

CAPE COD COMMISSION

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DATE: January 15, 1998 **TR# 97022**

TO: Thayer Family
c/o Henry Thayer, Esq.

cc: Whitney Wright, Realtor
Joseph Maruca, potential purchaser of Lot 2C
Douglas Ray, potential purchaser of Lot 2D

FROM: Cape Cod Commission

RE: Development of Regional Impact
Chapter A, Section 3 (c), Barnstable County Ordinance 94-10

PROJECT: Thayer ANR, as shown on the plan entitled "Plan of Land in Sandwich, Massachusetts", dated July 28, 1997.
Project address: frontage on Service Road and Popple Bottom Road,
Sandwich

BOOK/PAGE: Book 6452, Page 216 (Map 20, Parcel 128)

DECISION OF THE CAPE COD COMMISSION

SUMMARY:

The Cape Cod Commission (the Commission) hereby approves with conditions the application of Ellen S.H. Thayer, Hester Swain McDonough, Anne D. Smith and Charles B. Swain (the Thayer Family), c/o Henry Thayer, Esq., for a Development of Regional Impact qualifying under Chapter A, Section 3(c) of the Regulations of General Application, Barnstable County Ordinance 94-10, for the Thayer ANR "Plan of Land in Sandwich, Massachusetts", as shown on plans dated July 28, 1997. The decision is rendered pursuant to the vote of the Commission on January 15, 1998.

JURISDICTION:

This project qualifies as a Development of Regional Impact under Sections 3(c) of the Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 94-10, as it proposes "to divide, combine or develop any parcel of land totaling 30 acres or more." The project was referred to the Commission by the Sandwich Planning Board and received on October 17, 1997, pursuant to Section 12(h) of the Cape Cod Commission Act.

Thayer ANR "Plan of Land", Sandwich, MA
January 15, 1998 Decision - TR#97022

PROJECT BACKGROUND AND DESCRIPTION:

The Thayer Family parcel is located in Sandwich on the Barnstable/Sandwich Town line, as shown on the plan entitled "Plan of Land in Sandwich, Massachusetts", dated July 28, 1997 (see attached plan). The applicant proposes to subdivide the 57.63 acre, residentially zoned parcel into two lots. The two lots will be approximately 26.19 and 31.44 acres, respectively. The larger of the two lots fronts on Service Road (Lot 2C); the smaller on Popple Bottom Road (Lot 2D). Mr. Maruca holds a Purchase and Sales Agreement for the northern, 31.44 acre lot (Lot 2C) and has expressed the intention of further subdividing it for residential purposes. Mr. Ray holds a partially executed Purchase and Sales Agreement for southern, 26.19 acre lot (Lot 2D) and has discussed plans to create a single residential lot and to pursue agricultural activities.

Although not formally submitted, the potential purchaser of Lot 2C, Joseph V. Maruca, has expressed the intention to submit a 7 lot subdivision, of which 5 would be buildable lots and 2 would remain nondevelopable. The first of the nondevelopable lots would coincide with the required open space; the second would be a 5 acre piece annexed to the rear of the purchaser's lot, which has frontage on Great Hill Road (Lot 96-5).

PROCEDURAL HISTORY:

The plan entitled "Plan of Land in Sandwich, MA", dated July 28, 1997, was submitted to the Cape Cod Commission by the applicant, through Mr. Maruca, for a Development of Regional Impact approval on October 17, 1997. The following chronology describes the history of the project to date:

- October 22, 1997 - Mr. Maruca met with Commission Staff for a pre-application meeting to review Development of Regional Impact Filing Requirements.
- October 29, 1997 - Mr. Maruca submitted an application for a Development of Regional Impact.
- November 12, 1997 - Commission subcommittee members and staff attended a site visit of the project location with Mr. Maruca.
- December 2, 1997 - Commission subcommittee opened and held a public hearing in the town of Sandwich. The hearing was continued to the January 15, 1998 full Commission Meeting.
- January 7, 1998 - Commission subcommittee held a public meeting at the Cape Cod Commission offices to review the Draft Decision report prepared by Commission staff.
- January 15, 1998 - The written Decision was approved by the full Commission, following the public hearing.

MATERIALS SUBMITTED FOR THE RECORD:

From the Applicant:

- October 29, 1997 Cover letter to DRI Application submittal, including the following:
 1. DRI Application dated October 29, 1997
 2. Certified abutters list
 3. Copy of Project Notification Form sent to the MHC
 4. Abutters list on DRI Grid form
 5. Filing fee
 6. Copy of the Purchase and Sale Agreement, dated 9/23/1997, between Mr. Maruca and the applicant

- 7. Preliminary subdivision plan entitled "Plan of Land in Sandwich, Massachusetts, dated July 28, 1997
- 8. Natural Resource Inventory at Proposed Development Site written by Horsley & Witten, Inc.
- November 19, 1997 Letter from Mr. Maruca to Ms. Susan Pommrehn, i.e. site lines
- November 19, 1997 Letter commenting on Draft Staff Report prepared for hearing
- January, 1998 Copy of the partially executed Purchase and Sale Agreement, submitted 1/6/98, between Mr. Ray and the applicant
- January 6, 1998 Excerpt from the Health Regulations of the Town of Sandwich regarding Stable Regulation and Nitrate Loading Calculations
- January 9, 1998 Letter from Attorney Henry H. Thayer commenting on draft Decision

Cape Cod Commission:

- October 23, 1997 Letter to Mr. Joseph Maruca notifying Commission jurisdiction
- November 4, 1997 Letter to Mr. Joseph Maruca notifying hearing date and site visit
- November 4, 1997 Letter to Ms. Jo Anne Miller Buntich notifying hearing date and site visit
- November 26, 1997 Fax of Staff Report to Mr. Joseph Maruca
- November 26, 1997 Letter to Mr. Joseph Maruca, Staff Report enclosed
- December 2, 1997 Staff Report for December 2, 1997 public hearing
- December 2, 1997 Fax of Staff Report to Ms. Marie Blaney
- December 9, 1997 Fax letter to Ms. Marie Blaney discussing Lot 2C's build-out

- Other:
- Memos sent to Subcommittee on October 23, 1997, November 4, 1997, November 5, 1997, November 15, 1997, November 20, 1997 and November 26, 1997
 - Hearing Notice for December 2, 1997 public hearing
 - Minutes to December 2, 1997 public hearing

From the Town of Sandwich:

- October 15, 1997 Development of Regional Impact Referral Form (received 10/17/97), including the following:
 - 1. DRI Referral Form
 - 2. Municipal Lien Certificate, dated August 28, 1997
 - 3. Town of Sandwich ANR Form A, dated October 15, 1997
 - 4. Preliminary subdivision plan entitled "Plan of Land in Sandwich, Massachusetts, dated July 28, 1997

Staff Notes:

- October 22, 1997 Notes from Pre-application meeting
- December 2, 1997 Thayer ANR hearing notes

The application and notices of public hearings relative thereto, Commission's staff notes, exhibits and correspondence, minutes of hearings and all submissions received in the course of our proceedings on file TR#97022 (Thayer ANR) are incorporated into the record by reference.

TESTIMONY:

At the December 2, 1997 public hearing, Joseph V. Maruca, potential purchaser of Lot 2C, described the project. Mr. Maruca stated that the project entails the subdivision of approximately fifty-eight (58) acres into two lots. He noted that the parcel, which lies between Popple Bottom Road and Service Road, is approximately 500 feet wide and one mile in length. Mr. Maruca stated that the eastern edge of the parcel is bounded by the Barnstable/Sandwich Town line and the Barnstable Conservation Area and that the western edge of the parcel abutted the rear property line of lots along Great Hill Road. Mr. Maruca asked to discuss the development issues regarding Lot

2C. Mr. Maruca stated that once divided, he would purchase the northern lot, Lot 2C, and submit a seven lot subdivision plan; five buildable lots and two nondevelopable lots. He explained that lot 6 would be annexed to the rear of his property on Great Hill Road (lot 96-5), lot 7 would be the open space and lots 1 through 5 would be sold as residential lots. Mr. Maruca asked whether Lot 2C could be reviewed independent of what may occur on Lot 2D because the timing of their development would probably differ.

Christine Lemay, Commission staff, summarized the staff report, commenting on natural resources, water resources, transportation and affordable housing. Ms. Lemay recommended that the Commission retain jurisdiction over the project and that the impacts of development of each lot be considered cumulatively. Ms. Lemay noted that staff's main natural resource concern was that the open space on both Lot 2C and Lot 2D remain contiguous. She stated that Lot 2C would be required to set aside 16.77 acres of permanently protected open space according to the point system method. Tom Cambareri, Commission staff, described the water resource issues related to the project and noted that the area most likely to be developed on the two lots lay in different Marine Water Recharge Areas. Mr. Cambareri stated that the area most likely to be developed on the northern parcel, Lot 2C, lies within the Scorton Harbor/Creek Watershed, which is one of the most sensitive watersheds out of the fifty-two across Cape Cod. He noted that any DRI within a nitrogen sensitive marine embayment must use DEP approved denitrifying systems. He discussed options available to the applicant to prove that denitrifying systems would not be required. Sue Pommrehn, Commission staff, discussed off-site traffic impacts, trip reduction and site access. She stated that the proposed north/south and east/west pedestrian easements would meet trip reduction requirements for a project that proposed up to 6 single family homes on each lot and that the applicant should obtain the easements prior to a final decision. Ms. Lemay addressed the affordable housing element of the project. Ms. Lemay stated that an affordable unit would be required if the combined development of Lot 2C and Lot 2D met or exceeded 10 units or 10 developable lots and explained that Mr. Maruca has agreed to pay the future owner of Lot 2D half the cost of providing an affordable unit.

The Subcommittee questioned Mr. Maruca's and Whitney Wright's, real estate broker for the applicant, authority to agree to conditions placed on the property owned by the Thayer Family. It was agreed that staff and the applicant would review the Purchase and Sales Agreement to determine Mr. Maruca's and Mr. Wright's ability to agree to conditions.

Mr. Prince stated that the DRI review is the subdivision of one parcel into two lots and that the subcommittee must decide which conditions were to be applied to both lots. Mr. Lambros stated that conditions can be placed on the project, regardless of whether or not Mr. Maruca has an agreement with Mr. Thayer. Mr. Lambros asked if any reprieve, such as allowing a Title 5 septic systems (if the number of bedrooms were limited, etc.), would be offered to the applicant. Mr. Lambros asked if Commission staff had determined the exact site distance to the proposed driveway. Ms. Pommrehn replied that it would be influenced by the hill crest located to the west of the town boundary and the average travel speed along Service road. Mr. Olsen asked that it be clarified throughout the report who the applicant is and which conditions would be applied to the applicant and which would be applied to the future owners of Lot 2C and Lot 2D.

Ms. Carolyn Crowell, who has been involved extensively with the Pathways Project, stated that the east/west link between the Barnstable Conservation Area and the Maple Swamp Conservation Area is greatly needed. James Weaver, Right of Way Engineer for Commonwealth Electric, explained that the company felt they had a perpetual and exclusive easement and stated that any application made must also be submitted to ComElectric as they were partial owners. Mr. Maruca stated that he did not believe the electric company had a valid legal argument and that they cannot prevent the owner of the property from allowing public access.

Mr. Wightman asked if the money contribution to the flushing study was an alternative to using a denitrifying system. Mr. Cambareri replied that it was not, but that the contribution may be required by the Commission. Mr. Wightman stated that many of the subcommittee and staff had attended a site visit and expressed support for the fact that Mr. Maruca was not proposing a more comprehensive development plan.

Mr. Maruca discussed his concern over providing denitrification systems on all 5 lots and discussed the cost of installing and maintaining denitrifying systems, as well as the cost of undertaking studies to show that the property does not contribute to the Scorton Harbor/Creek watershed. Mr. Maruca stated that in order to make his proposal feasible, he would have to develop more lots just to cover the cost of installing denitrifying systems. Mr. Lambros stated that what was before the subcommittee was the decision to subdivide the parcel, not the decision to discuss a 5 lot or 10 lot subdivision. Mr. Lambros suggested the Subcommittee take a vote on whether to subdivide it based on the information at hand or that the applicant, through Mr. Maruca, work out another application that included Mr. Maruca's subdivision proposal. Mr. Maruca suggested that whether these issues would be dealt with now or at a later point, that the subcommittee recognize that his proposal does not maximize the full development potential of the lot and that this be considered when discussing the denitrification requirement. Mr. Prince suggested that Mr. Maruca might apply for a Hardship Exemption or that it might be possible to apply the Flexibility Clause of the Regional Policy Plan regarding the denitrification issue.

Mr. Bob Sprague, member of the Sandwich Conservation Trust, stated that they are very interested in the connection to Maple Swamp.

Mr. Broidrick moved that the hearing be continued to January 15, 1998 at 3:00 at the Barnstable Assembly of Delegates, that the record be left open and that Commission staff draft a decision granting subdivision of the parcel into Lot 2C and Lot 2D, as shown on the plan, both of which would be subject to the conditions concerning open space, affordable housing, water resources and transportation. Mr. Prince seconded the motion, which was passed unanimously. The subcommittee agreed to hold a public meeting on January 7, 1998, 1:00 p.m., at the Cape Cod Commission offices, in order to review the draft decision.

At the January 7, 1998 public meeting, the subcommittee reviewed the draft and made the following changes. The subcommittee asked that recording of the conservation restriction on the permanent open space be required prior to the Final Certificate of Compliance, as opposed to the Partial Certificate of Compliance. The subcommittee agreed to require that the open space plan and draft restriction obtain Commission Counsel approval prior to the Partial Certificate of Compliance. Mr. Prince made corrections to the open space calculation for Lot 2D, which should be 17.02 acres under Method A, not 16.77. The subcommittee agreed with the water resource findings and conditions and expressed their support of invoking the flexibility clause for requiring denitrifying systems under certain conditions. In terms of transportation, the subcommittee asked that the applicant, the Thayer Family, be given an alternative to obtaining the Town of Barnstable's written approval for use of portions of the existing north/south trail which lie within the boundary of the town, if such approval is not easily attained. Ms. Sferra stated that the applicant need only obtain a letter stating that the town "intends" to allow continued public use on portions of the trail that lie within the town of Barnstable. The subcommittee asked staff to draft an affordable housing condition which would allow Mr. Maruca to follow the requirements within his Purchase and Sales Agreement. The condition, in effect, would require that Mr. Maruca reimburse the potential purchaser of Lot 2D, up to \$10,000, should an affordable unit(s) or lot(s) be required under the Regional Policy Plan (RPP) as opposed to being proportionally responsible for meeting the RPP's affordable housing requirement. The subcommittee agreed that if the purchaser of Lot 2C is not Mr. Maruca, the future owners of Lot 2C and 2D would be, monetarily, proportionally responsible for providing an affordable unit(s) or lot(s) and that the owner of the lot that is purchased last

would be responsible for providing the actual unit(s) or lot(s). The subcommittee asked that Commission staff incorporate the agreed upon changes within the decision. The subcommittee meeting was adjourned.

At the full Commission meeting on January 15, 1998, the Commission voted unanimously to approve the Thayer ANR project (TR#97022) with conditions.

FINDINGS:

Based on the testimony received at the public hearing, 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 Thayer ANR project, TR#97022, be granted a DRI approval with conditions based on the following findings.

General:

- G1. The proposed subdivision of land qualifies as a DRI under Section 3(c) of the Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 94-10, as any development which proposes to divide land of thirty acres or more. The applicant proposes to divide a 57.63 acre parcel into two lots, Lot 2C and 2D. Lots 2C and 2D are also collectively referred to as Parcel 128, Sandwich Assessors Map 20. The extent of future development of the two lots is not known at this time, although Mr. Maruca has signed a Purchase and Sales Agreement to purchase Lot 2C and Mr. Ray has a partially executed Purchase and Sales Agreement for the purchase of Lot 2D.
- G2. The development of one single family residence each on Lot 2C and 2D will result in regional impacts as set forth in the findings below. As conditioned by this decision, the proposed development of one single family residence on each lot will meet the Minimum Performance Standards (M.P.S) of the Regional Policy Plan (RPP). Therefore, the development of one single family residence each on Lot 2C and 2D shall not require further DRI review. The development of more than one single family residence each on Lot 2C and 2D is expected to present regional impacts requiring further DRI review.

Natural Resources and Open Space:

- NR1. Parcel 128, as shown on Sandwich's Assessors Map 20, is located in a Significant Natural Resource Area (SNRA) (Cape Cod Significant Natural Resource Area Map, dated September 5, 1996, as amended).
- NR2. The parcel has been identified as a key Cape Cod Pathways Regional trail link between the West Barnstable Conservation Area and the Maple Swamp Conservation Area, located in Sandwich.
- NR3. The area located under the utility easement, which traverses the property in an east/west direction, is a Priority Site of Rare Species Habitat and Exemplary Natural Communities (Massachusetts Natural Heritage and Endangered Species Program, 1997).
- NR4. M.P.S. 2.5.1.1 of the Regional Policy Plan specifies that development in SNRA's must be clustered away from sensitive resources and maintain a continuous corridor to preserve interior wildlife habitat.
- NR5. In order to meet M.P.S. 2.5.1.2, which requires that the set aside open space be contiguous and interconnecting with adjacent open space and that a permanent conservation restriction be placed upon it, the applicant has agreed to designate the rear portion of each lot, starting at the boundary between the two lots, as the open space. The exact boundary

of the open space shall be determined at the time further subdivision or development is proposed for each lot.

- NR6. Because the parcel is located in a SNRA, 65% of the upland area on both Lot 2C and 2D must be set aside as open space (Method A), unless less is required by applying the point system (Method B), as specified in M.P.S. 2.5.1.3 of the RPP.
- NR7. The applicant, through Mr. Maruca, has decided to apply Method B, the Point Calculation system, for determining the required amount of open space on Lot 2C. Using the point system, 16.77 acres (as opposed to 20.43 acres using Method A) are required to be set aside, permanently restricted and open to public use.
- NR8. The applicant, through Mr. Maruca, has agreed to allow passive, recreational use of all the restricted open space on Lot 2C.

Water Resources:

- W1. Parcel 128, as shown on Sandwich's Assessors Map 20, lies within two coastal watersheds. The portion of the northern lot, Lot 2C, most likely to be developed lies within the Scorton Harbor/Creek Watershed. The portion of the southern lot, Lot 2D, most likely to be developed, Lot 2D, lies within the Barnstable Harbor Watershed (Cape Cod Water Resources Classification Map II, dated September 5, 1996, as amended).
- W2. Water resource issues may be addressed separately for each lot because the area most likely to be developed on each lot lies within different watersheds.
- W3. M.P.S. 2.1.1.2 - C1 specifies that development in Marine Water Recharge Areas must not exceed identified critical nitrogen loading standards. The nitrogen loading standard has not been determined for either the Scorton Harbor/Creek Watershed or the Barnstable Harbor Watershed. In subsequent DRI review, the owners of Lot 2C or 2D shall be required to make a monetary contribution to determine the flushing rate of their lot's respective embayment. The monetary contribution is based upon 15 cents per gallon of Title 5 flow.
- W4. The Scorton Harbor/Creek embayment is classified as the most nitrogen overloaded system on Cape Cod during the Commission's first order review of embayment Nitrogen loading (Cape Cod Commission, 1995). The review found that annual existing nitrogen loading within the Scorton Harbor/Creek system is 4.5 kg/acre of watershed, or 7,129 g/m² of embayment. The highest annual areal loading rate recommended by the Buzzards Bay Project, and adopted by the Commission in the Nitrogen Loading Technical Bulletin, is 45 g/m² of embayment.
- W5. The number of lots allowable under the Sandwich Zoning Bylaw on Lot 2C ranges between 11 lots and 21 lots. The eleven (11) lot estimate is based on a dead end road that meets the Sandwich 500 ft subdivision road length limit; the 21 lot estimate is based on a through street connecting the northern and southern portions of the site. Neither estimate accounts for potential reductions in the number of lots due to slope and drainage easements required under Sandwich Subdivision Regulations. Strict adherence to the provisions of the RPP would require all houses, regardless of the number, to have denitrifying septic systems.
- W6. Depending on the number of bedrooms per house, the nitrogen load per acre on the 31.44 acre northern parcel is 2.3 (3 bedrooms) or 2.8 kg/ac (4 bedrooms). If there are eight (8) or more lots using denitrifying septic systems with the equivalent number of bedrooms, the impact of the development would exceed the load produced by five (5) lots using

conventional septic systems. If there are five (5) lots with 4 bedrooms apiece, their nitrogen load is greater (2.8 kg/ac) than if there are eight (8) lots with 3 bedroom houses each using denitrifying septic systems (2.7 kg/ac). Thus, if there are five lots with a maximum of 19 bedrooms on the 31.44 acre parcel using conventional septic systems, the nitrogen loading impact will be the same or less than the impact associated with eight or more houses using denitrifying septic systems.

- W7. The parcels downgradient of Lot 2D all rely on private wells for their drinking water supply. Potential land uses, other than the construction of a single family dwelling, including agricultural activities would be a concern to these drinking water supplies. Agricultural activities include applications of fertilizers and pesticides and storage of fertilizers, pesticide and compost.
- W8. If only one single family unit is proposed on either Lot 2C or 2D, the owner may install a Title-5 septic system, waiving the RPP's requirement that any development in a Marine Water Recharge Area must install a denitrifying system as the interests protected by M.P.S. 2.1.1.2 - C3 will be achieved.
- W9. The Commission will apply the Regional Policy Plan's Flexibility Clause with regard to installing denitrifying systems if it can be shown that the proposed development will result in less nitrogen load than would otherwise occur if the site was developed to the maximum allowed under Sandwich's existing Zoning Bylaw (M.P.S. 2.1.1.2 - C3).

Transportation:

- T1. The future owners of Lot 2C and 2D will be required to address transportation issues, such as off site mitigation and site access, if further subdivision of each lot is proposed.
- T2. The impacts of future development of Lot 2C and 2D should be considered cumulatively in the case of off-site mitigation.
- T3. If the timing of development of Lot 2C and 2D differs, the proposed development of one lot and the maximum development potential of the other lot should be used as the basis on which to assess off-site traffic impacts.
- T4. As specified in M.P.S. 4.1.2.1, all DRI projects must reduce the average daily automobile trips to and from the development, based on the land use type, by 20 percent. The applicant proposes to create two pedestrian easements at this time.
- T5. As part of the trip reduction requirement, the applicant proposes a north/south pedestrian easement on Lot 2C, paralleling the town boundary line, from the Service Road to the Commonwealth Electric easement. This pedestrian easement will provide an important access point to the Cape Cod Pathways trail network which crosses this parcel in an east-west direction. The easement would be ten feet in width, but pedestrian use would occur on the existing worn path. The path meanders across the town boundary line. In order for this proposal to be acceptable, the applicant would need to obtain, in writing from the Town of Barnstable, a document stating that the town intends to allow public, pedestrian use on all portions of the path that lie within its boundary.
- T6. An east/west pedestrian trail across Lot 2C and/or Lot 2D could provide a key link in the Cape Cod Pathways regional trail network by linking the West Barnstable Conservation Area in Barnstable and the Maple Swamp Conservation Area in Sandwich and would also provide an important link in the proposed Cross-Cape Trail stretching from Sandy Neck in Barnstable to South Cape Beach in Mashpee.

- T7. The potential purchaser of Lot 2C has agreed to allow public access throughout the required open space.
- T8. In order to maintain the east/west trail, and further meet the Cape Cod Commission's trip reduction requirements, this decision requires that the applicant provide a 20 foot wide pedestrian easement across Lot 2C from the eastern border to the western border of Lot 2C. This easement shall be located outside of the Commonwealth Electric easement, but within the permanent open space.
- T9. The applicant has agreed to provide a 20 foot pedestrian easement across Lot 2D, from east to west, along the existing cart path known as Old Mill Road. The ten foot north-south easement will be extended from the Commonwealth Electric easement to meet the east-west easement, Old Mill Road. These easements are being provided to meet the Commission's trip reduction requirements with regard to this lot.
- T10. The two trip reduction strategies, the north/south and east/west pedestrian easements, are expected to meet the 20% trip reduction requirement for up to six single family homes on Lot 2C and six on Lot 2D (total of 12 residential units).
- T11. As stated in M.P.S. 4.1.1.5, measured site distances at access/egress locations within public ways must, at the minimum, comply with Massachusetts Highway Department (MHD) and American Association of State Highway Transportation Officials (AASHTO) standards for safe stopping site distance.
- T12. A crest of a hill exists approximately 500 feet west of the Barnstable/Sandwich town line on Service Road. A site drive for Lot 2C should not be any further than 250 feet west of the town boundary in order to provide adequate site distance. This preliminary measurement is based on the approximate distance of the hill crest from the town boundary and the average vehicle speed of 40 mph on this portion of Service Road.
- T13. Improvements to Popple Bottom Road will be determined after an evaluation of the size and type of development proposed for Lot 2D. If upgrading is necessary, the developers of Lot 2D, through a subsequent DRI review, will be responsible for the entire cost of the improvement.

Affordable Housing:

- H1. Minimum Performance Standard 5.1.2 and 5.1.3 of the RPP state that residential construction and redevelopment projects of 10 units or more (or residential subdivision plans of 10 lots or more) shall provide at least 10% of the proposed units (or lots) as affordable units (or lots). The unit or lot can be provided for on or off-site, or through a cash contribution.
- H2. In a subsequent DRI review, future owners of Lot 2C and 2D shall be required to meet the affordable housing standards of the RPP.
- H3. The burden of providing the affordable unit(s) or lot(s) will be placed on the owner of the lot that is purchased last, however, the owner of the adjacent property under Commission jurisdiction will make a cash contribution that is proportionally based on the level of development between Lots 2C and 2D, except as specified in condition H5 which takes into consideration the current potential purchasers of Lots 2C and 2D.

CONDITIONS:

Based on the need to address the impacts noted in the findings above, the Commission hereby attaches the following conditions.

General:

- G1. The Cape Cod Commission retains jurisdiction over both Lot 2C and Lot 2D and will review them as Developments of Regional Impact, except as provided in Conditions G4, G5 and G6 below. Notwithstanding Chapter 41 of the General Laws, including Section 81P, lot lines on the property shall not be altered without approval by the Cape Cod Commission or its designee.
- G2. The project plan entitled "Plan of Land in Sandwich, Massachusetts", dated July 28, 1997 shall become part of the written Decision. The applicant shall record the above referenced plan at the Barnstable County Registry of Deeds and note the Commission's jurisdiction on the said plan.
- G3. The findings and conditions contained within shall apply to the applicant and the future owner's of Lot 2C and Lot 2D as specified.
- G4. The development of one single family residence each on Lot 2C and 2D shall not require further DRI review. However, the applicant, or his successors, shall obtain a Partial Certificate of Compliance from the Commission prior to application for any permanent or temporary foundation or building permit for a single family residence on Lot 2C or 2D and a Final Certificate of Compliance prior to issuance of a Certificate of Occupancy from the Building Department of the Town of Sandwich for Lot 2C or 2D. All other development on Lots 2C and/or 2D shall require further review as a DRI.
- G5. Prior to the issuance of a Partial Certificate of Compliance for the development of a single family residence each on Lot 2C and/or 2D, the applicant or future lot owner shall comply with the conditions, (i) through (vii), below:

Natural Resources and Open Space:

- (i) Prior to issuance of a Partial Certificate of Compliance for either lot 2C or 2D, the applicant or current owner of each lot shall submit a plan showing the total upland area of the lot to be permanently restricted as open space as required by this Decision. The open space shall be deeded to the Sandwich Conservation Trust, Sandwich Conservation Commission, or placed under a permanent conservation restriction pursuant to M.G.L. c. 184 §§31-33, inclusive. The conveyance or restriction, and accompanying plan, shall be reviewed and approved by Commission Counsel prior to issuance of the Partial Certificate of Compliance and the conveyance or restriction shall be recorded prior to the Final Certificate of Compliance, as described in G6 below.
- (ii) In accordance with Section 2.5.1.3 (Method B) of the RPP, the owner of Lot 2C shall provide 16.77 acres of permanent open space. The open space acreage must perpetually remain open to public access. The open space shall be located such that a majority of it occurs at the rear of the lot and is contiguous with the open space that is to be provided on the adjacent lot, Lot 2D, and provides for a continuous east-west corridor across the lot.
- (iii) The owner of Lot 2D shall provide 17.03 acres of permanent open space in accordance with Section 2.5.1.3 (Method A) of the RPP. If the owner allows public access over all or a portion of the open space or deeds the land over to the Town of

Sandwich or the Sandwich Conservation Trust, less than 17.03 acres will be required to be set aside as permanent open space in accordance with Section 2.5.1.3 (Method B) of the RPP. The open space shall be located such that a majority of it occurs at the rear of the lot and is contiguous with the open space that is to be provided on the adjacent lot, Lot 2C, and provides for a continuous east-west corridor across the lot.

Water Resources:

- (iv) The future owners of both Lot 2C or Lot 2D are required to make a monetary contribution to the flushing study of their respective marine water embayments. Lot 2C will contribute to the Scorton Harbor/Creek flushing study whereas Lot 2D will contribute to the flushing study for the Barnstable Harbor embayment. The amount of the contribution will be \$16.50 per bedroom, plus 15 cents per gallon for any additional wastewater flow.
- (v) The applicant or current owner of each lot shall not be required to install a denitrifying septic system if only one single family dwelling is proposed on either Lot 2C or 2D. However, if land use in addition to the development of one single family dwelling is proposed on either lot, the lot may be further conditioned and must submit a plan describing all other proposed land uses, including agricultural uses. Such a plan must be reviewed and approved by the Commission's Regulatory Committee.

Transportation:

- (vi) The future owners of Lot 2C and Lot 2D shall demonstrate that they are providing adequate site distance to their respective site drive and shall meet MHD, AASHTO and town site drive design standards.
 - (vii) Site access to Lot 2C on Service Road is required to be located within 250 feet of the town boundary due to site access issues created by the hill crest, which is located approximately 500 feet west of the town boundary. The future owner of Lot 2C is required to submit a plan that shows the location of the hill crest so that Commission staff may determine the exact location of a permissible site drive.
- G6. Prior to the issuance of a Final Certificate of Compliance for the development of a single family residence each on Lot 2C and/or 2D, the applicant or future lot owner shall have obtained final approval of the Commission approved open space plan and deed of conveyance or restriction from both the Town of Sandwich and the EOEA Division of Conservation Services, as applicable. The applicant or current owner shall provide the Commission with proof of recording of the final approved open space plan and deed of conveyance or restriction.

Transportation:

- T1. In order to meet the 20% trip reduction requirements in the Regional Policy Plan and further the provision of the Cape Cod Pathways walking trail network, the applicant shall provide the Cape Cod Commission with east-west and north-south pedestrian easements on Lots 2C and 2D in accordance with the findings of this decision and in a form and content acceptable to Commission Counsel. The applicant shall provide the Commission with proof of recording of said easements and a plan showing their location prior to conveyance of each lot.
- T2. The north/south pedestrian easement on Lot 2C and Lot 2D shall be ten feet wide and located parallel to the Sandwich/Barnstable town line between Service Road and the way shown as "Cartpath 8' wide" (a.k.a. Old Mill Road) on the plan dated July 5, 1988, filed at the Barnstable Registry of Deeds in Book 7486, Page 332, as described in the findings.

Use shall occur on the existing worn path. The applicant must acquire written consent from the Town of Barnstable that states the town's intention to allow continued public pedestrian access on portions of the north/south existing path which cross over into the Town of Barnstable. If written consent from the Town of Barnstable is not given, then the applicant shall create a path consistent with the character of the existing path within the proposed easement prior the Final Certificate of Compliance. This requirement maintains access, through a pedestrian path, between Service Road and Old Mill Road.

- T3. The east/west easements on lots 2C and 2D shall be 20' in width and located outside of the Commonwealth Electric easement, but within the permanent open space. The easement on Lot 2D shall follow the current route of the cart path known as Old Mill Road unless an alternate location is approved by the Cape Cod Commission.

Affordable Housing:

- H1. If there is a subsequent DRI review, future development of Lot 2C and Lot 2D shall be considered cumulatively in terms of compliance with M.P.S. 5.1.2 and 5.1.3 of the RPP, which require residential construction and redevelopment projects of 10 units or more (or residential subdivision plans of 10 lots or more) shall provide at least 10% of the proposed units (or lots) as affordable units (or lots).
- H2. If there is a subsequent DRI review, the future owners of Lot 2C and Lot 2D are required to count only those lots which are designated as developable, single family residential lots when determining the affordable housing requirement. If a lot is set aside as undevelopable, the owner must write a restriction into the deed for that lot which states that no new development will occur on said lot.
- H3. If there is a subsequent DRI review, the following condition will be placed on lot 6, as shown on Mr. Maruca's preliminary subdivision plan for Lot 2C, entitled "Plan of Land in Sandwich, Massachusetts", dated July 28, 1997. "That lot 6 shall be annexed to and become a part of Lot 96-5, located on Great Hill Road, and that the said two properties shall constitute one building lot and that it shall be known that the single family residence currently standing on Lot 96-5 is the single residence allowed for both said properties. No additional residence shall be constructed on lot 6. There shall be no subdivision of the said property without the approval of the Cape Cod Commission or its successor."
- H4. If there is a subsequent DRI review, and should an affordable unit(s) or lot(s) become required, both future owners of Lot 2C and 2D are required to proportionately share in the cost of the affordable unit(s) or lot(s). However, the owner of the lot that is developed last will be responsible for the development of the affordable unit(s) or the provision of the affordable lot(s). If said lot is not developed within five years of the development that occurs on the first lot, the owner of the first lot shall not be held accountable for contributing to affordable housing costs.
- H5. Condition H4 will apply unless the potential purchaser of Lot 2C, Mr. Maruca, submits a plan substantially similar to the plan entitled "Conceptual Design Plan of Land in Sandwich, MA", dated December 2, 1997 and created by Stephen J. Doyle and Associates, for DRI approval to the Cape Cod Commission within three months of the date of this Decision and is subsequently approved. In this case, Lot 2D will be required to provide the affordable housing unit(s) or lot(s) but will be entitled to compensation from the current potential purchaser of Lot 2C, in accordance with the Purchase and Sales Agreement between the Thayer Family and Mr. Maruca submitted with the DRI application.

CONCLUSION:

Based on the finding and conditions above, the Cape Cod Commission hereby concludes:

The benefits of the proposed development as conditioned outweigh the detriments. This conclusion is supported by the findings and conditions above. The proposed development, as conditioned, is consistent with the Minimum Performance Standards of the Regional Policy Plan. The proposed development as conditioned is consistent with the Sandwich Zoning Bylaw and Regulations.

The Commission hereby approves with conditions the Development of Regional Impact Application of the Thayer Family, for the "Plan of Land in Sandwich, Massachusetts", dated July 28, 1997, pursuant to Chapter A, Sections 3(c) of the Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 94-10 and Sections 12 and 13 of the Cape Cod Commission Act, as amended, provided the conditions noted above are met.

Madeleine Bebout
Madeleine Bebout, Chair

1-15-98
Date

COMMONWEALTH OF MASSACHUSETTS

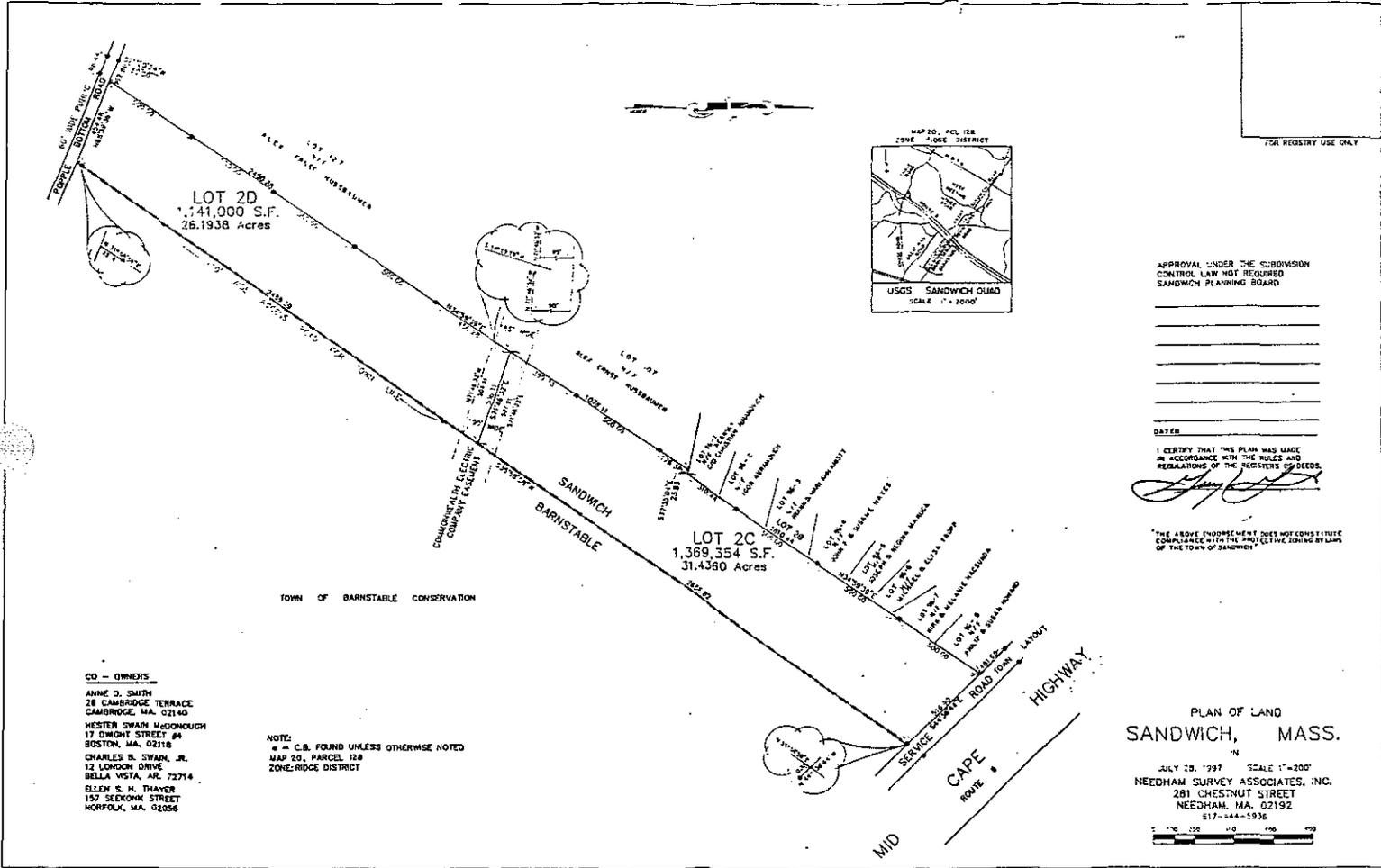
Barnstable, ss.

Subscribed and sworn to before me this 15th day of Jan 1998

Katharine L Peters



My



FOR REGISTRY USE ONLY



APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED SANDWICH PLANNING BOARD

DATED

I CERTIFY THAT THIS PLAN WAS MADE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.

[Signature]

THE ABOVE ENDORSEMENT DOES NOT CONSTITUTE COMPLIANCE WITH THE PROTECTIVE ZONING BYLAWS OF THE TOWN OF SANDWICH

CO - OWNERS
 ANNE D. SMITH
 28 CAMBRIDGE TERRACE
 CAMBRIDGE, MA. 02140
 WALTER SWAN MCGONOUGH
 17 DOWNTOWN STREET #4
 BOSTON, MA. 02118
 CHARLES B. SWAN, JR.
 12 LONDON DRIVE
 BELLA VISTA, AR. 72714
 ELLEN S. H. TRAYER
 137 SECONK STREET
 NORFOLK, MA. 02056

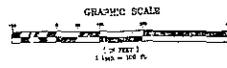
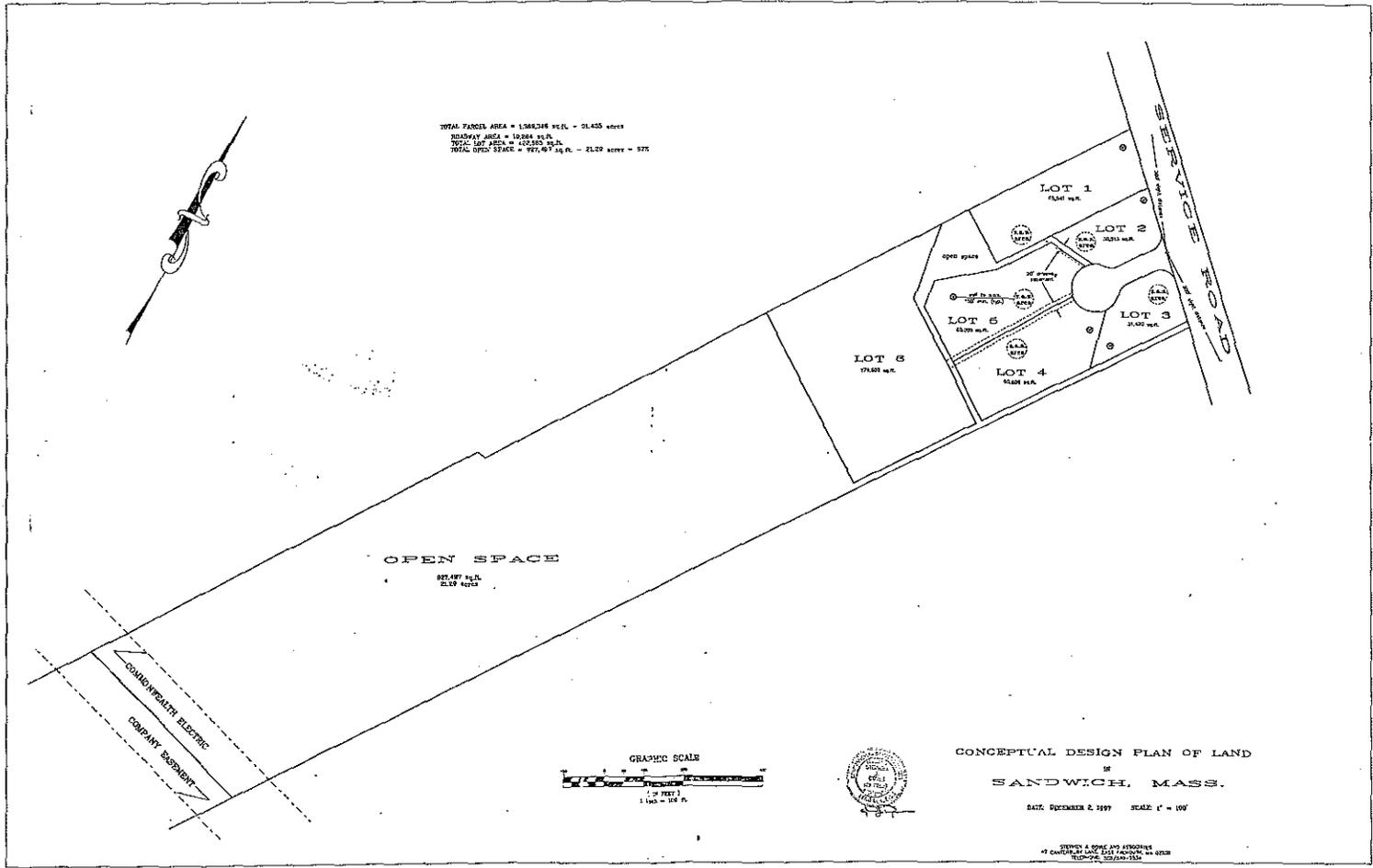
NOTE:
 * = C.B. FOUND UNLESS OTHERWISE NOTED
 MAP 20, PARCEL 128
 ZONE: RIDGE DISTRICT

PLAN OF LAND
 SANDWICH, MASS.

JULY 29, 1997 SCALE 1"=200'
 NEEDHAM SURVEY ASSOCIATES, INC.
 281 CHESTNUT STREET
 NEEDHAM, MA. 02192
 617-244-5936



TOTAL PARCEL AREA = 1,568,316 sq. ft. = 35.455 acres
 HIGHWAY AREA = 12,000 sq. ft.
 TOTAL LOT AREA = 432,283 sq. ft.
 TOTAL OPEN SPACE = 1,074,033 sq. ft. = 24.222 acres = 87%



CONCEPTUAL DESIGN PLAN OF LAND
 OF
 SANDWICH, MASS.

DATE: SEPTEMBER 2, 1997 SCALE: 1" = 100'

DESIGNED & DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: 09/26/97