

CAPE COD COMMISSION

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Date: February 26, 1998

Applicant: Larry Nickulas, Trustee
Conant Nursery Trust
P.O. Box 507
West Barnstable, MA 02668

Project #: DR97024
Project: Conant Nursery Trust Subdivision
Meetinghouse Way
West Barnstable, MA

Re: Development of Regional Impact
Cape Cod Commission Act, Section 12

Book/Page #s: Book 10948, Page 109
Barnstable County Registry of Deeds

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby approves with conditions the application of Conant Nursery Trust for a Development of Regional Impact (DRI) permit under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the Phase 1 subdivision of 24.9 acres of land west of Meetinghouse Way in West Barnstable, MA. Phase 1 includes subdivision of the property into three lots, including one lot for an existing historic house (Lot 1), one new single family residential lot (Lot 2), and one large lot that comprises an existing historic house as well as existing greenhouses (Lot 3). Phase 1 also includes permanent restriction of 6.65 acres of open space. Any further subdivision or development of Lot 3, beyond continuation of the existing use in those areas outside the designated open space, will require Development of Regional Impact review. This decision is rendered pursuant to a vote of the Commission on February 26, 1998.

PROJECT DESCRIPTION

The project site is at the intersection of Meetinghouse Way/Route 149 and Cedar Street in West Barnstable. The topography of the site is highest in the southern portion, sloping steadily downward to the north. Moderate slopes are found in the southern and southwestern portions of the site, while the central portion of the site is relatively flat. The site is largely wooded, though large portions of it have been used as a nursery and contain several greenhouses, loam piles and nursery plantings. The site is located entirely within a Significant Natural Resource Area as identified by the Regional Policy Plan. A potential future public water supply well is

sited within town conservation land to the east. The surrounding area is relatively rural in character. Few structures are visible from the roadway, and most of these are historic properties. The site is located within a National Register Historic District and the Old Kings Highway Regional Historic District.

The applicant proposes to develop the site in two Phases. Phase 1 includes subdivision of the property into three lots, including establishing a separate lot around the existing historic home at #2175 Meetinghouse Way (Lot 1), creation of one new single family home lot on Cedar Street (Lot 2), and one large lot that comprises the historic house at #2135 Meetinghouse Way as well as the existing greenhouses and nursery operation (Lot 3). Phase 1 also includes permanent restriction of 6.65 acres of open space on Lot 3 comprising the most environmentally significant portions of the property and the land along the West Barnstable Village Green, renovation of two historic homes, and continued use of the greenhouse and remainder of the site as a nursery. Phase 2 of the project will involve the remaining central portion of Lot 3. The applicant has submitted a potential sketch plan for Phase 2, showing a cluster residential subdivision with a single access road on Lot 3.

PROCEDURAL HISTORY

The project was referred to the Cape Cod Commission as a discretionary referral by the Barnstable Planning Board on October 21, 1997. The Commission voted to review the project at their October 23, 1997 meeting.

A duly noticed public hearing was held on December 1, 1997, at the Barnstable Town Hall for the purpose of taking testimony on the proposed project. The hearing was continued to January 22, 1998 at the Assembly of Delegates Chamber, First District Court, Barnstable. The hearing was continued to February 26, 1998 at the Assembly of Delegates Chamber. Subcommittee meetings were held on January 22, 1998 in the Assembly of Delegates Chamber and on February 9, 1998 at the Cape Cod Commission office. A final hearing was held by the full Cape Cod Commission on February 26, 1998.

Materials Submitted for the Record

Town Submittals:

- Discretionary DRI Referral form, narrative and supporting plans submitted by the Barnstable Planning Board, dated October 21, 1997.
- Letter from Robert J. Williams and Robert B. Wood, West Barnstable Water Commission, to Cape Cod Commission re: impacts on future well site, dated January 19, 1998.
- Cover letter and Report on 1977 Test Well Investigations, West Barnstable Fire District, by Whitman & Howard, Inc., submitted by Robert B. Wood, West Barnstable Water Commission, dated January 29, 1998.

Staff Reports and Correspondence:

- Development of Regional Impact Notification Form, dated October 28, 1997.
- Memo from Sarah Korjeff to subcommittee members re: public hearing, dated October 30, 1997.
- Letter from Sarah Korjeff to Larry Nickulas re: required application materials, dated November 6, 1997.
- Memo from Sarah Korjeff to subcommittee members re: site visit and application materials, dated November 20, 1997.
- Staff Report, dated November 25, 1997.

- Letter from Sarah Korjeff to Larry Nickulas re: site walk, dated December 17, 1997.
- Staff Report dated January 16, 1998.
- Public hearing and subcommittee meeting minutes dated December 1, 1997, January 22, 1998, and February 9, 1998.

Submittals from the Applicant:

- DRI Application and attachments, dated October 27, 1997, received November 3, 1997.
- Division Plan of Land in W. Barnstable prepared for Conant Nursery Trust, dated October 1, 1997.
- Natural Resources Inventory, performed by ENSR, dated November 1997.
- Letter from Toivo A. Lamminen, Jr., and D. M. Taylor, Atlantic Environmental Technologies, Inc., to Larry Nickulas re: Groundwater Flow Direction, dated December 22, 1997.
- Nitrogen Loading Calculations for Conant Nursery Trust, prepared by Atlantic Design Engineers, Inc., dated January 7, 1998.
- Division Plan of Land in W. Barnstable, MA, prepared for Conant Nursery Trust, dated January 7, 1998. Including Wetlands Delineation, dated December 26, 1997, Private Well Locations, dated January 5, 1998 and Sketch Plan, dated January 8, 1998.
- Letter from Larry Nickulas to Sarah Korjeff re: additional information, dated January 8, 1998.
- Letter from Larry Nickulas to Cape Cod Commission re: renovation schedule, dated January 8, 1998.
- Division Plan of Land in W. Barnstable, MA, prepared for Conant Nursery Trust, dated January 21, 1998.
- Letter from Donald Schall, ENSR, re: natural resources inventory, dated January 22, 1998.
- Division Plan of Land in W. Barnstable, MA, prepared for Conant Nursery Trust, dated January 21, 1998, revised February 6, 1998.
- Sketch Plan of Site for Conant Nursery Trust showing the marked specimen trees, general structure layout, Lot No. 2, Cedar Street, W. Barnstable, MA, dated February 6, 1998.
- Letter from Jeffery Johnson, Esquire, to Ralph Crossen re: former Conant property use, dated February 18, 1998.

Submittals from Government Agencies:

- Letter from Gary Hammer, Massachusetts Historical Commission, to Larry Nickulas re: need for additional information, dated December 1, 1997.
- Letter from Brona Simon, Massachusetts Historical Commission, to Sarah Korjeff re: review as the project is further developed, dated February 6, 1998.

Submittals from the Public:

- Letter from Robert A. Bianchi to Sarah Korjeff re: Conant Property, dated October 28, 1997.
- Map showing conservation lands in the West Barnstable area, submitted by Mark Wirtanen, Barnstable Land Trust, received November 3, 1997.
- Letter from David Moeller, Chair, West Parish Church Council, to Cape Cod Commission Members re: Conant subdivision, dated November 24, 1997.
- Photographs of West Barnstable Village Green and surrounding area, submitted by David Moeller, West Parish Church, received December 1, 1997.
- Letter and enclosure from Robert A. Bianchi to Sarah Korjeff re: Cape Cod Life article, dated December 3, 1997.
- Letter from Patti Kellogg to Kathy Sferra re: Conant Property, dated December 5, 1997.
- Letter and attachment from Robert A. Bianchi to Sarah Korjeff re: opinion from John Alger, dated December 10, 1997.
- Letter from Robert A. Bianchi to Sarah Korjeff re: meeting, dated December 19, 1997.

- Deeds for Conant Property, submitted by Robert A. Bianchi, received December 31, 1997.
- Agricultural restrictions relating to Conant Property, submitted by Jeffery Johnson, received January 9, 1998.
- Letter from Robert A. Bianchi to Sarah Korjeff re: contiguous Lots, dated January 13, 1998.
- Letter and attachment from Larry Nickulas to Sarah Korjeff re: Conant Estate Time Line, dated January 13, 1998.
- Letter from John Doyle, P.L.S., to Sarah Korjeff, re: delineation of property perimeter, dated January 14, 1998.
- Letter from Jeffery Johnson, Esq., to Patricia Daley, Esq. re: Ownership of parcels, dated January 16, 1998.
- Letter from David M. Ross, Trustee of Cape Cod Cranberry Realty Trust, re: potential impacts of Conant subdivision, dated January 21, 1998.
- Letter from Eric Hokans, abutter, to Conservation Commission re: development of Conant property, dated January 22, 1998.
- Letter from Audrey M. Loughnane, Barnstable Town Councilor, re: comments on proposed subdivision, dated January 22, 1998.
- Letter from John R. Alger, P.C., to Patricia Daley, Esq. re: Ownership of parcels, dated February 3, 1998.
- Letter from Jeffery Johnson, Esq., to Patricia Daley, Esq. re: Ownership of parcels, dated February 6, 1998.

The application and notice of the public hearing relative thereto, the Commission's staff reports, correspondence, notes and exhibits, minutes of the hearing and all written submissions received in the course of the proceedings, including materials submitted on file #DR97024, are incorporated into the record by reference.

TESTIMONY

At the December 1, 1997 public hearing, Larry Nickulas, applicant, described the proposed subdivision of 24 acres into 5 lots, including 3 new single family home lots in the southern portion of the property. The remaining two lots would include existing single family homes, one on approximately one acre, and the other on approximately 20 acres. He stated his hope to leave the 20 acre parcel undeveloped at this time. Sarah Korjeff, Commission staff, summarized the staff report. She stated that the project is within a Significant Natural Resource Area, a National Register Historic District, and the Old Kings Highway Historic Regional District. Ms. Korjeff suggested natural buffers to wetlands on site and along the roadway. She also discussed the need to evaluate potential impacts to private wells in the area and the limits on nitrogen loading. Ms. Korjeff suggested a single access for development on the property and recommended traffic mitigation be addressed when additional development is proposed.

Audrey Loughnane, Barnstable Town Councilor, stated that the parcel is a focal point for the area which should be protected. She suggested that the hearing be continued to address issues regarding water supply, wetland delineation, and contiguous ownership. Wayne Miller, owner of the abutting trout farm, described the trout farm and its sensitivity to impacts from septic systems. He noted that aquaculture is an agricultural use and should be supported. Robert Bianchi, attorney for Wayne Miller, presented a map and stated that the parcel under review is part of a 47 acre parcel under contiguous ownership which should be reviewed by the Commission. Mark Wirtanen, Barnstable Land Trust, stated his concern about over development of the area and noted his hope for cluster development in the interior of the site

rather than along the road frontage. Judy Desrosiers, President, West Barnstable Civic Association, stated that water resource protection and preservation of the frontage on the village green are most important. David Moeller, Chair of the Council of the West Parish Church, showed photographs of the church and the village green and stated that the historic setting should be protected. Jim Jenkins, West Barnstable resident, suggested cluster development on the site to screen views from the roadway. George LeClerc, abutter, noted concerns regarding wildlife and water quality protection. Mark Nelson, West Barnstable resident, stated that potential water quality impacts to the trout hatchery, estuary and Barnstable Harbor require further review. He also stated concern regarding the lots proposed on the village green. Patty McGuire, abutter, stated that a small pond on the site may be a vernal pool and should be protected. Helen Wortenen, West Barnstable resident, stated that the proposed public water supply well is needed for the future and noted that the Local Comprehensive Plan suggests increased lot sizes in West Barnstable. David Ross, abutter, stated concern regarding water quality and buffers to the cranberry bog. He suggested access to the property be located away from the corner of Cedar Street and Meetinghouse Way. Debbie Fitten, Deacon at West Parish Church, noted that the church owns a parcel of land at that corner.

At the January 22, 1998 public hearing, Larry Nickulas, applicant, described the revised subdivision proposal that would create one new residential lot fronting on Cedar Street. He stated that a groundwater flow study was completed and wetlands were delineated. John Doyle, engineer for the applicant, described the revised wetland delineation and sight distance for the proposed lot on Cedar Street. Mr. Nickulas stated his intention to operate the nursery in the spring and to renovate the two historic homes on the site. He stated his willingness to extend the permanent open space along the entire village green. Sarah Korjeff summarized the staff report, discussing restriction of the permanent open space, protection of specimen trees, additional water resource information needed prior to any phase 2 development, and sight distance considerations.

Robert Wood, West Barnstable Water Commissioner, questioned the protection of the proposed future well site with the proposed development. Kevin Courain, attorney for the West Parish Church Council, recommended additional open space along the village green and along the front of Lot 2 to limit visual impacts on the area. Jim Jenkins, West Barnstable resident, stated that the West Parish Memorial Foundation unanimously voted against the Phase 1 proposal. He stated his hope that the greenhouse will be reused and that development will be focused on the interior of the site. Robert Bianchi, attorney for the owner of the adjacent trout farm, questioned the project's impacts on groundwater and suggested that the Commission address the site's development as a whole. David Moeller, Chair of the West Parish Council, stated that the setting is important to the church and recommended buffers around the entire green. Joyce Joaken, Vice Chair of the West Parish Council, noted that land given to the West Parish Foundation was intended to stay in a natural state. Jeff Johnson, attorney for the applicant, stated that it would be inappropriate to hold up the decision because it would force his client to go forward with the Phase 2 development.

At the January 22, 1998 and February 9, 1998 subcommittee meetings, the subcommittee discussed issues related to the Commission's jurisdiction over adjacent property, provision of open space and buffers along the village green, site distance requirements, the potential for archaeological resources, and limitations on Phase 2 development of the project. The subcommittee discussed draft findings and conditions for Phase 1 of the project and voted to give the Chair the authority to direct changes to the draft decision.

JURISDICTION

The proposed Conant Nursery Trust Subdivision qualifies as a DRI under section 12 (e) of the Act, where "a proposed development which does not exceed one of the specific thresholds in the interim standards and criteria set forth in subsection C...may be referred to the commission by a municipal agency, in the municipality where the development is located,...provided that the commission accepts the referral as a development which may have regional impacts..." This project was referred by the Barnstable Planning Board and the Cape Cod Commission voted to accept the referral on October 23, 1997.

FINDINGS

Based on the testimony received at the public hearings, application materials submitted by the project proponent, written material submitted by all interested parties, and supporting technical information provided by staff, the Commission voted that the proposed Conant Nursery Trust Subdivision Phase 1 project be granted a DRI approval with conditions based upon the following findings:

General:

G1. The Commission makes no finding regarding ownership or title to the adjacent wetland area immediately north of the project site. The Commission finds that ownership of this area has no material impact on the Development of Regional Impact review. If this wetland area is ever deemed part of the subject parcel or under the same ownership, it shall not be developed.

G2. Regarding the Village Lane subdivision located to the north of the above-described wetland parcel and accessed off Willow Street, the Commission finds that based on existing subdivision lines at the time this parcel was permitted in 1995, the project would not have tripped the mandatory Development of Regional Impact threshold in effect at that time and thus would not retroactively qualify as a Development of Regional Impact at this time.

G3. The 24.9 acre property is proposed to be developed in two phases. Phase 1 includes subdivision of the property into three lots, including one lot for the historic house at #2175 Meetinghouse Way (Lot 1), one new single family residential lot on Cedar Street (Lot 2), and one large lot that comprises the historic house at #2135 Meetinghouse Way as well as the existing greenhouses and nursery operation (Lot 3) as shown on the plan titled "Division of Land in West Barnstable, MA, prepared for Conant Nursery Trust" and dated January 21, 1998, revised February 6, 1998. Phase 1 also includes permanent restriction of 6.65 acres of open space on Lot 3, renovation of the two historic homes, and continued use of the greenhouse and remainder of Lot 3 as a nursery as allowed by the town.

G4. As proposed, the property can be developed in two phases without derogating from the intent of the Act or from the goals and policies of the 1996 Regional Policy Plan. In allowing Phase 2 of the development to be defined at a later date, within certain limitations detailed in this decision, the applicant retains flexibility to continue the existing nursery use on the site while providing permanent protection of key open space areas and renovation of two historic buildings.

G5. To ensure that any future development is consistent with the Regional Policy Plan goals and policies, any further division or development of Lot 3, beyond continued use and operation

of the nursery in those areas outside the designated open space, will require Development of Regional Impact review.

G6. The project site is located within residential zoning district RF and is located within the Well Protection Overlay District. The Phase 1 plan to create three residential lots is consistent with local zoning regulations. Lots 1 and 2 meet the town's minimum lot size requirements. The applicant also proposes to continue the existing use on Lot 3. The Commission's decision does not restrict the town's interpretation of that existing use or any local permit requirements.

Water Resources:

W1. The proposed project site is located within the Zone of Contribution to a potential public water supply well directly east of this property. The project site is also located within the watershed to Barnstable Harbor. The site is in an area of private wells, and a portion of the site is considered a Potential Public Water Supply area as designated on the Water Resources Classification Map.

W2. The 1996 Regional Policy Plan requires that nitrogen loading in Wellhead Protection Areas not exceed 5 ppm. The Regional Policy Plan also requires that projects within Marine Water Recharge Areas use alternative denitrification systems where a critical nitrogen loading rate has not been identified. No critical loading rate has been identified for Barnstable Harbor.

W3. The nitrogen loading from one new single family home in Phase 1 will not have significant impacts on water quality. If subsequent Phase 2 Development of Regional Impact review is conducted under the 1996 Regional Policy Plan, then in order to meet the Regional Policy Plan standards for both Wellhead Protection Areas and Marine Water Recharge Areas, the applicant may propose up to 20 new homes with denitrification systems, or provide an equivalent or smaller nitrogen load by proposing 11 new homes with conventional Title 5 systems. This finding is based on the assumption that the required Phase 2 open space will be provided in the watershed to Barnstable Harbor.

W4. Because no critical loading rate has been determined for Barnstable Harbor, a monetary contribution to a flushing study or other nitrogen management strategy is required by the Regional Policy Plan. The required contribution will be based on a rate equal to \$0.15 times the daily design flow of the project. Because Phase 1 includes only one new residential home and its associated design flow, this contribution may be deferred until Phase 2 development is proposed.

W5. Groundwater flow direction provided by the applicant was established from measurements taken from three monitoring wells installed on the eastern portion of the property. While the placement of the wells does not provide ideal coverage of the lot, the flow direction indicated is consistent with regional flow and may be implied for the remainder of the property.

W6. The applicant has addressed potential downgradient impacts adequately for the construction of the one additional house lot proposed in Phase 1, but concerns with downgradient impacts to surface water resources have not been addressed in sufficient detail to allow for development beyond that proposed in Phase 1. Prior to any Phase 2 development, additional documentation of the proposed impacts specific to the adjacent downgradient trout farm, and additional information on groundwater flow and subsurface geology are needed to minimize potential conflicts with private wells and surface water resources.

Natural Resources:

NR1. The project is located in a Significant Natural Resource Area due to its location within a Zone of Contribution to a public water supply and the presence of unfragmented forest habitat on the site. The project is thus required by Minimum Performance Standard 2.5.1.3 to provide 65% of the upland area as open space. Based on this requirement, the applicant must provide 15.1 acres of open space. If the applicant donates all of the project open space to the town or a land trust or provides for permanent public access, the open space requirement is 12.4 acres, consistent with Minimum Performance Standard 2.5.1.3.

NR2. The applicant's Phase 1 proposal includes 6.65 acres of permanent open space. Designation of this proposed Phase 1 open space would ensure compliance with Regional Policy Plan Minimum Performance Standard 2.3.1.2 which requires an undisturbed buffer of at least 100 feet to wetlands. The proposed Phase 1 open space protects most of the high quality habitat areas on the site, but does not protect the wildlife travel corridor south of Lot 1 as identified in the Natural Resources Inventory and shown on the site inspection map submitted by the applicant's consultant.

NR3. In order to permanently protect the open space designated in Phase 1 of the project, the applicant has agreed to place a conservation restriction on those 6.65 acres designated as permanent open space. The boundaries of the open space should be clearly marked on site with bounds and/or a low fence to ensure that continued use of Lot 3 does not impact the designated open space.

NR4. Continued operation of the nursery during Phase 1 of the project has the potential to impact the wildlife travel corridor south of Lot 1 and existing specimen trees which are outside of the designated Phase 1 open space. The applicant may remove such specimen trees for the purpose of relocating them to another site, so long as they are not within the Phase 1 open space, or designated for preservation on the plan referenced in finding NR6, and understanding that further development of Lot 3 in Phase 2 may require revegetation of a 15 to 20 foot wide wildlife travel corridor extending 190 feet west from Meetinghouse Way along the south side of Lot 1.

NR5. To the maximum extent feasible, Phase 2 open space should be contiguous with Phase 1 open space and must incorporate the wildlife travel corridor south of Lot 1 as identified in the Natural Resources Inventory and site inspection map to provide an additional wildlife travel corridor between the Conservation Area east of Route 149 and the abandoned cranberry bogs at the western boundary of the site, and to the woodland community located to the south of Cedar Street. The applicant may provide some of the remaining required open space off site in accordance with the Regional Policy Plan, with the proposed off-site open space parcels subject to approval by the Commission.

NR6. To preserve native specimen trees along the frontage of Meetinghouse Way, the applicant has agreed to work with the Commission staff to identify and mark on a plan those native specimen trees within 40 feet of Meetinghouse Way which will not be removed during any future development of the site. The majority of the nursery stock within this area will be allowed to be removed, and specimen trees identified within the proposed right-of-way for the Phase 2 subdivision road may be removed following Cape Cod Commission approval for Phase 2 development.

Transportation:

T1. The project site is located on Route 149, which is classified as a Rural Major Collector under the Regional Policy Plan. Cedar Street is classified as a Rural Minor Collector.

T2. The traffic generated by the addition of one single family home in Phase 1 will not have significant impacts on the surrounding transportation system. However, full development of the 24.9 acre site in Phase 2 may have significant impacts.

T3. The transportation staff has performed a speed study on Cedar Street to determine if adequate stopping sight distance is met at the proposed Phase 1 site drive. Based on the speed study, the average running speed is 32.7 mph travelling eastbound and 31.4 mph travelling westbound on Cedar Street. Based on these speeds, a sight distance of 225 feet should be provided. The measured sight distance is approximately 320 feet on the eastbound approach and 210 feet on the westbound approach to the site drive. Therefore, sight distance on the westbound approach to the intersection should be increased by 15 feet.

T4. Since the size and type of development in Phase 2 is not known at this time, trip reduction requirements for both Phase 1 and Phase 2 should be addressed at the time that Phase 2 development is proposed. No trip reduction measures will be required for the existing single family homes currently located on the site.

T5. A single subdivision road or common access for any future development of Lot 3 is recommended in order to limit traffic impacts on Meetinghouse Way/Route 149. The applicant has provided a sketch plan for Phase 2 development which proposes a single subdivision road approximately in the location of the existing southern site entrance.

Historic Preservation/Community Character:

HP1. The project site is located within the West Barnstable National Register Historic District. Two historic Cape Cod houses on the site are listed as contributing structures within the National Register Historic District. A wide vegetated buffer along the road edge would best limit the visual impacts of new development on the district's historic and rural character.

HP2. The project site is located within the Old Kings Highway Regional Historic District. Any proposed exterior alterations or new construction on the site, including development on Lot 2, is subject to review by the Barnstable Old Kings Highway Historic District Committee.

HP3. The applicant has provided a permanent vegetated buffer 150 feet in depth along the corner of Meetinghouse Way and Cedar Street, tapering sharply to a depth of zero near the northern end of the village green. The buffer extends along the entire length of the West Barnstable Village Green and will provide an effective visual buffer between the Village Green and any future development on the interior of the site. The buffer will be placed under conservation restriction along with the other permanent open space designated in Phase 1 of the project.

HP4. The applicant proposes to renovate the two historic houses on the property, located at #2135 and #2175 Meetinghouse Way, and to upgrade the wells and septic systems serving these buildings. To insure compliance with the Regional Policy Plan and to allow Commission staff to comment on any proposed exterior alterations to the historic buildings, the applicant should submit plans to the Cape Cod Commission on the same day they are filed with the Old Kings Highway Historic District Committee.

HP5. The Massachusetts Historical Commission finds that the proposed Phase 1 development is unlikely to affect significant archaeological resources. Any Phase 2 development should be reviewed by the staff of the Massachusetts Historical Commission in conjunction with Cape Cod Commission and Barnstable Old King's Highway Historic District Committee review to limit potential impacts to significant historic and/or archaeological resources.

Affordable Housing:

AH1. Phase 1 of the proposed development results in the creation of one new residential lot and thus does not require the provision of affordable housing units under the 1996 Regional Policy Plan. Phase 2 of the proposed development may result in up to 20 new residential lots and thus may require provision of affordable housing.

CONDITIONS

Based on the findings above, the Cape Cod Commission hereby concludes that the benefits of the proposed Phase 1 project outweigh the detriments. This conclusion is supported by the findings that the applicant will provide 6.65 acres of permanent open space in Phase 1 which includes most of the significant natural resource areas on the entire property, wetland buffers, wildlife corridors and visual buffers to the West Barnstable Village Green, that the applicant will continue the existing nursery use on a large portion of Lot 3, and that the applicant will maintain and reuse the two existing historic structures on the property. In addition, any future development of Lot 3 shall be reviewed by the Cape Cod Commission as a Development of Regional Impact and thus will be required to conform with the Minimum Performance Standards of the Regional Policy Plan in effect at that time. These benefits outweigh the detriments of an additional residential lot within the Zone of Contribution to a potential future well site, and the loss of specimen trees on portions of the site.

The Commission has reviewed the project against the Minimum Performance Standards in the 1996 Regional Policy Plan and has determined that the project, as conditioned, will comply with all Regional Policy Plan Minimum Performance Standards.

The Commission hereby approves Phase 1 of the proposed Conant Nursery Trust Subdivision, subject to the following conditions:

General:

G1. If the wetland area immediately north of the project site is ever deemed to be part of the subject parcel or under the same ownership, it shall not be developed.

G2. Phase 1 shall include creation of a separate lot for the historic house at #2175 Meeting House Way (Lot 1), creation of one single family residential lot on Cedar Street (Lot 2), and permanent restriction of 6.65 acres of open space on Lot 3 as designated on the plan titled "Division of Land in West Barnstable, MA, prepared for Conant Nursery Trust" and dated January 21, 1998, revised February 6, 1998.

G3. Prior to any Phase 1 development activity on Lot 2, or issuance of a Building Permit for this lot, the applicant shall obtain a Partial Certificate of Compliance for Phase 1 from the Cape Cod Commission. Conditions NR1, NR3, NR4, and NR5 of this decision shall be met prior to issuance of a Partial Certificate of Compliance for Phase 1. Prior to issuance of a Certificate of Occupancy for Lot 2, the applicant shall receive a Final Certificate of Compliance

for Phase 1 from the Cape Cod Commission. Conditions T1 and HP2 shall be met prior to issuance of a Final Certificate of Compliance for Phase 1. The applicant shall provide the Cape Cod Commission with at least 30 days notice prior to applying for a partial or final Certificate of Compliance.

G4. Any future development of Lot 3 shall be reviewed as a Development of Regional Impact and must be consistent with the Regional Policy Plan in effect at the time. Prior to any further division or development of Lot 3 beyond continued use and operation of the nursery in those areas outside the designated open space, the applicant shall submit a Phase 2 development plan for review and approval by the Cape Cod Commission.

Water Resources:

W1. Any proposed Phase 2 development shall meet the Regional Policy Plan standards for both Wellhead Protection Areas and Marine Water Recharge Areas.

W2. In subsequent Phase 2 Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall make a monetary contribution to a flushing study or other nitrogen management strategy for Barnstable Harbor to cover impacts from both Phase 1 and Phase 2 of the development.

W3. In subsequent Phase 2 Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall provide additional documentation regarding potential impacts to the adjacent downgradient trout farm, and additional information on groundwater flow and subsurface geology.

Natural Resources:

NR1. Prior to receiving a Partial Certificate of Compliance for Phase 1 of the project, the applicant shall provide the Cape Cod Commission with a conservation restriction consistent with Massachusetts General Laws Chapter 184 and accompanying plan to be approved by Commission counsel and recorded at the Registry of Deeds or Land Court which provides that the 6.65 acres of open space shown on the Plan titled "Division Plan of Land in West Barnstable, MA, prepared for Conant Nursery Trust" and dated January 21, 1998, revised February 6, 1998, shall remain as permanent open space. The restriction and site plan shall be executed and recorded and proof of recording shall be provided to the Commission prior to receiving a Partial Certificate of Compliance for Phase 1.

NR2. The nursery shall not be operated in those areas designated as Phase 1 permanent open space, and site disturbance associated with the nursery shall be minimized on the remainder of Lot 3. Specimen trees on Lot 3 which are outside of the designated open space, and which are not designated for preservation as noted on the plan referenced in Condition NR5, may be removed and relocated off site with the understanding that further development of Lot 3 may require revegetation of a 15 to 20 foot wide wildlife travel corridor extending 190 feet west from Meetinghouse Way along the south side of Lot 1.

NR3. Prior to receiving a Partial Certificate of Compliance for Phase 1 of the project, the applicant shall clearly mark the boundaries of the Phase 1 permanent open space on Lot 3 with bounds and/or a low fence to ensure there is no disturbance of these areas. No disturbance of any area within 100 feet of the wetland boundary shall occur, consistent with Minimum Performance Standard 2.3.1.2.

NR4. Prior to receiving a Partial Certificate of Compliance for Phase 1 of the project, the applicant shall identify a limit of work around the specimen trees on Lot 2, as shown on the "Sketch Plan of Site for Conant Nursery Trust showing the marked specimen trees, general structure layout, Lot No. 2, Cedar Street, W. Barnstable, MA," and dated February 6, 1998, to ensure the specimen trees are not damaged during construction on the lot. This limit of work shall encompass as much of the canopy of the specimen trees as possible while still allowing for well and septic construction and grubbing and shall be reviewed and approved by Commission staff. Some holly trees may be relocated on the lot if necessary.

NR5. Prior to receiving a Partial Certificate of Compliance for Phase 1 of the project, the applicant and the Commission staff shall identify and mark on a plan those native specimen trees within 40 feet of Meetinghouse Way which shall not be removed during any future development of the site. The identified specimen trees will not include the majority of the nursery stock in this area, and any specimen trees identified within the proposed right-of-way for the Phase 2 subdivision road may be removed following Cape Cod Commission approval for Phase 2 development.

NR6. In subsequent Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall provide additional permanent open space which incorporates the wildlife travel corridor south of Lot 1 as identified in the Natural Resources Inventory. The Phase 2 proposal shall also provide sufficient additional permanent open space to satisfy the Regional Policy Plan open space requirement. The 6.5 acres of open space provided in Phase 1 shall be counted toward the total required in any Phase 2 development.

NR7. In subsequent Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall describe building envelopes and design the development to protect remaining specimen trees and limit grading and clearing of vegetation on the site.

Transportation:

T1. Prior to receiving a Final Certificate of Compliance for Phase 1 of the project, the applicant shall increase the sight distance by 15 feet on the westbound approach to the proposed Phase 1 driveway on Cedar Street. The applicant shall either remove vegetation in front of the stone wall or shall relocate the proposed driveway 15 feet to the west of the driveway shown on the "Sketch Plan of Site for Conant Nursery Trust, Lot 2," dated February 6, 1998. A combination of these two measures that increases sight distance by 15 feet is also acceptable.

T2. In subsequent Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall mitigate all traffic impacts from the Phase 1 development (Lot 2) along with the development of Lot 3 in Phase 2 in order to address the cumulative traffic impacts from the entire development.

T3. In subsequent Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall address the trip reduction requirements of the Phase 1 development (Lot 2) as well as any future development of Lot 3 in Phase 2 in order to address trip reduction requirements for the entire development.

T4. In subsequent Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall provide a single subdivision road or common access located at approximately the location of the existing southern site entrance as shown on the sketch plan for Phase 2 of the project titled "Sketch Plan Prepared for Conant Nursery Trust showing general layout proposed Phase II, West Barnstable, MA," dated January 21, 1998.

T5. In subsequent Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall demonstrate that adequate sight distances are available at the site drive, and shall construct and design the roadway in conformance with the Town of Barnstable standards for subdivision roads.

Historic Preservation/Community Character:

HP1. As required in Condition NR1, the applicant shall provide a permanent vegetated buffer to the Village Green along Meetinghouse Way as shown on the plan titled "Division Plan of Land in West Barnstable, MA, prepared for Conant Nursery Trust" and dated January 21, 1998, revised February 6, 1998, designating this area as permanent Phase 1 open space.

HP2. Prior to issuance of a Final Certificate of Compliance for Phase 1, the applicant shall submit plans for renovation of the historic buildings at #2135 and #2175 Meetinghouse Way for review and comment by the Cape Cod Commission staff. These plans shall be filed with the Cape Cod Commission on the same day they are filed with the Barnstable Old Kings Highway District Committee.

HP3. In subsequent Development of Regional Impact review, the applicant for Phase 2 development of Lot 3 shall provide copies of any future development proposal for review by the Massachusetts Historical Commission in order to address potential impacts to significant historic or archaeological resources.

Affordable Housing:

AH1. In subsequent Development of Regional Impact review, any Phase 2 development proposal that results in the cumulative creation of 10 or more new residential lots on the property shall include provision for 10% affordable housing in compliance with the 1996 Regional Policy Plan or the Regional Policy Plan in effect at the time.

The Commission hereby grants Conant Nursery Trust Subdivision Phase 1 a DRI Approval with Conditions.

Madeleine Bebout
Madeleine Bebout, Chair

February 26, 1998
Date

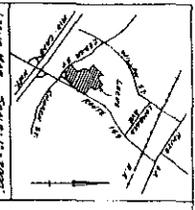
Commonwealth of Massachusetts
Barnstable, ss.

Subscribed and sworn to before me this 26th day of Feb 1998

Katharine L. Peters
Name, Notary Public

My commission expires:

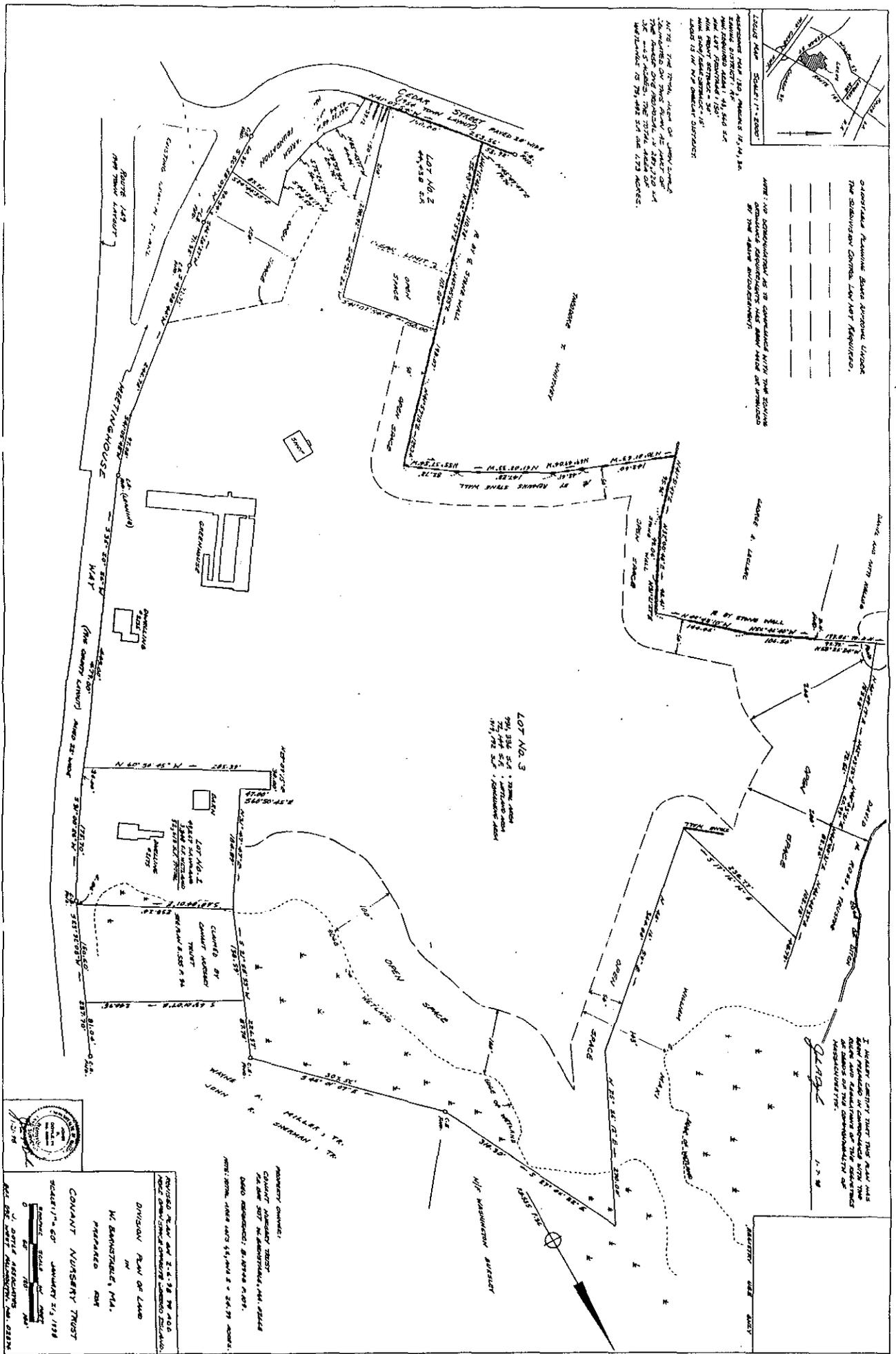




CONTRACTOR REMOVING BURNED STRUCTURE, UNLESS THE SUBDIVISION COMPLETION IS REQUIRED BY THE ABOVE ENCLOSURE.

NOTE: NO RECONSTRUCTION IS TO BE CONSIDERED WITH THE EXISTING CONSTRUCTION DEVELOPMENTS HAS BEEN MADE OR PROPOSED BY THE ABOVE ENCLOSURE.

NOTE: THE TOTAL AREA OF THE PROPERTY IS 1.75 ACRES. THE TOTAL AREA OF THE PROPERTY IS 1.75 ACRES. THE TOTAL AREA OF THE PROPERTY IS 1.75 ACRES.



I HEREBY CERTIFY THAT THIS PLAN AND THE INFORMATION THEREON IS TRUE AND CORRECT AS FAR AS THE INFORMATION OF THE SUBDIVISION IS CONCERNED.

DATE: 1-2-28



W. BARNSTABLE, M.A.
 DIVISION PLANNING & LAND
 PREPARED FOR
 CONNANT NURSERY TRUST
 SCALE: 1" = 40'
 DATE: JANUARY 21, 1928

PROPERTY OWNER:
 CONNANT NURSERY TRUST
 207 WASHINGTON AVENUE
 BOSTON, MASS.
 DATE: JANUARY 21, 1928