

CAPE COD COMMISSION

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

DATE: September 5, 1996

TO: Robert D. Landry and Alan Bissonnette
7 Beauty Hill Road
Center Barnstead, New Hampshire 03225

FROM: Cape Cod Commission

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

PROJECT: **PATRIOT HILL - - TR96017**
Service Road, Sandwich
Book 7947, Pages 50 & 62

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Robert D. Landry and Alan Bissonnette for the Patriot Hill land division - TR96017 as a Development of Regional Impact (DRI) under Section 13(a) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the division of an approximately 34 acre parcel of land, resulting in the creation of four Approval Not Required lots.

This decision is rendered pursuant to the vote of the Commission on September 5, 1996.

PROJECT DESCRIPTION

The project was previously approved by the Town of Sandwich on July 20, 1989 for a six-lot subdivision of approximately 34 acres and it is now coming before the Town as an Approval Not Required (ANR) with a reduction from six lots to four and elimination of the subdivision road. The site is located between Exits 2 and 3 on the southerly side of the Service Road. The site is an entirely natural, wooded area with no existing buildings. Lot 1 is approximately 137,853 sq. ft. (approximately 3.2 acres), Lot 2 is 137,121 sq. ft. (3.2 acres), Lot 3 is 127,264 sq. ft. (2.9 acres), and Lot 4 is 24.98 acres. The property has only two abutters: Winthrop V. Ahonen and the Town of Sandwich conservation land.

JURISDICTION

The proposed project qualifies as a Development of Regional Impact 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 J. Mark Haney, Chair of the Sandwich Planning Board on June 24, 1996 and the Commission received the application on July 24, 1996.

PROCEDURAL HISTORY

A properly-noticed public hearing was held on Thursday, August 15, 1996 at 7:00 p.m. at the Sandwich Human Services Building to hear testimony on the DRI application. A site visit was held prior to the public hearing on Thursday, July 11, 1996 at 1:00 p.m. The public hearing was continued to Thursday, September 5, 1996 at 3:00 p.m. before the full Commission. A Subcommittee meeting was held at the Commission offices on Thursday, August 22, 1996 at 2:00 p.m. to review the draft Decision and meet with the applicant's representative, Mr. Paul Ryll and another held on Thursday, September 5 at 2:00 p.m. At the public hearing before the Commission on Thursday, September 5, 1996, the draft decision 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, Robert D. Landry and Alan Bissonnette, July 24, 1996.
Plan of Land, Service Road, Sandwich, MA. (small)
Plan of Land, Service Road 6/12/96, Sandwich, MA, Eagle Surveying, received June 19, 1996.
Plan Showing Proposed Driveways and Sight Distances, Eagle Surveying & Engineering, Inc., received August 5, 1996.
Plan of Land, Service Road 6/12/96, updated, received July 23, 1996.
Plan of Land, Service Road, updated to include Open Space

From the Commission:

Letter from Gay D. Wells, Planner Cape Cod Commission to J. Mark Haney, Chair Sandwich Planning Board, dated July 1, 1996.
Memo from Gay Wells to Subcommittee, July 3, 1996.
Memo from Gay Wells to Peter Tancredi, Town Engineer, Sandwich, July 30, 1996.

Letter from Gay D. Wells to Robert D. Landry and Alan Bissonnette, July 31, 1996.
Memo from Gay Wells to Robert D. Landry, August 2, 1996.
Staff Report, Patriot Hill, August 7, 1996.
Memo from Gay Wells to Subcommittee with attached staff report and other attachments, August 8, 1996.
Notes from telephone conversation with Bob Picerelli, August 19, 1996.
Memo from Kathy Sferra to Gay Wells, August 20, 1996
Patriot Hill Transportation Comments, August 21, 1996 from Paul Tilton to Gay Wells.

From Others:

Letter with attachments from J. Mark Haney to Cape Cod Commission referring the project, June 24, 1996.
Memo from Peter Tancredi to Gay Wells with topographic map enclosed.
FAX from Peter Tancredi to Gay Wells with zoning regulations, August 6, 1996.
Notes from telephone conversation with Peter Tancredi, August 7, 1996.
Memo from Peter Tancredi to Gay Wells, August 15, 1996.
Project Notification Form from Massachusetts Historical Commission, received August 22, 1996.

TESTIMONY

At the public hearing on Thursday, August 15, 1996 the following people testified on the proposed project:

Paul Ryll from Eagle Surveying & Engineer, Inc. of Sandwich, representing the applicant Mr. Alan Bissonnette, explained that the project was previously approved by the Sandwich Planning Board as a six-lot subdivision, including a road. The new project is a four-lot Approval Not Required (ANR), without a road. He noted there will be minimal tree clearing and that sixty percent of the site will be preserved as permanently-restricted Open Space. The Open Space will be adjacent to Town of Sandwich conservation land.

Ken Mason, subcommittee member, inquired about the possibility of further subdividing Lot 4. Mr. Ryll stated that there is no intention of any further subdivision. Gay Wells, Planner, Cape Cod Commission, noted that due to town regulations and the proposed conservation restriction, further subdivision is unlikely.

Tom Broidrick, subcommittee Chair, inquired about the ancient ways. Mr. Ryll stated that there is no intent to use the ancient ways. Ken Brock, subcommittee member, inquired about frontage requirements. Mr. Ryll stated that the requirement is 200 feet. Ms. Wells summarized a letter from Peter Tancredi, Sandwich Town Engineer,

clarifying the Town's position with regard to Zoning, Water Resources, Transportation, and Open Space & Recreation. She commenced the Staff Report by explaining that Kathy Sferra, Natural Resources Planner with the Commission, has requested that a habitat assessment be completed on the front of the lots to best determine where development could go and whether there were environmentally sensitive areas that should be avoided.

Ed Eichner, Water Resources Cape Cod Commission, noted that the project is in a zone of contribution to a public supply well and the watershed for Sandwich Harbor. The concern is the nitrogen loading to the watershed, which currently exceeds capacity. He stated that it is appropriate to require denitrifying septic systems, no lawns and a limitation to four bedrooms per house.

Paul Tilton, Transportation Engineer Cape Cod Commission, discussed the transportation issues for the project. He suggested that the applicant combine driveways to minimize the number of curb cuts onto the Service Road. He also recommended that the applicant provide an easement along the Service Road for a bicycle path.

Mr. Mason requested a description of the Service Road. Mr. Tilton explained that the road is approximately twenty feet wide, allows 40 MPH speeds and handles between 1500 and 2000 vehicles each day. Mr. Tilton noted that this is moderate traffic and there is potential for additional development in the area. Lance Lambros, subcommittee member, noted that the Service Road is rarely used.

Ms. Wells concluded the Staff Report by stating that the staff also recommends that the ancient ways be retained and that there be no blocking of these two ancient ways. Mr. Ryll concurred, noting that the nearby Discovery Hill Road, an ancient way, had been extinguished and was blocked off.

George Benway, subcommittee member, inquired about the purpose of the habitat assessment. Ms. Wells noted that it would identify rare or significant plant and animal habitat and identify environmentally sensitive areas that should not be disturbed.

Mr. Benway inquired about the depth to the water table. Mr. Ryll responded that it is between 130 and 140 feet below the ground. Mr. Benway inquired of Ed Eichner why denitrifying systems would be necessary since the site is a distance from Sandwich Harbor. Mr. Eichner stated that the standard in this case is .3 ppm; therefore, there is a need for recirculating sand filters. Mr. Brock inquired about additional cost of this new technology. Mr. Eichner stated that it would be approximately an additional \$5000 per system. Mr. Mason stated that while he does not support the recommendation that a

habitat assessment be prepared, he could support the requirement for recirculating sand filters. Mr. Brock noted that a limitation of four bedrooms per lot with a standard Title 5 system may be a better option to the developer.

Mark Galkowski, Sandwich Conservation Officer, requested that concrete bounds be placed at the back property lines. He also noted that Discovery Hill Road has only been temporarily blocked by the hospital and that the road was not extinguished by the stump dump. Mr. Ryll noted that the concrete bounds are already in place.

Mr. Galkowski inquired about future development of Lot 4. Mr. Ryll noted that almost twenty acres of the lot will be left as open space with a conservation restriction on it.

Mr. Lambros inquired about the possible location of a bicycle path on town owned land. Mr. Galkowski stated that this is unlikely since the topography in the area is not suitable to a bicycle path. Mr. Ryll stated that the bicycle path can be located in the Service Road layout, which extends forty feet from the edge of the pavement. He believes that there is no need for an easement. Mr. Benway stated that he believes that forty feet is sufficient.

Mr. Tilton responded that he is concerned about the town's ability to construct the required slope for the bicycle path due to the steep slope in some locations. Mr. Brock inquired about whether the other properties on the Service Road will have a bicycle path constructed over them. Mr. Lambros noted that the Sandwich LCP has designated the Service Road as a location for a bicycle path.

The committee discussed continuing the public hearing. Mr. Bissonnette expressed concern over increasing costs to him and his partner if the hearing is continued for a long period of time. Mr. Benway moved to continue the hearing until the September 5, 1996 Commission meeting and continue discussion of the project immediately in a meeting of the subcommittee. Mr. Lambros seconded the motion and it was unanimously approved.

Subcommittee Meeting, August 15, 1996

Mr. Broidrick opened the meeting by noting that there are four unresolved issues, including the nitrogen loading issue, the wildlife assessment, shared driveways and the easement for the bicycle path.

Mr. Lambros suggested that the committee require a maximum of four bedrooms per lot or a denitrifying septic system, at the choice of the applicant. The committee concurred.

Mr. Mason suggested that the committee not require a habitat assessment. Mr. Brock suggested the staff review the habitat assessment for the Rehabilitation Hospital prior to determining whether to waive the habitat assessment. The committee concurred.

The committee reviewed the idea of shared driveways. Mr. Bissonnette expressed concern that it would be harder to sell lots with shared driveways. The committee concurred and decided not to require the shared driveways.

The committee considered the easement for the bicycle path. The committee decided to consider a concept where there would be a limited time for the town to make up their mind whether an easement is needed depending upon the design of the bicycle path.

Mr. Benway moved to adjourn the meeting at 8:25 p.m. and hold the next subcommittee meeting at 2:00 p.m. at the Commission offices on August 22, 1996. Mr. Lambros seconded the motion and it was unanimously approved.

Subcommittee Meeting, September 5, 1996

The subcommittee met to discuss the Draft Decision. The following changes were made:

1. Condition 6 - delete "and maintain"
2. Condition 7 - change "two" to "one" single-family home developed per lot

Paul Ryll made a correction in the minutes from the public hearing stating that on page 4 he had concurred with rather than objected to the retention of ancient ways.

The subcommittee approved the minutes of the previous hearing and subcommittee meeting. They voted to approve the findings and conditions as corrected and present the Decision to the full Commission on September 5, 1996.

FINDINGS

The Commission has considered the DRI application of Robert D. Landry and Alan Bissonnette for the Patriot Hill land division on the Service Road in Sandwich, 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 approximately 34 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 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 is not located within a designated District of Critical Planning Concern or a Proposed Open Space Greenbelt.
3. The project is located within the Sandwich Harbor Marine Water Recharge Area (MWRA) and the Boiling Spring Wellhead Protection Area. Nitrogen loading from existing development within the marine watershed is estimated at 102 g/yr/m² of embayment. This rate is three times the highest recommended embayment nitrogen loading limit in Technical Bulletin 91-001 (the highest for shallow embayments is 30 g/m²/yr). Based on this information, the Sandwich Harbor MWRA would be considered a Water Quality Improvement Area (WQIA) under the Regional Policy Plan (RPP). In WQIAs, the RPP states that development shall not exceed identified marine water standards. Residential development of this site would, therefore, require significant efforts (i.e., denitrifying septic systems, reducing lawn areas, etc.) to ensure adequate protection of marine water quality.
4. There are no wetlands on the site, as determined by the applicant.
5. In order to comply with RPP Minimum Performance Standard 2.4.1.1, B.1, a Habitat Assessment of the site should be prepared by the applicant. In this case, however, the Commission finds that, although no Plant and Wildlife Habitat Assessment has been conducted, the development has been redesigned from the previously-approved plan to minimize impacts to wildlife and plant habitat and the intent of Minimum Performance Standard 2.4.1.1, B.1, has been met due to the location of the site abutting Town conservation land and the limited amount of development proposed for the site.
6. The project proposes to provide the 60% protected Open Space requirement for permanent restriction of conservation land by setting aside 894,294 sq. ft. (20.53 acres) in the following manner: 30,454 sq. ft. (.7 acre) on Lot 1; 30,448 sq. ft. (.69 acre) on Lot 2; 22,963 sq. ft. (.53 acre) on Lot 3; and 810,429 sq. ft. (18.6 acres) on Lot 4. All Open Space designated is abutting the Town of Sandwich conservation land.
7. Open Space designation on lots of less than 3 acres is generally not allowed under the Regional Policy Plan and Open Space Technical Bulletin 94-001; however, since the Open Space abuts Town conservation land, an exception has been made to allow Open Space to be designated on Lot 3, which is only slightly below the required 3 acres at 2.9 acres.

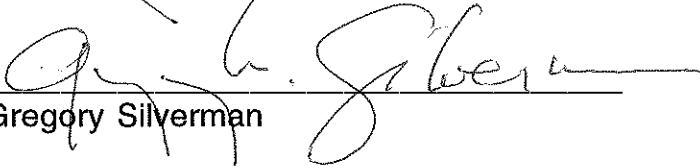
8. The applicant has taken traffic sight distance measurements along the Service Road and has shown them to be in excess of State design standards.
9. The Town has designated the Service Road for a bicycle path in the future. A site visit has shown that the proposed bicycle path along the Service Road may be better located on the north side opposite the Patriot Hill property; however, additional studies by the Town will be required to determine an appropriate location. An easement to locate the bicycle path on the south side of the road on the Patriot Hill property is desired in the event that the Town locates a bicycle path on the southerly side of the Service Road. The Cape Cod Commission considers the provision of these easements not as mitigation but as a benefit of the project.
10. The use of shared driveways along the Service Road would be beneficial because this would minimize the fill of land and cutting of additional trees on the site and also has the potential to increase safety by reducing the number of conflict points along the Service Road.
11. The project does not meet the Affordable Housing threshold for residential subdivisions of 10 lots or more; therefore, there are no Affordable Housing requirements.
12. The Massachusetts Historical Commission (MHC) has reviewed the project and a response dated August 15, 1996 from Constance A. Crosby, Archaeologist/Preservation Planner states that, "After review of MHC files and the materials you submitted, it has been determined that this project is unlikely to affect significant historic or archaeological resources."
13. Discovery Hill Road, an ancient way, runs through the corner of Lot 1 and Thicket Run Road, another ancient way, runs through Lots 3 and 4. Depending upon their legal status, these ancient ways may be able to be used by the public or by abutters in a limited fashion. The Commission encourages the retention of ancient ways and requires that they not be built upon or blocked. The Commission finds that maintaining these ancient ways is a benefit of the project.
14. The Town of Sandwich has requested that the back boundary of each lot be marked with concrete bounds between the lots and the Town conservation land. The applicant's representative, Mr. Paul Ryll, of Eagle Surveying & Engineering, Inc. has indicated that these are in place.

CONDITIONS

1. All conditions shall be met prior to the issuance of a Certificate of Compliance by the Cape Cod Commission. A Certificate of Compliance shall be issued prior to the sale of any lots or application for any building permits. All deed restrictions required herein shall be provided in a form acceptable to the Cape Cod Commission's legal Counsel and shall be recorded in the Barnstable County Registry of Deeds.
2. Due to the existing overload of nitrogen into the Sandwich Harbor Marine Water Recharge Area, all development shall ensure adequate protection of marine water quality in the following way: 1) Lots developed with four bedrooms or fewer may use a standard Title 5 septic system; or 2) Lots developed with five or more bedrooms shall install and maintain a state-approved denitrifying system. This condition will be enforced through a deed restriction recorded on each lot.
3. The applicant shall provide for the permanent protection of the Open Space on each of the four lots, as designated on the approved site plan dated September 18, 1996, prepared by Paul Ryll, P.L.S. of Eagle Surveying & Engineering, Inc. Such permanent protection shall be provided through a conservation restriction consistent with M.G.L., c. 184, sections 31-33 and with Finding 1.
4. The applicant shall provide to the Town of Sandwich a 10-foot wide easement on each lot along the Service Road for use as a bicycle path should the Town need to extend beyond its right-of-way in some locations. The easements shall be perpetual. If within five years of the date of this Decision the Town has not voted to accept the easements, the easements are deemed extinguished. The easements shall remain in place and shall benefit the Town of Sandwich and shall be in a form and content satisfactory to Cape Cod Commission Counsel. The easements shall be provided in a deed restriction and shown on the approved site plan, dated September 18, 1996, prepared by Paul Ryll, P.L.S. of Eagle Surveying & Engineering, Inc.
5. Two ancient ways, Discovery Hill Road and Thicket Run Road, shall be retained and shall not be built upon or blocked. This restriction will be enforced through a deed restriction recorded on the affected lots.
6. The applicant shall install concrete bounds at the individual lot corners.
7. There shall be no more than one single-family home developed per lot.

CONCLUSION

After reviewing the project as a Development of Regional Impact in relation to Sections 12 and 13 of the Cape Cod Commission Act, the Commission concludes that a Development of Regional Impact approval be granted as subject to the Conditions stated above. The Commission concludes that the benefits of the project outweigh the detriments as identified in Findings 9 and 13, that the project is consistent with the Regional Policy Plan, and is consistent with local development bylaws, as supported by Findings 2 through 14 listed above.



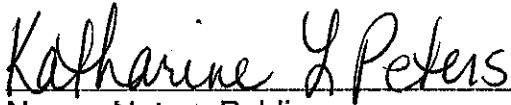
Gregory Silverman

Date 9/14/96

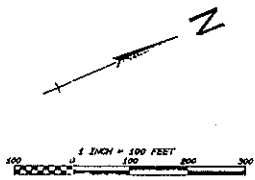
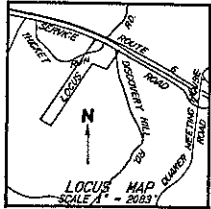
Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 12th day of Sept 1996

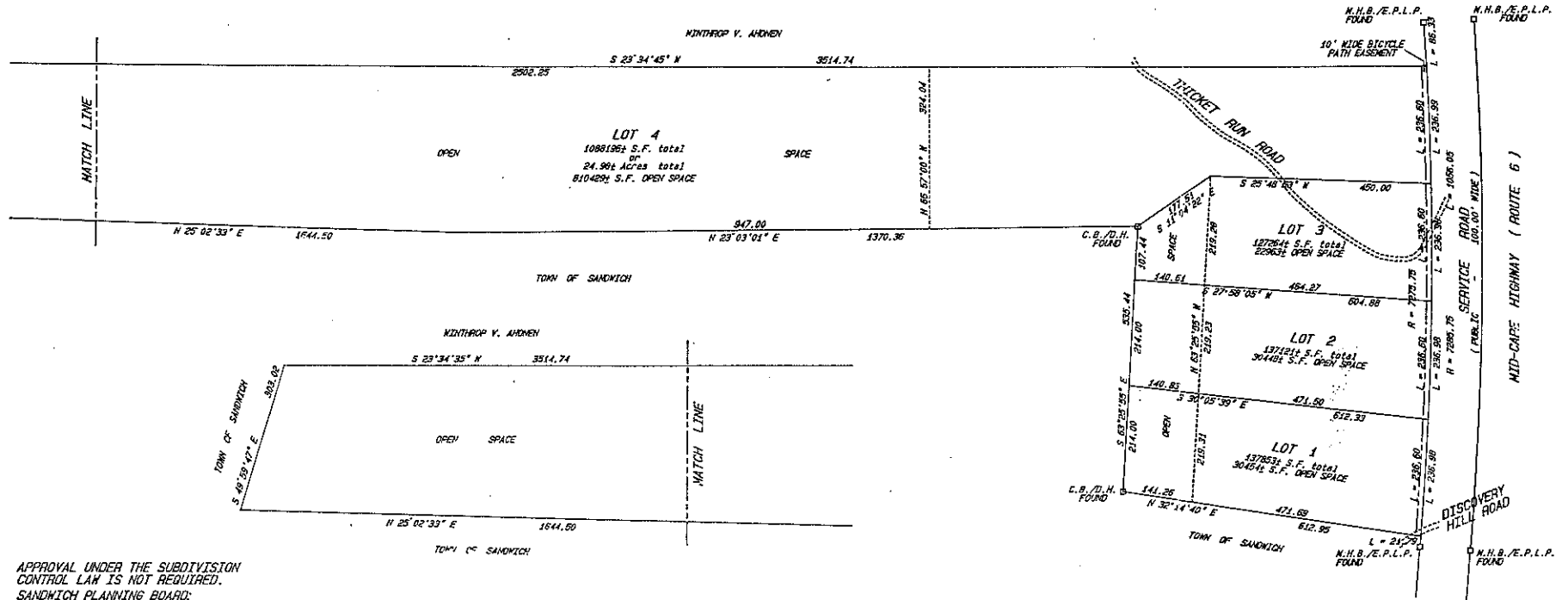
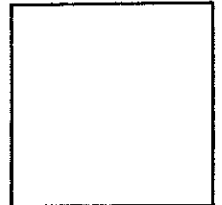


Name, Notary Public
My Commission Expires: _____



ZONE: RIDGE DISTRICT
 ASSESSORS MAP 33
 PARCELS 60, 60-1, 60-2
 60-3, 60-4 and 60-5

APPLICANT:
 ALAN BISSONNETTE &
 ROBERT D. LINDY
 7 SECURITY HILL ROAD
 CENTER BARRISTEAD, NH 03225



APPROVAL UNDER THE SUBDIVISION CONTROL LAW IS NOT REQUIRED.
 SANDWICH PLANNING BOARD:

DATE: September 18, 1996
 [Signature]

OPEN SPACE:
 TOTAL AREA = 1490435± S.F.
 OR
 34.22± ACRES
 1490435± S.F. X 60% = 894262± S.F.
 REQUIRED = 894262± S.F.
 PROVIDED = 894264± S.F.

NOTE: PARCEL WAS FORMERLY CALLED "PATRIOT HILL"
 A SIX (6) LOT DEFINITIVE SUBDIVISION
 APPROVED JULY 29, 1989 AND RECORDED AT
 THE BARRISTABLE COUNTY REGISTRY OF DEEDS
 IN PLAN BOOK 472, PAGE 29.

THIS PLAN WAS PREPARED IN CONFORMITY WITH
 THE RULES AND REGULATIONS OF THE REGISTERED
 OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

9-19-96
 DATE: [Signature]
 PROFESSIONAL LAND SURVEYOR

PLAN OF LAND
 SERVICE ROAD, SANDWICH, MA
 SCALE 1" = 100' SEPTEMBER 18, 1996
 EAGLE SURVEYING & ENGINEERING, INC.
 441 ROUTE 130, SANDWICH, MA
 PROJECT NUMBER 96-048

"THE ABOVE ENDORSEMENT DOES NOT CONSTITUTE COMPLIANCE WITH THE PROTECTIVE ZONING BY-LAWS OF THE TOWN OF SANDWICH."

**FINAL PLAN
 APPROVED**
 BY THE CAPE COD COMMISSION
 DATE: 9/19/96