [Signature]

I, \_\_\_\_\_ CLERK OF THE TOWN OF BREWSTER HEREBY CERTIFY THAT THE NOTICE OF APPROVAL OF THIS PLAN BY THE PLANNING BOARD HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND NO NOTICE OF APPEAL HAS BEEN RECEIVED DURING THE TWENTY DAYS NEXT AFTER SUCH RECEIPT AND EXPIRING ON SAID NOTICE.  
 DATE: \_\_\_\_\_  
 TOWN CLERK: \_\_\_\_\_

**LEGEND**

CB	CONCRETE BOUND
PO	POLE
UP	UTILITY POLE
HYS	HYDRANT
E.P.V.	EDGE OF PAVEMENT
B.W.M.	BORDERING WETLAND
W	WETLAND
○	AT
⊕	CENTER LINE

I CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE REGISTRY OF DEEDS REGULATIONS EFFECTIVE JANUARY 1, 1976.  
 DATE: 6/1/88  
 R.F.A. [Signature]

**SUBDIVISION PLAN OF LAND IN EAST BREWSTER, MASSACHUSETTS**  
 PREPARED FOR  
**2882 REALTY TRUST**  
**ROBERT F. SMITH, TRUSTEE**  
 SCALE: 1" = 40 FT  
 JUNE 1, 1988  
 NICKERSON & BERSER, INC., R.L.B. & R.E. ORLEANS, MASSACHUSETTS