

# CAPE COD COMMISSION

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508-362-3828  
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DATE: March 14, 1996

TO: Ralph G. Rowe, Jr.  
190 St. Claire  
Braintree, MA 02184

FROM: Cape Cod Commission

RE: Development of Regional Impact - TR96001  
Cape Cod Commission Act Section 13(a)

PROJECT: **ROWE/WISTRICH LAND DIVISION - TR96001**  
**Long Pond Road - Brewster**

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Ralph G. Rowe, Jr. for the Rowe/Wistrich Land Division - TR96001 as a Development of Regional Impact under Section 13(a) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended for the division of a 36.31 acre parcel of land, resulting in the creation of one 27.46 acre parcel to be maintained in perpetuity in its natural state as conservation land and for six Approval Not Required lots of approximately 1.5 acres each.

This decision is rendered pursuant to the vote of the Commission on March 14, 1996.

### PROJECT DESCRIPTION

The project is a division of 36.31 acres of undeveloped, natural woodland into six house lots along Long Pond Road (Route 137) in Brewster, each with approximately 1.5 acres, and a single open area of 27.46 acres. The applicants have a Purchase and Sale agreement with Orenda Wildlife Land Trust for the purchase of Lot 9, the

*Rowe/Wistrich Land Division, Brewster - TR96001  
Cape Cod Commission Decision - March 14, 1996*

27.46 acre parcel, which will be maintained in perpetuity in its natural state. The project also allows for an easement for access to previously inaccessible conservation land owned by the Town of Brewster.

### **JURISDICTION**

The proposed project qualifies as a DRI under Chapter A, Section 3, of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended, as "any development which proposes to divide, combine or develop any parcel(s) of land totaling 30 acres or more." The project was referred to the Commission by Steven W. Eldredge, Chair of the Town of Brewster Planning Board on January 4, 1996 and the Commission received the application on January 10, 1996.

### **PROCEDURAL HISTORY**

A properly-noticed public hearing was held on Monday, February 12, 1996 at 7:00 pm at the Brewster Town Hall to hear testimony on the DRI application. A site visit was held prior to the public hearing on Thursday, February 1, 1996 at 1:30 pm. The public hearing was continued to Thursday, March 14, 1996 and a Subcommittee Meeting was held on Wednesday, February 28, 1996 at 4:00 pm at the Commission offices to hear further testimony on the stopping site distances and other pertinent information. The Subcommittee then voted to recommend approval of the DRI application to the full Commission. At the public hearing before the Commission on Thursday, March 14, 1996, the project was presented and an opportunity was provided for comments from the applicant and the public. At that time, the Subcommittee's report was submitted to, and accepted by, the full Commission.

### **MATERIALS SUBMITTED FOR THE RECORD**

#### **From the Applicant:**

Application, Stephen B. Jones, Esq., January 10, 1996  
Letter and Report, Stephen B. Jones, January 18, 1996  
Plant & Wildlife Habitat Assessment from Sabatia, January 16, 1996  
Letter and 2 Site Plans, John Z. Demarest, Jr., P.L.S., January 24, 1996  
Purchase and Sale Agreement with Orenda Wildlife Land Trust, Stephen B. Jones,  
January 29, 1996  
Portion of Revised Site Plan, Stephen B. Jones, FAXed February 7, 1996  
Revised Site Plan, Stephen B. Jones, at Public Hearing, February 12, 1996

Letter from Carl A. Monge, Jr., President, Orenda Wildlife Trust, February 12, 1996  
Abutters List

From the Commission:

Transportation Report, Paul Tilton, Transportation Engineer, November 1, 1995  
Letter to Stephen B. Jones, Esq., from Gay D. Wells, Planner, January 12, 1996  
Letter to Mr. Ernst, Head Custodian Brewster, from Gay Wells, January 12, 1996  
Letter to Stephen Jones from Gay Wells, January 17, 1996  
Memo to Town of Brewster from Gay Wells, January 18, 1996  
Memo to Subcommittee from Gay Wells, January 18, 1996  
Letter to Stephen Jones from Gay Wells, January 23, 1996  
Memo to CCC staff from Gay Wells, January 23, 1996  
Memo to Subcommittee from Gay Wells, January 26, 1996  
FAX transmittal to David Thyng, Brewster Building Inspector, from Gay Wells, January 31, 1996  
Transportation Comments from Paul Tilton, January 29, 1996  
FAX transmittal to Stephen Jones from Gay Wells, January 31, 1996  
FAX transmittal to Jim Weaver, Commonwealth Electric, from Gay Wells, February 1, 1996  
Memo to Subcommittee from Gay Wells with Staff Report & Application attached, February 7, 1996  
Staff Report, Gay Wells, February 7, 1996  
Notes from phone conversation with David Thyng, Gay Wells, February 9, 1996  
FAX transmittal to Tina Balog, Brewster Conservation Commission, from Gay Wells, February 12, 1996  
Notes from phone conversation with Tina Balog, Gay Wells, February 12, 1996  
DRI areas of concern to subcommittee from Gay Wells, February 12, 1996  
Notes from phone conversations with David Thyng and Stephen Jones, Gay Wells, February 13, 1996  
Attendance List, Public Hearing, February 12, 1996  
Draft Decision, Gay Wells, (drafted 2/21/96) dated March 14, 1996  
Notes from phone conversation with David Thyng, Gay Wells, February 21, 1996  
Schedule, February 12, 1996  
Hearing Notice  
Abutters Notice

From Others:

Referral from Steven W. Eldredge, Chair, Brewster Planning Board, January 3, 1996  
Minutes Brewster Planning Board Meeting, Doris Alm, October 3, 1995  
Letter from Massachusetts Historical Commission, February 15, 1996  
Letter from Alan McClennen, abutter, January 31, 1996

## TESTIMONY

At the Public Hearing on Monday, February 12, 1996, the following people testified on the proposed project:

Ms. Gay Wells, Planner for the Cape Cod Commission, presented the staff report stating that there are no anticipated water resources impacts, that the project exceeds the open space requirements, and that no historic or archaeological impacts are anticipated. She explained that two issues had not yet been resolved: 1) placing a permanent restriction on the proposed open space, and 2) the provision of adequate stopping sight distance for the driveways on the residential lots.

Stephen B. Jones, the applicant's attorney, represented the applicant and addressed these issues. Mr. Jones presented a revised site plan to the subcommittee and stated that the applicant intends to clear trees and bushes required to meet the stopping sight distance. Additionally, it will require in the deeds that the driveways be a minimum of 100 feet long to discourage backing out onto Route 137. Mr. Jones stated that Lot 9 will be sold to the Orenda Wildlife Trust to be maintained as permanent open space. A deed restriction will be placed on the property to ensure that the site remains as Open space.

Mr. Paul Tilton, Transportation Engineer for the Commission, discussed the location of the driveway for Lot 3 stating that it should be located as far from Sheep's Pond Road as possible to avoid turning conflicts. Mr. Tilton expressed concern over the stopping sight distance for the driveways for Lots 6, 7, and 8 and the desirability of maintaining shared driveways, where possible.

Mr. Steven W. Eldredge, Chair of the Brewster Planning Board, stated his concerns to the committee. He urged the committee to: 1) ensure that Lot 9 would have a conservation restriction to maintain it as open space into perpetuity, 2) ensure that the driveways specified on the plans would be the only permitted vehicular access to the lots; and, 3) He suggested that the town be given the authority to clear for the stopping sight distance if not properly maintained by the property owner. He stated that such clearing by the Town would be charged to the owner of the lot.

Mr. William F. Riley, Subcommittee Chair, expressed concerns over whether the Commission has the authority to allow the town to clear the land and charge the property owner. He suggested that the land to be cleared should be shown on the project site plan.

Mr. Greg Silverman, Subcommittee member, suggested that the eventual property owners enter into an agreement with the town regarding who will maintain the cleared areas.

Ms. Vicky Bebout, Subcommittee member, expressed concerns over the driveways in relation to traffic on Route 137.

Mr. Harvey Freeman, an abutting property owner, explained that he lives directly across the street from the project. His driveway is directly across from the proposed shared driveway to Lots 6 and 7. He confirmed that it is very difficult to pull out onto Route 137 in that location and he is particularly concerned about traffic from heavy trucks. He stated that the hill at this location makes it more difficult.

Ms. Elizabeth Taylor, Brewster Conservation Commission member, stated that she is very pleased about the provision of open space reserved on the site and requested that a conservation restriction be placed on the property.

Mr. Carl A. Monge, Jr., President of Orenda, presented a letter stating Orenda's mission and their intention to retain the land for conservation by creating *No Bottom Pond Wildlife Sanctuary*. He agreed to a deed restriction on the parcel.

Ms. Barbara Birdsey, from the Orenda Wildlife Trust, suggested that the speed limit on Route 137 could be lowered.

### FINDINGS

The Commission has considered the DRI application of Ralph G. Rowe, Jr. for the Rowe/Wistrich Land Division on Long Pond Road, Route 137 in Brewster, MA. Based on the consideration of such application, the information presented and the Commission staff recommendations, the Commission makes the following findings pursuant to Sections 12 and 13 of the Act:

1. The project site consists of 36.31 acres of undeveloped, natural woodland and meets the threshold for a Development of Regional Impact specified in Chapter a, Section 3, of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended, as "any development which proposes to divide, combine or develop any parcel(s) of land totaling 30 acres or more."
2. The project site is not within a designated District of Critical Planning Concern, Proposed Open Space Greenbelt, Freshwater Recharge Area, or a designated Rare Plant or Animal Habitat.
3. There is a wetland area located along the edge of No Bottom Pond that is part of Lot 9 which will remain undeveloped and will be reserved for conservation.

4. The site contains a small area (35,000 - 40,000 sq. ft.) of sandplain grassland on Lot 8. This is an unusual plant community and is a high priority for protection.
5. The project includes a 27.46 acre parcel of land, Lot 9, which is the subject of a Purchase and Sale agreement and will be sold to Orenda Wildlife Land Trust to be maintained as undisturbed open space in perpetuity via a deed restriction. This open space parcel is an integral part of the development proposal and exceeds the 60% open space requirement in the Regional Policy Plan.
6. The proposed open space, Lot 9, is adjacent to existing Town of Brewster conservation land and the Orenda Wildlife Land Trust has agreed to provide an easement which will provide currently unavailable public access to this town property from Route 137.
7. Orenda Wildlife Land Trust has a "mission of preserving land in its natural state and the wildlife thereon." Orenda is certified as a non-profit tax-exempt organization by federal and state standards. Orenda's active tax-exempt number: 222-719-760 was issued on September 16, 1986. Orenda Wildlife Land Trust proposes to create *No Bottom Pond Sanctuary* on Lot 9 to "save the land from development and protect the wildlife on the land." Orenda's trust document specifies by law that in the event that Orenda ceases to exist, its holdings will be transferred to a similar 501-3C non-profit organization. Orenda has agreed to a deed restriction for conservation purposes.
8. The Town of Brewster has requested that Lot 9 have a conservation restriction in the deed to ensure its being maintained as open space into perpetuity.
9. The project is not in compliance with Minimum Performance Standards 1.1.2 and 6.1.2 of the Regional Policy Plan which require that all residential subdivisions of five or more lots submit a cluster development plan for consideration by the Commission. Given that the applicant is proposing to provide 75% open space adjacent to existing conservation land, the Commission finds that the proposed project better meets the goal of the Regional Policy Plan than would be accomplished by application of these minimum performance standards. Therefore, the Cape Cod Commission has invoked the "flexibility clause" with regard to the project's not meeting these minimum performance standards.
10. The project does not meet the Affordable Housing threshold for residential subdivisions of 10 lots or more; therefore, there are no Affordable Housing requirements.

11. The Massachusetts Historical Commission has reviewed the project and a letter to Tina Balog, Brewster Conservation Commission, dated February 15, 1996 from Constance A. Crosby, Archaeologist and Preservation Planner, states that "it has been determined that this project is unlikely to affect significant historic or archaeological resources."
12. Due to topography, road layout and allowable speeds, creation of driveways could create a safety problem on Route 137 unless adequate site distance is maintained.
13. The Town of Brewster has expressed the desire that the location of the driveways for Lots 3 through 8 be shown on the site plan and that these locations be restricted in the deeds in order to minimize potential safety problems as well as the number of access points on Route 137.
14. Backing out onto Route 137 will create serious hazard; therefore, there should be a restriction in the deeds of Lots 3 through 8 that requires each driveway to be at least 100 feet long and provide a turning area on the property to discourage backing out onto Route 137.
15. To ensure adequate sight distances for the Lot 8 driveway, it is necessary to clear vegetation that may obstruct drivers' view of the road; therefore, the deed for Lot 7 should indicate the area of privately-owned land along Route 137 which is to be cleared of obstructing vegetation and maintained by the property owner to preserve adequate sight distances for the Lot 8 driveway.
16. The Commission finds that the applicant has taken reasonable steps to improve the sight distance for the proposed driveways on Route 137 by providing clearing and by agreeing to deed-restrict Lot 7 to require vegetative clearing on private property to maintain sight distance. However, due to the inadequate vertical sight distance on the southbound approach of the Lot 8 driveway, the applicant will make a good-faith effort to resolve this matter with the Town of Brewster. Any further remedial measures, including the possible grading of the bank along Route 137 within the town right-of-way which would further improve the vertical sight distance at this location, could be addressed through the Town development review process.
17. The Town of Brewster has requested an easement which indicates on the site plan the area of any private property to be cleared of obstructing vegetation and maintained by the property owner to provide adequate stopping sight distances from each driveway. The Town of Brewster may maintain this portion of each lot if the property owner does not provide adequate maintenance. It shall also state that the Town may charge the property owner for the service in this case.

18. The project is found to be consistent with local development bylaws.

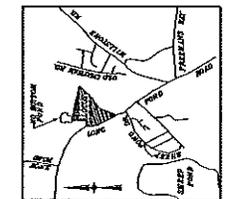
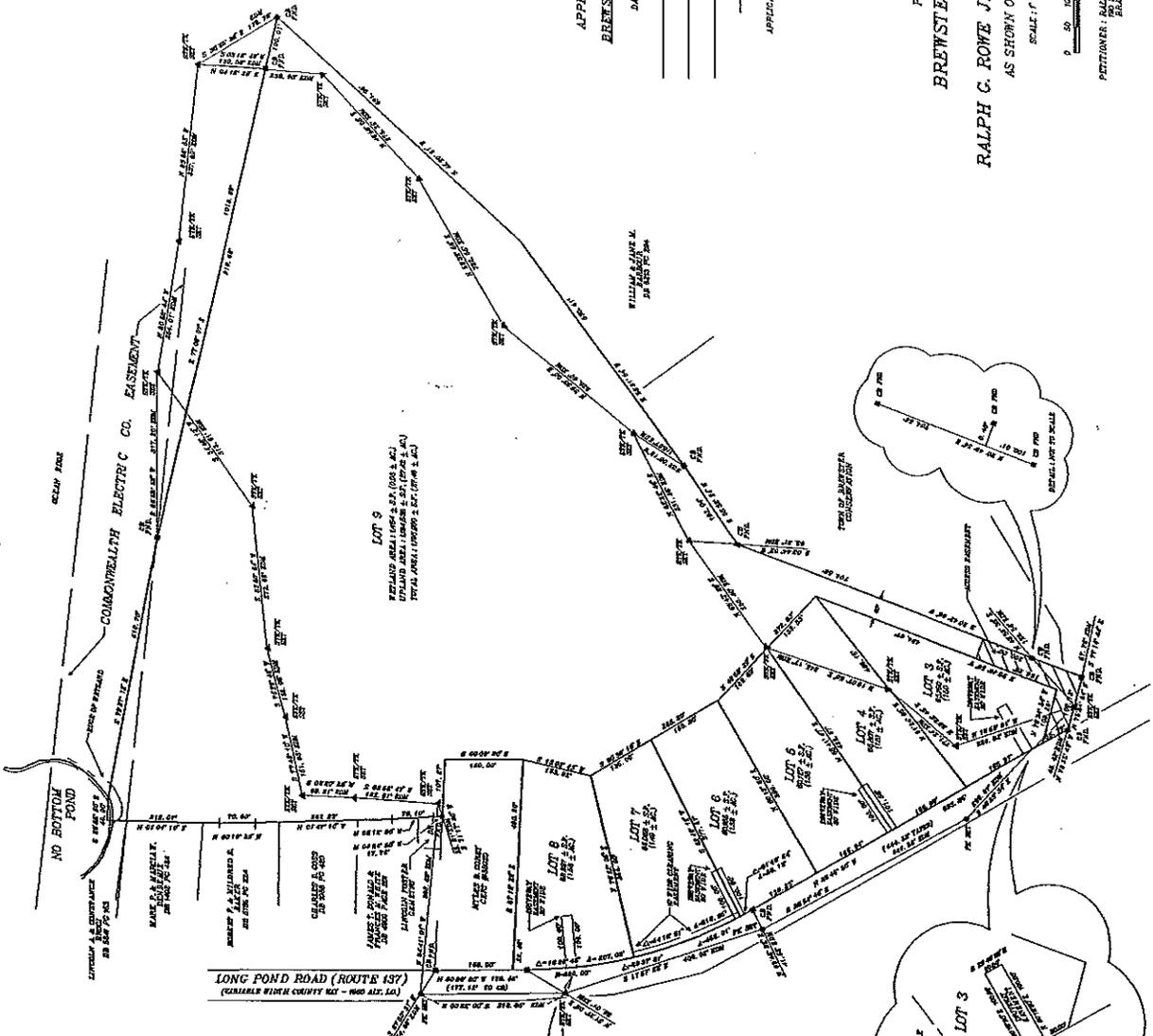
### **CONDITIONS**

1. All conditions shall be met prior to the issuance of a Certificate of Compliance by the Cape Cod Commission . All deed restrictions required herein shall be recorded in the Barnstable County Registry of the Land Court.
2. No conveyance of Lots 3 through 8 nor application for building permits for Lots 3 through 8 shall occur prior to the issuance of a Certificate of Compliance by the Cape Cod Commission.
3. The applicant shall convey Lot 9 to the Orenda Wildlife Land Trust for the purpose of protecting the parcel as permanent open space. This protection will be provided through a deed restriction. Said conveyance shall occur prior to obtaining a Certificate of Compliance from the Cape Cod Commission and shall be in a form that is acceptable to the Commission's legal Counsel.
4. The deed for Lot 9 shall provide an easement to the Town of Brewster which provides access to its conservation land, as shown on the project site plan, dated April 3, 1996, prepared by Demarest-McLellan Engineering and stamped by John Z. Demarest, Jr.
5. The presence of sandplain grassland on Lot 8 is an unusual plant community and is a high priority for protection. The deed for Lot 8 shall contain wording to make the owner aware of this important environmental area and to encourage the retention of the sandplain grassland on the site.
6. The locations of the driveways for the residential lots shall be indicated on the final project site plan, dated April 3, 1996, prepared by Demarest-McLellan Engineering and stamped by John Z. Demarest, Jr., which will go before the Town of Brewster for development review. A deed restriction shall be placed on Lots 3 through 8 indicating and restricting the location of each driveway and requiring each driveway to be at least 100 feet long and to provide a turning area on the property. Said deed restriction shall be in a form and content satisfactory to Cape Cod Commission Counsel and shall be approved by Cape Cod Commission Counsel prior to issuance of the Certificate of Compliance.
7. The deed for Lot 7 shall provide an easement to the Town of Brewster indicating the area along Route 137 to be cleared of obstructing vegetation and maintained by the property owner to provide stopping sight distance from the driveway of Lot 8. The easement shall be indicated as shown on the plan dated





LONG POND ROAD AND AL.



NOTES:

1. LOCATION MAP SCALE 1" = 2000'

2. TOTAL AREA: 1,000.00 ± SF. (43.50 ± AC.)

3. ASSESSORS SHEET 32 PARCEL 30

4. ZONING CLASSIFICATION: R-1B

5. MIN. LOT FRONTAGE: 30 FT.

6. MIN. LOT AREA: 10,000 SF.

7. MIN. FRONT YARD SETBACK: 10 FT.

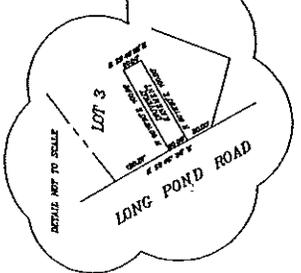
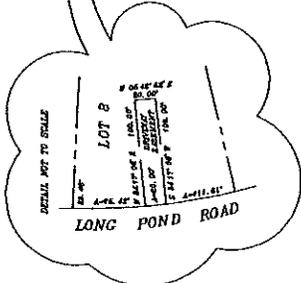
8. DEPTH OF RECORD: PALOR & ROWE, JR. 1987

9. DEED REFERENCE: 1987-001-0000

10. PLAN REFERENCE: LONG POND EAST SIDE

11. PREVIOUS PLAN: 1987-001-0000

12. CAPAS AND COMMISSIONER APPROVAL FOR DEVELOPMENT ON MARCH 1987. REFER TO COMMISSIONER'S REPORT FOR FURTHER INFORMATION.



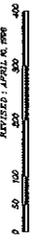
APPROVAL NOT REQUIRED  
BREWSTER PLANNING BOARD

DATE: \_\_\_\_\_

APPLICATION DATE: \_\_\_\_\_

PLAN OF LAND IN  
BREWSTER, MASSACHUSETTS  
PREPARED FOR  
RALPH C. ROWE JR. & BETSEY ROWE WISTRICH  
AS SHOWN ON LAND COURT PLAN 86695

SCALE: 1" = 100'  
DATE: DECEMBER 15, 1986  
REVISED: APRIL 15, 1988



PARTICULAR: PALOR & ROWE, JR. & BETSEY ROWE WISTRICH  
100 WEST STREET  
BOSTON, MASSACHUSETTS 02111

REVISIONS TO THIS PLAN SHALL BE MADE BY THE DRAWER IN ACCORDANCE WITH THE LAND COURT RULES AND REGULATIONS.

DATE: \_\_\_\_\_ DRAWN BY: DEANIST FRANK

DEANIST FRANK  
24 SCHOOL STREET, PARK 400  
P.O. BOX 1000  
BREWSTER, MASSACHUSETTS  
01936