

# CAPE COD COMMISSION

3225 MAIN STREET  
P.O. BOX 226  
BARNSTABLE, MA 02630  
(508) 362-3828  
FAX (508) 362-3136

E-mail: frontdesk@capecodcommission.org

DATE: April 23, 1998 #TR-96024  
TO: Attorney Michael D. Ford  
Stinson and Ford  
72 Main Street  
P.O. Box 665  
West Harwich, MA 02671  
FROM: Cape Cod Commission  
RE: Development of Regional Impact  
Section 12(c) of the Cape Cod Commission Act

APPLICANT: James S. Davis, Trustee  
Catherine B. Lowell Trust  
C/o Bingham, Dana & Gould, LLP  
150 Federal Street  
Boston, MA 02110-1726

*James B. Davis, Tr.  
of Lowell B. Trust*

PROJECT: Lowell Trust ANR project  
Barnstable, MA

*Also Lot 2 on  
Plan 4686C*

BOOK/PAGE:

*certificate of title: 75428 + 129611  
Plan: Land 4880A  
Lot A Plan 4686A, excluding Lot 1 on 4686B and  
excluding Lot 2 on 4686C and Lot 3 on 4686C, now shown as  
lots 4+5 on 4686D*

## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (the Commission) hereby approves, with conditions, the application of James S. Davis, Trustee for the Catherine B. Lowell Trust, represented by the firm of Stinson and Ford, for a Development of Regional Impact pursuant to Section 12(c) of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, and pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10, for a subdivision of land in Barnstable, MA. The decision is rendered pursuant to a vote of the Commission on April 23, 1998.

*Lowell Land Trust doc # 736091  
11/27/69  
James S. Davis, Tr.  
+ Colin S. Marshall, Tr.*

### PROJECT DESCRIPTION

The project consists of the subdivision of a 58.98-acre parcel located in Barnstable Village between Barnstable Harbor, Commerce Road and Indian Trail into seven lots. The lot line shown on the plan separating Lots I and J is for the purposes of marking land registered in Land Court from unregistered land. For the purposes of the DRI review, Lot I and J are being treated as one lot. The purpose for the subdivision of land is for estate-planning purposes. The entire site is zoned RF-1 (one-acre residential) according to the Barnstable Zoning By-law. According to the DRI application, the site contains a total of 39.54 acres of upland and 19.44 acres of wetland.

### PROCEDURAL HISTORY

The project was referred as a Development of Regional Impact by Mr. Warren J. Rutherford, Barnstable Town Manager, on November 19, 1996. The referral was received by the Cape Cod Commission on November 20, 1996.

On January 7, 1997, a Commission staff member acted as a Hearing Officer to open and continue a public hearing on this project. On January 8, 1997, the applicant filed a Development of Regional Impact application. On January 9, 1997, the Commission voted six in favor and four opposed to empower Mr. Paul Wightman to act as a Commission Member Hearing Officer for the Lowell Trust project subject to Section 4(8)(a) of the Cape Cod Commission Act.

Subject to a letter received from the applicant dated January 15, 1997, no scoping session was held on this project pursuant to the Memorandum of Understanding between the Commission and the Town of Barnstable.

In a letter dated January 15, 1997, the applicant was informed that the DRI application was complete. A site visit for Mr. Paul Wightman, Commission staff and interested Town officials was held on January 21, 1997.

A duly-noticed public hearing to consider the DRI application was held on January 28, 1997 at the Assembly of Delegates chamber at the First District Courthouse in Barnstable. This hearing was continued to the March 20, 1997 regular full Commission meeting.

A duly-noticed public meeting on the project scheduled for March 6, 1997 was canceled and rescheduled to March 10, 1997 at the applicant's request.

At the March 20, 1997 Commission meeting, Mr. Benway moved that the hearing be continued and the record be left open to the April 3, 1997 Commission meeting. Ms. Ritchie seconded the motion. The Commission voted all in favor of the motion. At the April 3, 1997 Commission meeting, Mr. Prince moved that the

hearing be closed and the record be left open. Mr. Broidrick seconded the motion. The Commission voted all in favor of the motion.

On April 3, 1997, the Commission received an Extension Agreement signed by Attorney Ford representing the applicant extending the decision period to May 16, 1997.

In a letter dated April 16, 1997, staff indicated to Attorney Ford that the extension agreement until May 16, 1997 was ending. On April 23, 1997, the Commission received an extension agreement signed by Attorney Ford representing the applicant extending the decision period to August 22, 1997.

In a letter dated June 25, 1997, staff indicated to Attorney Ford representing the applicant that the extension agreement until August 22, 1997 was ending.

On July 22, 1997 the Commission received an extension agreement signed by Attorney Ford representing the applicant extending the decision period to November 20, 1997.

In a letter dated October 2, 1997, staff indicated to Attorney Ford representing the Applicant that the extension agreement until November 20, 1997 was ending.

On October 6, 1997, Attorney Ford and Commission staff met to discuss the project.

On October 20, 1997 the Commission received an extension agreement signed by Attorney Ford representing the applicant extending the decision period to February 18, 1998.

Staff also met again with Attorney Ford to discuss the project.

In a letter dated November 18, 1997, Commission staff noted that a public hearing had been scheduled on the project for Monday, December 8, 1997. The letter also urged the applicant to submit proposals addressing outstanding issues on the project in light of the Thanksgiving holiday.

On December 8, 1997, a duly-noticed public hearing was held on the project. At this hearing, the applicant described his position on the project issues and provided a revised site map. Mr. Wightman instructed staff to draft a decision including findings and conditions for discussion at a subsequent public meeting to be held on January 5, 1998. Attorney Ford also agreed to provide additional detail about the applicant's revised open space proposal.

In a letter dated December 31, 1997, the applicant was reminded that the existing

Extension Agreement on the project was scheduled to end on February 18, 1998.

The January 5, 1998 meeting was canceled.

In a letter dated January 8, 1998, the applicant was reminded that the Extension Agreement was ending on February 18, 1998. The letter also noted staff would seek direction from Mr. Wightman concerning additional extensions of the Decision time.

On January 21, 1998, the Commission received Extension Agreements from the applicant extending the Decision time to May 22, 1998.

In a letter dated January 28, 1998, the applicant was informed that Mr. Wightman's appointment to the Commission was scheduled to expire on April 24, 1998.

On March 6, 1998, the Commission received a letter from the applicant discussing their position on the outstanding project issues.

Based on this, a public hearing was scheduled for April 16, 1998. A draft open space plan was received by the Commission on April 2, 1998 and a revised open space plan was received on April 6, 1998.

At the duly-noticed public hearing on April 16, 1998, Mr. Wightman moved to continue the public hearing and keep the record open until April 23, 1998 at the full Cape Cod Commission meeting scheduled for 3:00 PM at the Assembly of Delegates. Mr. Wightman directed staff to work with the applicant and his attorneys to resolve the changes to the draft findings and conditions. Mr. Wightman moved to adjourn the public hearing at 4:30 PM.

Mr. Wightman approved the 12/8/97 and 4/16/98 Minutes on April 22, 1998.

At the regularly-scheduled Cape Cod Commission meeting on 4/23/98, Ms. Bebout, the Commission Chair asked Andrea Adams, the project planner to describe the project.

Attorney Michael Ford of Stinson and Ford, representing the applicant, described the project.

Alix Ritchie moved to close both the public hearing and record on Lowell Trust. Mr. Richard Prince seconded the motion. The Commission voted all in favor of the motion.

Mr. Richard Prince moved to approve with conditions the Lowell Trust project, as

outlined in the draft decision dated 4/23/98 as amended at the Commission meeting. Mr. Sumner Kaufman seconded the motion. The Commission voted in favor of the motion. Mr. Robert O'Leary abstained.

MATERIALS SUBMITTED FOR THE RECORD

A. Materials submitted by the Applicant:

Letter, from Attorney Ford, DRI application	1/8/97
Site maps, two full-sized copies	
Fee payment (copy of check)	
Summary of conformance with Minimum Performance Standards	
Site map, 8.5 X 11 size	
Letter, from Attorney Ford, supplement to DRI application	1/8/97
Letter to Massachusetts Historical Commission and site maps	
Abutters list (also received on 1/23/96)	
Plant and wildlife habitat assessment (also received on 11/26/96)	
Letter, from Attorney Ford, additional enclosures/DRI appl.	1/8/97
Deed (copy)	
Land Court information (copy)	
Transfer of Title information (copy)	
Letter, from Attorney Ford, to confirm no Scoping Session	1/15/97
Letter, from Attorney Ford, requesting more time to complete the DRI filing	1/16/97
Maps, one full-sized copy (draft), shows initial 100-ft buffers to the on-site wetland areas	2/27/97
Copy of Extension Agreement	4/2/97
Letter, from Attorney Ford, with Extension Agreement	4/3/97
Letter, from Attorney Ford, with Extension Agreement	4/7/97
Copy of Extension Agreement	4/23/97
Letter, from Attorney Ford, with Extension Agreement	4/24/97
Copy of Extension Agreement	6/25/97
Copy of Extension Agreement	10/2/97
Fax, from Attorney Ford, confirming 12/8/97 hearing date	11/13/97
Revised site plans (large size)	12/5/97
Extension Agreement	
Fax, discussion of project issues	3/6/98
Letter, from Attorney Ford, discussion of project issues	3/9/98
Draft open space plan (by hand) from Attorney Ford	4/2/98
Draft revised open space plan from Attorney Ford	4/6/98
Fax, discussion of project issues in response to 4/9/98 Staff Report	4/13/98
Revised site plan showing wetland areas and lot lines (by hand)	4/16/98
Revised open space plan showing wetland buffers and upland (by hand)	4/16/98
Revised open space plan with a key describing the plan notations	4/23/98
Reduced-size site plan showing lot lines (8.5x11 and 11x17)	5/1/98

B. Materials submitted by the State:

Letter, from Brona Simon, State Archeologist of MHC, expressing concerns about archeological resources on the site	2/10/97
--	---------

C. Materials submitted by the Town:

Letter, DRI Referral Form	11/20/96
Site map	Transfer of Title (copy)
Form A (ANR Application)	Land Court registration (copy)
Form E (Designer's Certificate)	Deed (copy)
Fax, from Planning Department, indicates draft decision is consistent with the Barnstable Local Comprehensive Plan	4/22/98

D. Materials submitted by the Public:

E-mail, from Sara Widdicombe, questions about the DRI process and possibility of development on the site	1/2/97
E-mail, from Sara Widdicombe, questions on DRI process	1/21/97
Letter, from Virginia A. Kelly, concerns for natural resources	1/23/97
Letter, from Mavis Phillips, concern for natural resources (includes a list of bird and animals noted on the site)	1/27/97
Article, <i>The Register</i> , on the project and DRI process	4/9/98

E. Materials submitted by Cape Cod Commission:

Staff Form Q	11/26/96
DRI Referral Form	
site map and locus map	
Notes, meeting with applicant	11/26/96
Notes, phone conversation with Anna Brigham on project	11/26/96
Letter, to Ford, Notice the project is a DRI	11/26/96
Memo, to Subcommittee, project referral information	11/26/96
Memo, to Subcommittee, project update	12/5/96
Memo, to Subcommittee, project update	12/18/96
Letter, to Ford, Confirm 1/7/97 hearing officer	12/19/96
Memo, to Subcommittee, project update	12/24/96
Response E-Mail from Sara Widdicombe	1/3/97
Memo, to Subcommittee, project update	1/6/97
Hearing Notice (Commission staff hearing officer)	1/7/97
Minutes	1/7/97
Fax, to Ralph Crossen, DRI Liaison, confirm 1/28/97 hearing	1/7/97
Fax, to Barnstable Town Clerk, confirm 1/28/97 hearing	1/7/97
Fax, to Ford, confirm 1/28/97 hearing	1/7/97
Staff Form Q	1/8/97
Minutes, of Cape Cod Commission meeting, vote to designate a Commission Member as a Hearing Officer per Sect. 4(8)(a) of the Act	1/9/97
Notes, phone conversation with Ford	1/15/97
Fax, to Ford, copy of MOU with Barnstable	1/15/97
Fax, to Ford, confirm site visit, that DRI application is complete and to confirm that no Scoping Session will be held	1/15/97
Fax, to Ralph Crossen, DRI Liaison, confirm site visit, no Scoping Session and that DRI application is complete	1/15/97
Fax, to Barnstable Town Clerk, confirm site visit, no Scoping Session and that DRI application is complete	1/15/97
Memo, to Paul Wightman, project update and submittals	1/21/97
Staff Report	1/21/97
Letter, to Ford, Staff Report (copy)	1/21/97
Letter, to Ralph Crossen, DRI Liaison, Staff Report (copy)	1/21/97

E. Materials submitted by Cape Cod Commission:

Photos (10 color Polaroid) of site visit and written descriptions	1/21/97
Letter, to Elisabeth and Sheldon Woolf, describing DRI process	1/22/97
Response to E-Mail questions from Sara Widdicombe	1/22/97
Hearing Notice (Commission Member Hearing Officer)	1/28/97
Minutes (Public Hearing)	1/28/97
Letter, to Ford, copies of letter received from public, to confirm meeting and to confirm next hearing date	1/29/97
Fax, to Connie Crosby of MHC, copy of Staff Report	1/31/97
Project Update	3/4/97
Fax, to Ford, Project Update (copy)	3/4/97
Fax, to Ralph Crossen, DRI Liaison, Project Update (copy)	3/4/97
Fax, to Ford, Project Update (copy)	3/4/97
Memo, to Ralph Crossen, DRI Liaison, project update (copy)	3/4/97
Memo, to Barnstable Town Clerk, project update (copy)	3/4/97
Fax, to Ford, Project Update (second copy)	3/5/97
Minutes (public hearing)	3/10/97
Minutes, Cape Cod Commission meeting	3/20/97
Fax, to Ford, draft Extension Agreement	3/24/97
Draft Extension Agreement	4/2/97
Minutes, Cape Cod Commission meeting	4/3/97
Fax, to Ford, Extension Agreement	4/3/97
Letter, to Ford, concerning Extension Agreement, w/copy included	4/16/97
Letter, to Ford, concerning Extension Agreement, w/copy included	6/25/97
Fax, to Ford, Extension Agreement	6/25/97
Fax, to Ford, Extension Agreement	10/2/97
Letter, to Ford, concerning Extension Agreement, w/copy included	10/2/97
Letter, to Ford, concerning 12/8/97 hearing	11/18/97
Fax, to Ford, letter of 11/18/97 concerning 12/8/97 hearing	11/18/97
Hearing notice (12/8/97 hearing)	12/8/97
Minutes (public hearing)	12/8/97
Letter, to Crosby of Massachusetts Historical Commission	12/24/97
Fax, to Ford, concerning Extension Agreement	12/31/97
Letter, to Ford, concerning Extension Agreement w/copy included	12/31/97
Fax, to Ford, concerning Extension Agreement	1/8/98
Letter, to Ford, concerning Extension Agreement w/copy included	1/8/98
Letter, to Ford, concerning Extension Agreement and noting that Mr. Wightman's term was ending in April, 1998	1/28/98
Letter, to Ford, transmitting a copy of signed Extension Agreement	1/29/98
Staff Report including draft findings and conditions	4/9/98
Fax cover sheets, to Ford, Ralph Crossen, Robert Schernig, Jackie Etsten and Connie Crosby transmitting a copy of the Staff Report	4/10/98
Revised findings and conditions	4/15/98
Fax cover sheets, to Ford, Ralph Crossen, Robert Schernig, Jackie Etsten and Connie Crosby transmitting a copy of the Staff Report	4/16/98
Minutes, public hearing	4/16/98
Open Space Worksheet	Undated

The DRI application and notice of the public hearing(s) relative thereto, the Commission's Staff Report(s), Project Update(s), exhibits, Minutes of all hearings or

meetings and all submissions received in the course of the proceedings, including materials submitted on file #TR-96024 are hereby incorporated into the record by reference.

#### TESTIMONY

The Commission Member Hearing Officer, Mr. Paul Wightman, received testimony on this project at a duly-noticed January 28, 1997 continued public hearing.

Mr. Paul Wightman opened the hearing at 7:00 p.m. He explained that he would be acting as the Commission Member Hearing Officer for the project and explained the procedure for review. Ms. Andrea Adams, a Planner with the Commission, read the hearing notice.

Mr. Mike Ford, attorney for the applicant, presented the project.

Ms. Adams presented the majority of the Staff Report.

Ms. Kathy Sferra, the Commission's Natural Resources Planner, presented the natural resources section of the Staff Report.

Mr. Wightman asked for further comments on the project from the applicant or staff. Hearing none, he opened the hearing to comments and questions from the public.

Barbara Angus inquired about the proposed demolition of buildings on the site. Mr. Ford responded that the Barnstable Planning Board requires the notation on the plan if a building is within the setback of a new lot line. He said the demolition is not proposed to happen soon, and anticipated that the Massachusetts Historical Commission and Old Kings Highway Historic District would comment on the proposed demolition.

Walter Peterson inquired whether a home will be built on each of the four buildable lots. Mr. Ford responded that there are no current intentions to build, but the subdivision will create the possibility for one house per lot.

Victor Phillips stated that there is a vernal pool on Lot I. This was acknowledged by Mr. Wightman, the applicant and the Commission staff.

Mr. Wightman continued the hearing until March 20, 1997 at 3:00 p.m. at the Cape Cod Commission meeting at the First District Courthouse in Barnstable. He also announced that there would be a meeting on March 6, 1997 to discuss the project at 1:00 p.m. at the Commission office in Barnstable.

**March 10, 1997 Meeting**

The March 6, 1997 public meeting was rescheduled to March 10, 1997 at the applicant's request. On March 10, 1997, a duly-noticed public meeting was held at the Cape Cod Commission office before Mr. Paul Wightman as the Commission Member Hearing Officer on this project. Mr. Wightman opened the meeting at 11:35 AM. He asked that Attorney Ford provide an overview of the project issues to date.

Attorney Ford, representing the Lowell Trust, noted there were two outstanding issues from the last public hearing: (1) the configuration and location of the open space set-aside areas and (2) a determination from the Massachusetts Historical Commission (MHC) concerning the presence of archeological resources on the site. He noted that a letter had been received from MHC which noted that the area could well be a significant site. Attorney Ford noted the letter recommended that an archeological survey be done of the entire site prior to any development (MHC's preference) or at least of those areas where development might occur. Attorney Ford said he would confirm the applicant's position in writing on the archeological issues.

Attorney Ford noted that with respect to the open space issues, a copy of a draft map has been provided to staff on 2/27/97 which showed proposed 100-foot buffers to the wetland areas. He said the 100-foot buffer amounted to about 15 acres, leaving about 5 acres yet to be provided to satisfy the Commission's open space requirements. Attorney Ford said he would continue to work with staff to resolve the open space issues.

Mr. Wightman asked Ms. Korjeff, the Commission's Preservation Planner to comment on the archeological issues. Ms. Korjeff said Attorney Ford's summary was consistent with the project discussion held with staff on 2/27/97. She said, however, that it was important to emphasize that no buildings should be constructed on the site until the survey was completed, including the 4 homes possibly proposed by the applicant as part of this DRI.

Attorney Ford noted that there was no present intent by the applicant to build on any of the lots.

Mr. McGruder noted there were no plans to build on any of the lots at this time, nor to build any access roads.

Mr. Wightman asked Paul Tilton, a Transportation Engineer, to address the transportation issues. Mr. Tilton noted that the outstanding transportation issue related to the Regional Policy Plan's 20% trip reduction standard for DRIs. He said he had completed an analysis of build-out scenarios for the site. He said the

proposal to develop four homes on the site would result in 38 vehicle trips per day. In comparison, Mr. Tilton noted that build-out under the one-acre zoning would allow a maximum of 39 homes (without regard to other zoning or site limitations), resulting in 372 vehicle trips per day. He said a 4-home scenario allowed for lower traffic impacts.

Mr. Wightman asked for comments on other project issues. Ms. Gabrielle Belfit, a Hydrologist with the Commission's Water Resources office, noted she had reviewed the area of contribution for the project site. She said the site contributes nitrogen to Barnstable Harbor. Ms. Belfit noted that the existing nitrogen loading for the Harbor is low enough such that it meets the DEP's classification for SA-waters. She said the staff's goal would be to maintain this low level of nitrogen loading. Ms. Belfit said that this level of nitrogen loading could be maintained by keeping a level at approximately 1.5 bedrooms per acre. She said that, leaving aside other nitrogen sources (like fertilizer), the 4-home scenario based on 1.5 bedrooms per acre would maintain the existing level of nitrogen loading.

Mr. Wightman asked when Attorney Ford thought the Trust might come to a consensus on the open space issues. Attorney Ford suggested a direction or formal proposal could be forthcoming in the next two weeks.

Ms. Adams noted that a Decision had to be rendered or an Extension Agreement finalized no later than April 3, 1997. She noted that the project was scheduled to be voted on at the March 20, 1997 Commission meeting.

Attorney Ford did not think that the final open space set-aside plan would be ready for March 20, 1997.

Mr. Wightman suggested that delaying the open space provision to the time when development was proposed could be possible. He emphasized, however, that he thought it would be in the applicant's best interest to provide the open space now because waiting would make it more difficult to insure that the open space was actually provided. He noted that setting aside the 100-foot wetland buffers now was commendable. Mr. Wightman also emphasized that the final decision as to whether the project had addressed all the relevant issues was up to the full Commission.

Mr. McGruder suggested that there was a high probability that parts of the site would be placed under a Conservation Restriction in the near future. He suggested there was a timing issue more than anything. He said reaching a consensus was proving difficult.

Ms. Korjeff noted the Commission allowed the Nightingale Pond subdivision

project in Bourne to go forward providing that open space was set aside as the lots were sold off. She suggested that it was also important to consider protecting on-site archeological resources as part of the open space set-aside areas.

Ms. Adams suggested it was important for the staff to discuss these issues, given that the applicant was proposing that all of the Conditions take effect at some unspecified time in the future when development was proposed or building permits were sought. She noted it was very important that potential future owners of a lot clearly understand the restrictions which would have to be complied with prior to any development.

Mr. Robinson, representing the Barnstable Land Trust, questioned how the open space Conditions could work. He questioned whether one lot owner seeking a building permit would in essence trigger the open space set-aside requirement for the entire parcel.

Mr. Wightman said that a second public meeting should be held in the next two weeks to resolve project issues. He then closed the meeting at 12:30 PM.

#### **Commission Meetings**

At the March 20, 1997 Commission meeting, Mr. Benway moved that the hearing be continued and the record be left open to the April 3, 1997 Commission meeting. Ms. Ritchie seconded the motion. The Commission voted all in favor of the motion.

At the April 3, 1997 Commission meeting, Mr. Prince moved that the hearing be closed and the record be left open. Mr. Broidrick seconded the motion. The Commission voted all in favor of the motion.

#### **December 8, 1997 Public Hearing**

Mr. Wightman opened the hearing at 4:45 PM and asked Ms. Adams to read the hearing notice. Ms. Adams read the hearing notice.

Mr. Wightman noted the purpose of the public hearing was to allow the applicant's representative to present new information and provide the public a chance to comment on it. He noted the Commission staff had not prepared a staff report on the information. He suggested the public hearing would allow the project to continue moving through the Commission's review process and suggested next step might be a public meeting to resolve project issues. Mr. Wightman asked Attorney Ford to describe the applicant's proposal.

Attorney Ford described the history of the project. He said there was a change in the plans submitted. He noted the revised plan showed a seventh lot, Lot K. Attorney Ford said Lot K was not proposed to be a buildable lot, but rather to carve out a piece of Lot F. Attorney Ford noted the plans showed a boundary line between Lots I and J. He noted that Lot J was registered land and was shown on a plan in Land Court.

He said the applicant would request that for the purposes of the Commission's DRI review, that Lots I and J be considered to be one lot.

Mr. Wightman, recognizing that there was no formal staff report, he asked the staff for their initial comments on the applicant's proposal.

Ms. Adams suggested that it was not an issue for staff to allow land which was currently used as agricultural land to be incorporated into the project's open space, and to allow the agricultural activities to continue.

Mr. Wightman suggested that it did not seem to be a problem for areas set aside as open space to also be used for agricultural purposes.

Ms. Adams suggested that clarifying that Lot J was registered land did not appear to be an issue. Mr. Fox said he did not think treating Lots I and J as one lot for DRI purposes would pose a problem.

Attorney Ford noted the applicant would still be seeking a DRI approval which would allow the ultimate construction of four houses without additional DRI review even if Lots I and J were treated as one lot for the DRI review.

Ms. Sferra noted that Attorney Ford had stated that approximately 70-75% of the open space requirement for the project was included in the 100-foot wetland buffer area. She questioned whether the applicant was proposing to set aside the buffer area as permanently restricted open space as a result of the DRI review at this time.

Attorney Ford suggested the applicant was seeking flexibility on all of the open space issues including the 100-foot buffer.

Ms. McGruder, one of the beneficiaries of the Trust, explained that the rationale behind the applicant's desire for flexibility on the open space proposal was to preserve the family's ability to donate the land and receive a benefit from the donation.

Ms. Sferra said the applicant's proposal on open space was something the staff would need to discuss further.

Mr. Tilton, a Transportation engineer with the Commission, noted that it was important when subdividing land to consider where access to the site would be provided. He said it was important to consider safety and accessibility of people using the roadway system and of the access road. Mr. Tilton said the Commission encourages development to use one access to the site as opposed to multiple access ways if possible. He noted that in the future, if there is development, the

development would need to address any traffic issues and comply with the transportation standards of the RPP.

Mr. Wightman noted the applicant was proposing the subdivision, but was also seeking a DRI approval which would allow for the construction of four houses on the project site without additional DRI review.

Attorney Ford noted that applicant understood that any development in excess of four houses would require further Commission review. He also said the applicant looked into doing an archeological survey in considerable detail.

Mr. Wightman suggested that it would be possible to resolve the remaining issues at a public meeting.

Ms. Adams said that the meeting would depend on the staff receiving a more detailed proposal from the applicants with regard to phasing the open space set aside.

Mr. Dorr Fox, the Commission's Chief Regulatory Officer, noted that on past DRIs, the open space area is designated as part of the review process and that the form and content of a permanent conservation restriction is worked out prior to the Commission rendering a decision or at very least, prior to issuance of a Certificate of Compliance.

Mr. Wightman asked for public comments on the project.

Ms. Agnes Lyons of Locus Lane in Barnstable questioned who the applicant was for the project. Attorney Ford stated that Mr. Davis was the technical legal owner in that he was the Trustee for the family.

Ms. Lyons asked if the family planned to build houses on the land. Attorney Ford said there were no plans at this time to build houses. He noted the subdivision created the potential to build.

Ms. Lyons asked what "DRI" meant. Attorney Ford said it stood for "development of regional impact."

Ms. Etsten of the Barnstable Planning Department suggested possible Planning Board issues on the project might be whether Lot E as currently configured was actually "accessible" by the narrow panhandle shown on the plans. She said the Board might question whether the panhandle did indeed provide access to Lot E. Ms. Etsten also noted that Indian Trail was a narrow way, that the right-of-way was shown as 20 feet but that it in fact tapered to less than that in places. She questioned

whether Indian Trail would provide adequate access to any lots off of Indian Trail. She noted it was an ancient way but questioned whether it was a Town way. Ms. Etsten stated that the conservation restriction should be more carefully drafted. She said that previous restrictions were complex and allowed beneficiaries to be changed.

Mr. Wightman directed that the public hearing be continued to 1/29/98 and that the record be kept open. Mr. Wightman suggested a public meeting should be held on 1/5/98 at 1:00 PM in the Commission offices.

The January 5, 1998 public meeting was canceled.

### **Commission Meeting**

At the January 29, 1998 Commission meeting, Mr. Brock moved to close the hearing and leave the record open. The vote approving the motion was unanimous.

### **April 16, 1998 Public Hearing**

Mr. Wightman opened the hearing at 3:20 PM and asked Ms. Adams to read the hearing notice.

Ms. Adams read the hearing notice. She noted there was a sign-up sheet and copies of the Staff Report. She presented the Staff Report, explaining the project and the draft findings and conditions.

Attorney Ford, representing the applicant, explained the purpose of the project was to divide land, not to develop it.

Ms. Adams reviewed proposed findings and conditions which revised and updated those contained in the April 9, 1998 Staff Report.

Mr. Wightman recommended that a key should be added to the site plan (which was entitled "Plan of Land in Barnstable for the Catherine B. Lowell Trust dated July 26, 1996, revised December 1, 1997, revised April 14, 1998") and plan showing the areas proposed to be set aside as on-site open space (entitled "Plan for in Barnstable for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998") which described what shading on the plan meant.

Mr. Wightman inquired about the ability of the applicant to modify the proposed open space areas shown on the plan entitled "Plan for in Barnstable for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998". Ms. Adams explained the Commission's Development of Regional Impact (DRI) modification procedure.

The applicant, Mr. Wightman and Commission staff discussed issues related to the provision of open space.

Ms. Elisabeth Woolf questioned whether the project would entail the development of new roads. Mr. Wightman asked Attorney Ford to address the question. Attorney Ford responded that no new roads were envisioned. He noted that the lots were on existing roads.

Mr. Neil Shule questioned where the proposed new lots were. Ms. Adams noted they were shown on the site plan. Attorney Ford explained how the lots were arranged and the fact that Lot J was registered land in Land Court.

Ms. Sara Widdecome asked where the proposed four houses were going on the lots. Attorney Ford responded that the applicant was seeking the ability to potentially develop four homes from the Commission as the result of this DRI review, but that no development was proposed at this time.

Ms. Adams noted that several changes to the most recent version of the recommended findings and conditions (which revised those in the Staff Report) had been suggested by the applicant and his attorneys. She noted that these changes would need to be looked at by staff.

Mr. Wightman moved to continue the public hearing and keep the record open until April 23, 1998 at the full Cape Cod Commission meeting scheduled for 3:00 PM at the Assembly of Delegates. Mr. Wightman directed staff to work with the applicant and his attorneys to resolve the changes to the draft findings and conditions. Mr. Wightman moved to adjourn the public hearing at 4:30 PM.

### **Commission Meeting**

At the regularly-scheduled Cape Cod Commission meeting on 4/23/98, Ms. Bebout, the Commission Chair asked Andrea Adams, the project planner to describe the project. Ms. Adams noted the hearing on Lowell Trust had been continued from the April 16, 1998 public hearing. She described the Lowell Trust project for the full Commission. Ms. Adams noted that Mr. Wightman, the project Commission member hearing officer, asked her to make three points. She said that Mr. Wightman felt the hearing officer concept worked well for projects involving divisions of land for estate planning purposes. Ms. Adams said he also felt the project took the time it did in part because the Trustee and beneficiaries needed additional time to resolve issues internal to the dissolution of the Trust which were not related to project DRI issues. Ms. Adams also said that Mr. Wightman noted that the applicant had developed a plan showing areas of proposed on-site open space. She noted he felt the plan could be modified in the future, but that it was valuable because it was an indication of what was discussed in the DRI review. Ms.

Adams went over changes to the draft decision and explained the difference between the site plan and the plan which showed the areas of proposed on-site open space.

Attorney Michael Ford of Stinson and Ford, representing the applicant, described the project.

Alix Ritchie moved to close both the public hearing and record on Lowell Trust. Mr. Richard Prince seconded the motion. The Commission voted all in favor of the motion.

Mr. Richard Prince moved to approve with conditions the Lowell Trust project, as outlined in the draft decision dated 4/23/98 as amended at the Commission meeting. Mr. Sumner Kaufman seconded the motion. The Commission voted in favor of the motion. Mr. Robert O'Leary abstained.

#### JURISDICTION

The proposed project qualifies as a DRI under Chapter A, Section 3(c), Barnstable County Ordinance 94-10: "any development which proposes to divide, combine or develop any parcel(s) of land totalling thirty acres or more."

#### FINDINGS

The Commission has considered the DRI application of Mr. James S. Davis, Trustee for the Catherine B. Lowell Trust, represented by the firm of Stinson and Ford, to divide a 58.98-acre parcel in Barnstable Village between Barnstable Harbor, Commerce Road and Indian Trail.

Based on consideration of such DRI application, the information presented at the public hearing(s) and submitted for the record, the Commission makes the following findings subject to Section 12(c) of the Act and pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10:

#### **General**

G-1. The stated purpose for this division of land, according to the DRI application, is for estate-planning. The actual Approval Not Required (ANR) plan divides a 58.98-acre parcel in Barnstable Village between Barnstable Harbor, Commerce Road and Indian Trail into seven total lots including Lot J which is registered land in Land Court. The entire site is zoned RF-1 (one acre/residential) according to the Barnstable Zoning By-law. According to the DRI application, the site contains 39.54 acres of upland and 19.44 acres of wetland.

### **Natural Resources/Open Space**

NR/OS-1. The DRI application information indicates that the property is ecologically diverse, consisting of open fields and thickets as well as extensive scrub-shrub wetlands, salt marsh, tidal creeks, open water ponds (salt and fresh) and abandoned cranberry bogs. Lot J and Lot F are primarily open agricultural field. Most of the upland portion of Lot I is forested. Several large mature trees are scattered throughout the site on the edges of fields, along cart paths and fence rows. The boundary of the Sandy Neck Area of Critical Environmental Concern follows the 10-foot contour on the north side of the property. No rare species habitat has been mapped on the site, however, the applicant's consultant identified a single specimen of prickly pear north of the Brazelton house.

NR/OS-2. According to information in the DRI application, portions of the site are located within the 100 year floodplain. In addition, in some locations, unpaved but travelled cart paths exist near the wetland areas.

NR/OS-3. The total upland area on the site is approximately 39.5 acres. The 1996 Regional Policy Plan (RPP) contains two methods for calculating a project's open space set-aside requirement. For the Lowell Trust project, the RPP requires the applicant to provide approximately 50% of the upland areas of the site, or approximately 19.75 acres as permanently restricted open space. The area set aside as open space may include areas located within wetland buffers.

NR/OS-4. The applicant has proposed meeting the open space requirements by designating approximately 20 acres of on-site upland, the majority of which is in the 100-foot upland buffer to the on-site wetlands and the remainder is upland adjacent to the 100-foot buffers. This is slightly in excess of the RPP's open space requirement. The areas to be designated as on-site open space are shown on the plan entitled "Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998." This is a distinct and different plan from the site plan which only shows lot lines and an indication of wetland areas.

### **Heritage Preservation/Archaeological Resources**

HP/AR-1. This project is located within the Old Kings Highway Regional Historic District. Any new construction or alteration of existing structures on the site is subject to review by the Barnstable Old King's Highway Historic District Committee.

HP/AR-2. In a letter dated February 5, 1997 and received by the Commission on February 10, 1997, Brona Simon, State Archeologist with the Massachusetts Historical Commission determined that the project area is likely to possess archaeological significance. The letter recommended that the project be conditioned to require an intensive (locational) archaeological survey to identify and evaluate any significant archeological resources which may be impacted by the proposed development prior to the issuance of any building permits or on-site construction.

### **Water Resources**

WR-1. An existing sewer main on Commerce Road terminates near this site. The project site is in the Marine Water Recharge Area (MWRA) to Barnstable Harbor. An analysis by the Cape Cod Commission Water Resource Office Marine Embayment Project has identified that the existing nitrogen load for the MWRA to Barnstable Harbor is 12.39 g/m<sup>2</sup>/yr. To maintain water quality to Barnstable Harbor and to be consistent with the Regional Policy Plan Minimum Performance Standard 2.1.1.C.2., future building on this site should not exceed a nitrogen load of 9.30 kg/acre, or approximately 1.5 bedrooms per acre. Based on this standard, the development of four (4) houses within the project site would not be expected to have nitrogen impacts.

### **Transportation**

TRANS-1. Based on the RPP standards, development of four single-family houses is a low impact scenario which minimizes area-wide traffic compared to a potential 39-home buildout scenario allowed under current 1-acre local zoning. At a full buildout potential of 39 single-family houses, the project would generate approximately 372 daily vehicle trips. A project consisting of four single-family houses would generate approximately 38 daily vehicle trips.

TRANS-2. Any proposal to increase development on the site over and above four single-family houses would require additional Cape Cod Commission review to determine impacts on transportation resources.

TRANS-3. The Town of Barnstable Planning Department expressed concern at a December 8, 1997 public hearing about the adequacy of Indian Hill Road and Indian Trail to accommodate and withstand deterioration resulting from additional traffic. This is also a concern of the Cape Cod Commission.

### **Affordable Housing**

AH -1. The proposed ANR plan creates seven total lots, and does not involve the development of housing units at this time. The impacts relating to affordable housing due to the development of four (4) houses on the buildable lots would not require the provision of affordable housing under RPP standards. However, Section 5.1.2 and 5.1.3 of the RPP require construction of ten or more units or lots to set aside at least 10% of these units/lots for affordable housing. As such, any proposal to increase on-site development over and above four (4) houses on the buildable lots would require additional Commission review to determine compliance with the affordable housing standards of the RPP.

### CONCLUSION

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

1. The benefits of the project outweigh the detriments. This is supported by Findings NR/OS-4, WR-2 and TRANS-1.
2. The proposed project is consistent with the relevant Minimum Performance Standards of the 1996 Regional Policy Plan, subject to the attached conditions.
3. The proposed project is consistent with the Town of Barnstable development ordinances.
4. The proposed project is consistent with the Town of Barnstable Local Comprehensive Plan. This is supported by a letter submitted for the file by the Town of Barnstable Planning Department dated April 22, 1998.

The Cape Cod Commission hereby approves, with conditions, the application of Mr. James S. Davis, Trustee for the Catherine B. Lowell Trust, represented by the firm of Stinson and Ford, to divide a 58.98-acre parcel in Barnstable Village between Barnstable Harbor, Commerce Road and Indian Trail as a Development of Regional Impact, pursuant to Section 12(c) of the Act and pursuant to the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10, provided the attached conditions are met:

#### **General**

G-1. The applicant, any successors or assigns shall be bound by the requirements of this Development of Regional Impact Decision.

G-2. Prior to the issuance of any building and/or foundation permits from the Town of Barnstable for any lots shown on the site/ANR plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised December 1, 1997, revised April 14, 1998* or the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998* which shows areas to be designated as on-site open space, the applicant, any successors or assigns or subsequent owners shall obtain a Certificate of Compliance from the Cape Cod Commission.

G-3. Issuance of a building and/or a foundation permit in excess of four (4) single-family houses and any other development not otherwise permitted by this decision within the project site as shown on the plans entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised December 1, 1997, revised April 14, 1998* or *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998*, shall be reviewed by the Cape Cod

Commission as a Development of Regional Impact, except for the instances noted in General Condition #4 (G-4), below. All plans submitted for and listed in this Decision shall become part of the written Decision and any changes to these plans shall be approved by the Cape Cod Commission.

G-4. The further division of lots within the project site as shown on the plans entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised December 1, 1997, revised April 14, 1998* or *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998*, only for the purpose of creating unbuildable lots for conveyance shall not be considered to be a Development of Regional Impact for the purposes of General Condition #3, (G-3), above.

Plans specific to further divisions of lots shall be submitted for Cape Cod Commission staff review and approval prior to their submission to the Town of Barnstable. Nothing contained herein shall be construed to prevent a reconfiguration of the existing site provided that no more than four (4) buildable lots are created, in addition to a lot for the existing farmhouse on Lot F. Any further subdivision or division of the site which creates building lots in excess of the above limitation shall require further Cape Cod Commission review.

G-5. The applicant, any successors or assigns shall obtain all necessary State and local permits for the proposed project.

G-6. The applicant, any successors or assigns shall inform the Commission sixty (60) days prior to seeking a Certificate of Compliance from the Cape Cod Commission and thirty (30) days in advance of any application for a foundation and/or building permit from the Town of Barnstable.

G-7. An explanatory note shall be included on all final site plans recorded with the Commission's Decision indicating that Lot J is registered land in Land Court.

G-8. Any building and/or foundation permit issued by the Town of Barnstable shall be null and void unless a Certificate of Compliance is first issued by the Cape Cod Commission and condition NR/OS-4 as described below is complied with by the applicant, any successors, assigns or subsequent owners.

#### **Natural Resources/Open Space**

NR/OS-1. Any development, as defined by Section 2(e) of the Cape Cod Commission Act, within the 100-year floodplain shall be elevated in conformance with the requirements of the Federal Emergency Management Agency (FEMA) and the Town of Barnstable, as well as an additional one foot in elevation as required by the Regional Policy Plan.

NR/OS-2. Prior to the issuance of a Certificate of Compliance from the Cape Cod Commission and prior to the issuance of a foundation permit and/or a building permit from the Town of Barnstable, the applicant, any successors or assigns shall submit a plan, consistent with Finding NR/OS-4, above, depicting at least 50% of the upland area of the site to be designated as open space. Said plan shall be incorporated by reference into a permanent Conservation Restriction referred to in Natural Resources and Open Space Condition #3 (NR/OS-3). Future activities within this area shall be governed by the terms of the Conservation Restriction referred to in Natural Resources and Open Space Conditions #3 and #4, below.

NR/OS-3. Prior to the issuance of a Certificate of Compliance from the Cape Cod Commission and prior to the issuance of a foundation permit and/or a building permit from the Town of Barnstable, the applicant, any successors or assigns shall submit to the Cape Cod Commission Counsel a Conservation Restriction consistent with MGL Chapter 184, permanently restricting the areas depicted on the plans referred to in Natural Resources and Open Space condition #2, above, for review and approval prior to its submission for review by the State and prior to its recording at the Barnstable County Registry of Deeds and/or Land Court.

NR/OS-4. The owner of the subject lot as described below shall record at the Barnstable County Registry of Deeds and/or Land Court a fully executed and Commission-approved Conservation Restriction which is referred to in Natural Resources and Open Space conditions #2 and #3, above, according to the method shown below.

Compliance with this condition shall occur prior to issuance of a foundation permit and/or a building permit from the Town of Barnstable for any lot as described in this condition.

The lots, wetland buffer areas and adjacent upland areas referred to in this condition are shown on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998* which is on file with the Cape Cod Commission.

This condition not intended to preclude the applicant, any successors or assigns from having the ability to modify the open space plan. However, such a modification shall be reviewed in conformance with the Commission's Administrative Regulations.

Prior to issuance of a foundation and/or building permit affecting any lot on the site, a Conservation Restriction shall be recorded for Lot E.

Lot E is described on the plan entitled *Plan of Land in Barnstable, MA for the*

*Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998.* It is shown as containing approximately 7.38 acres of land, of which 4.35 acres are upland and 3.03 acres are wetland. The amount of land shown on the plan which is to be permanently-restricted open space for Lot E is approximately 2.72 upland acres in the 100-foot buffer to the wetland and 0.54 additional upland acres of land adjacent to the 100-foot wetland buffer.

Prior to issuance of a foundation and/or building permit affecting Lots I and/or Lot J, a Conservation Restriction shall be recorded for Lot I and Lot J.

Lot I is described on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998.* It is shown as containing approximately 9.23 acres of land, of which 6.23 acres are upland and 3.00 acres are wetland. The amount of land shown on the plan which is to be permanently-restricted open space for Lot I is approximately 4.47 upland acres in the 100-foot buffer to the wetlands and 1.02 additional upland acres of land adjacent to the 100-foot wetland buffer.

Lot J is registered land in Land Court. Lot J is described on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998.* It is shown as containing approximately 16.59 acres of land, of which 13.09 acres are upland and 3.50 acres are wetland. The amount of land shown on the plan which is to be permanently-restricted open space for Lot J is approximately 3.23 upland acres in the 100-foot buffer to two wetland areas and 0.81 additional upland acres of land in a 30-foot wide strip adjacent to the larger 100-foot wetland buffer.

Prior to issuance of a foundation and/or building permit affecting Lot F, a Conservation Restriction shall be recorded for Lot F, Lot G, Lot H and Lot K.

Lot F is described on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998.* It is shown as containing approximately 20.21 acres of land, of which 14.64 acres are upland and 5.57 acres are wetland. The amount of land shown on the plan which is to be permanently-restricted open space for Lot F is approximately 4.03 upland acres in the 100-foot buffer to the wetlands and 1.82 additional upland acres of land adjacent to the 100-foot wetland buffers.

Lot G is described on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998.* It is shown as containing approximately 1.03 acres of land, of which 0.43 acres are upland and 0.60 acres are wetland. The amount of land shown on the plan which is to be permanently-restricted open space for Lot G is approximately 0.43 upland acres in the 100-foot buffer to the wetland.

Lot H is described on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998*. It is shown as containing approximately 4.54 acres of land, of which 0.80 acres are upland and 3.74 acres are wetland. The amount of land shown on the plan which is to be permanently-restricted open space for Lot H is approximately 0.93 upland acres in the 100-foot buffer to the wetlands.

Lot K is described on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998*. It is shown as containing approximately 2.00 acres of land, of which 0.59 acres are upland and 1.41 acres are wetland. The amount of land shown on the plan which is to be permanently-restricted open space for Lot K is approximately 0.59 upland acres in the 100-foot buffer to the wetland.

NR/OS-5. Where cart paths exist within the project site and which exist within areas which have been designated as open space or wetland buffer areas, these cart paths may remain and be maintained, but shall not be paved and/or widened.

NR/OS-6. There shall be no development or disturbance, as defined by Section 2(e) of the Cape Cod Commission Act, within the area of the 100-foot buffer to the wetlands as shown on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998*, excepting the maintenance of existing roads, the construction or maintenance of unpaved footpaths and/or the continuation of agricultural practices on land currently in agricultural use.

NR/OS-7. In areas which are not part of the 100-foot wetland buffer as shown on the plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised April 14, 1998*, the continuance or the expansion of agricultural practices on land currently in agricultural use or the placing of other land into agricultural use shall be permitted.

#### **Heritage Preservation/Archaeological Resources**

HP/AR-1. Prior to the issuance of a foundation and/or building permit affecting any lot on the site, the applicant, any successors or assigns shall complete an intensive (locational) archaeological survey (950 CMR 70) for said lot in compliance with MGL Chapter 9, Sections 26-27C, and Implementing Regulations (950 CMR 70) in areas deemed likely to possess archeological significance by the Massachusetts Historical Commission. Location of site preparation work and new structures shall be reviewed by the Massachusetts Historical Commission for impacts to archeological sites based on the survey results and shall be approved by the Cape Cod Commission or its designee prior to commencing site preparation or development work.

**Water Resources**

WR-1. To be consistent with the 1996 RPP Minimum Performance Standard 2.1.1.C.2., and to maintain existing levels of nitrogen loading in the Barnstable Harbor Marine Water Recharge Area, any development within the project site as shown on the site plan entitled *Plan of Land in Barnstable, MA for the Catherine B. Lowell Trust dated July 26, 1996, revised December 1, 1997, revised April 14, 1998* shall be limited to a 1.5 bedroom-per-acre limit or approximately 165 gallons-per-day per acre of septic flow.

The limit described in this condition shall be implemented as follows except if new agricultural activities are proposed on any of the lots described below. If new agricultural activities are proposed, the Cape Cod Commission or its Regulatory Committee shall review and approve any changes to the per-lot maximum limits established below:

- Lot E - A maximum of seven (7) bedrooms is allowable
- Lot F - A maximum of twenty-two (22) bedrooms is allowable
- Lot I - A maximum of nine (9) bedrooms is allowable
- Lot J - A maximum of twenty (20) bedrooms is allowable

Vicky Bebout  
Vicky Bebout, Chair

May 7, 1998  
Date

**COMMONWEALTH OF MASSACHUSETTS**

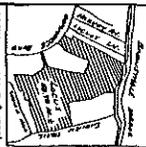
Barnstable, ss.

Subscribed and sworn to before me this 7<sup>th</sup> day of May, 1998.

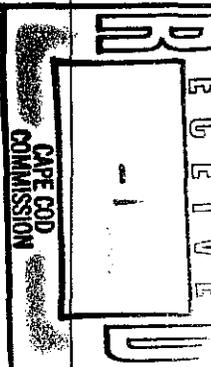
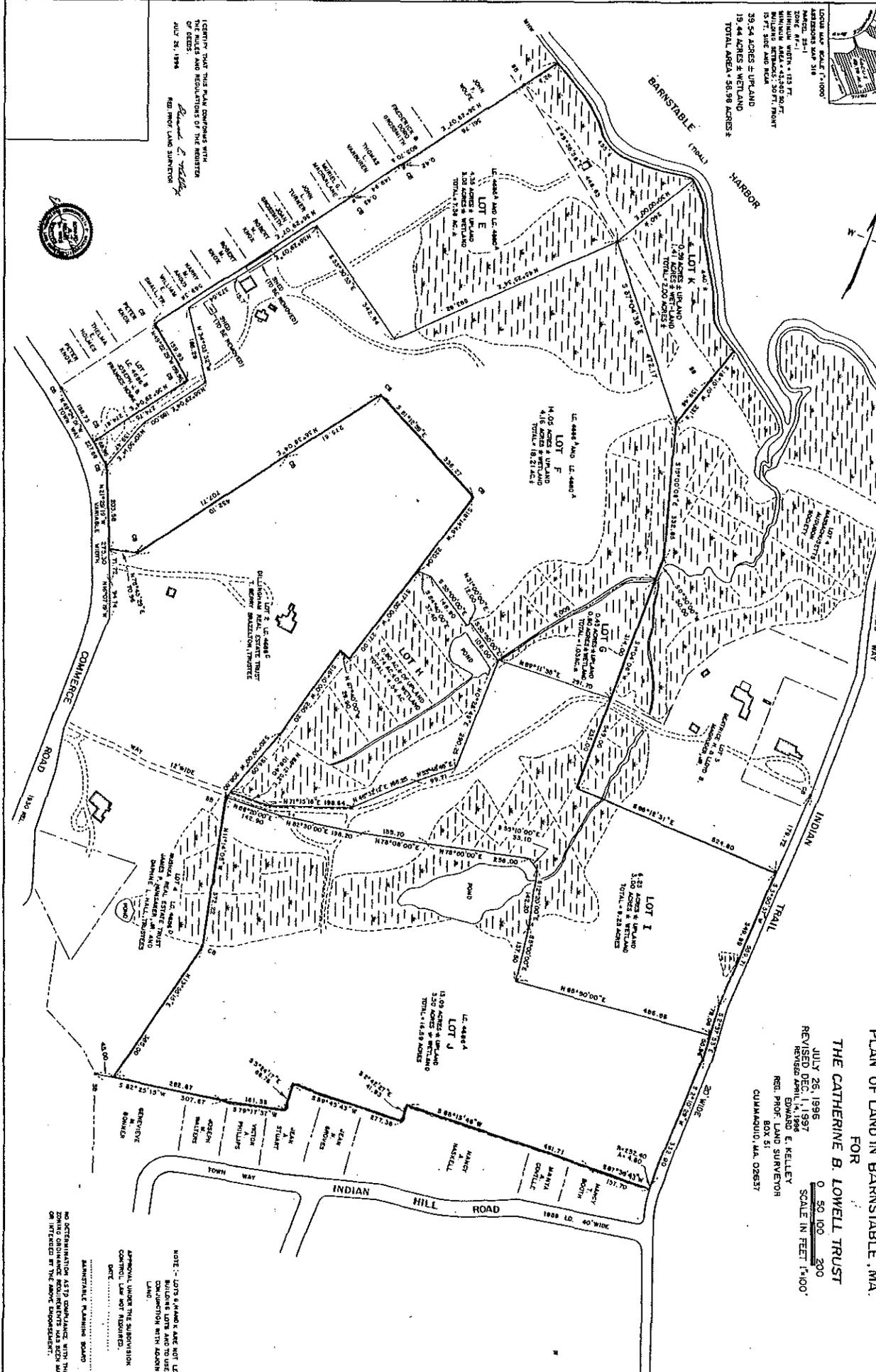
Katharine L Peters  
NAME, Notary

My Commission expires:





SCALE MAP SHEET 1:1000  
 MAP NO. 25-1  
 ZONE M-1  
 MINIMUM AREA - 4,000 SQ. FT.  
 MINIMUM SETBACK - 30 FT. FRONT  
 15 FT. SIDE AND REAR  
 39.54 ACRES ± UPLAND  
 19.44 ACRES ± WETLAND  
 TOTAL AREA - 58.98 ACRES ±



PLAN OF LAND IN BARNSTABLE, MA.

FOR  
 THE CATHERINE B. LOWELL TRUST

JULY 26, 1996  
 REVISED DEC. 1, 1997  
 REVISED APRIL 1, 1998  
 EDWARD E. KELLEY  
 REG. PROF. LAND SURVEYOR  
 QUINNAPPOIT, MA. 02537

SCALE IN FEET 1"=100'

NOTE - LOTS 1 THROUGH 10 ARE NOT LEGAL  
 ZONING ORDINANCE REQUIREMENTS HAS BEEN MADE  
 OR INTERFERED BY THE ABOVE ENGAGEMENT.

APPROVAL UNDER THE SUBDIVISION  
 CONTROL LAW NOT REQUIRED.

ADMINISTRATIVE PLANNING BOARD

I CERTIFY THAT THIS PLAN CONFORMS WITH  
 THE RULES AND REGULATIONS OF THE REGISTER  
 OF DEEDS.  
 REG. PROF. LAND SURVEYOR