



CAPE COD COMMISSION

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E-mail: frontdesk@capecodcommission.org

DATE: July 13, 2000
TO: CLSV Associates Limited Partnership
Frank B. and Christine Wooding
FROM: Cape Cod Commission
RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

APPLICANTS: CLSV Associates Limited Partnership
P.O. Box 1049
North Falmouth, MA 02556

and

Frank B. and Christine Wooding
c/o Michael J. Markoff, Attorney at Law
184 Jones Road
Post Office Box 212
Falmouth, MA 02541-0212

PROJECT #: TR20016

PROJECT: Ballymeade ANR
Lot 3A and 3B, Falmouth Woods Road and Sam Turner Road
North Falmouth, MA 02536

BOOK/PAGE: 1452/852

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of CLSV Associates Limited Partnership and Frank B. and Christine Wooding as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Ballymeade ANR. The decision is rendered pursuant to a vote of the Commission on July 13, 2000.

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Cape Cod Commission DRI Decision
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PROJECT DESCRIPTION

The project involves the subdivision of a 48.89 acre lot (Lot 3) in North Falmouth between Falmouth Woods Road and Sam Turner Road. The project is located within the Agricultural district (AGAA), requiring minimum 80,000 s.f. lots, and is also located within a Significant Natural Resource Area and a DEP-approved Zone II Wellhead Protection Area. The proponents propose to subdivide the property into two lots; Lot 3A with 9.47 acres and one existing single family dwelling, and Lot 3B with 39.42 acres and which is not a buildable lot under this decision but will be reviewed together with the Ballymeade Estates golf course project in the future.

PROCEDURAL HISTORY

The Ballymeade ANR was referred to the Commission by the Falmouth Planning Board on April 26, 2000. The Commission received the referral on April 27, 2000. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on June 1, 2000 at the Gus Canty Recreation Center, Falmouth, MA. The public hearing was continued and the record was left open for submission of written materials to July 13, 2000.

The subcommittee held a public meeting to deliberate on this project on July 6, 2000.

At the July 6, 2000 subcommittee meeting, the subcommittee voted unanimously to recommend to the full Commission that the project be approved as a DRI, subject to conditions. A final public hearing was held before the full Commission on July 13, 2000.

Materials submitted for the record

From the applicant:

- DRI application from CLSV Associates Limited Partnership to the Cape Cod Commission, received 5/12/00.
- Fax of letter dated May 25, 2000 from Michael J. Markoff, Attorney at Law to the Cape Cod Commission, received June 1, 2000.
- Copy of Purchase and Sales agreement signed January 12, 1999 between Frank and Christine Wooding and John Callahan, CLSV Associates Limited Partnership, received May 31, 2000.
- Revised site plan "Plan of Land prepared for CLSV Limited Partnership in Falmouth" dated March 17, 2000, revised 5/31/00, received 6/12/00.
- Fax of ANR Easement Calculations dated 6/13/00.
- Correspondence from Michael McGrath, Holmes and McGrath, Inc, to Tana Watt, Cape Cod Commission dated June 26, 2000.
- "Topographic Plan of Land prepared for CLSV Limited Partnership in Falmouth" dated January 25, 1999 and last revised 6/23/00.
- "Figure 6 Zone II Crooked Pond Well" received June 29, 2000.
- Map of wellsites, received June 29, 2000.

- Fax from Michael J. Markoff, Attorney to Tana Watt, dated and received July 5, 2000.
- Correspondence from Frank B. Wooding to Cape Cod Commission, dated July 2, 2000 and received July 5, 2000.

From Cape Cod Commission staff:

- DRI referral notification from Cape Cod Commission to Jack Callahan, CLSV Limited Partnership dated 5/1/00.
- Staff report dated 5/25/00.

From state/local officials:

- DRI referral from the Falmouth Planning Board to Cape Cod Commission dated 4/26/00.

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

The Commission heard oral testimony at the June 1, 2000 hearing from:

Frank Wooding, who stated that he believes that the open space should be the responsibility of Ballymeade, although some portion of that requirement may eventually be met from the remaining Wooding property as a result of negotiation between the Woodings and Ballymeade.

Jeanette Perry of Falmouth's Transportation Management Committee inquired what an ANR is and expressed concern over traffic.

Elizabeth Dickerson expressed concern over traffic on Sam Turner Road and about Ballymeade using the access to the Wooding property.

JURISDICTION

The proposed Ballymeade ANR qualifies as a Development of Regional Impact (DRI) under Section 3(c) of the DRI Enabling Regulations governing review of Developments of Regional Impact, which requires review of "...any development which proposes to divide parcels of land totaling 30 acres or more...".

FINDINGS

The Commission has considered the application of CLSV Associates Limited Partnership and Frank B. and Christine Wooding for the proposed Ballymeade ANR,

and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

General Findings:

G1. The project involves the subdivision of a 48.89 acre lot (Lot 3) in North Falmouth between Falmouth Woods Road and Sam Turner Road owned by Frank B. and Christine Wooding. The site is located within the Agricultural district (AGAA), requiring minimum 80,000 s.f. lots, and is also located within a Significant Natural Resource Area. The proponents propose to subdivide the property into two lots; Lot 3A with 9.47 acres and one existing single family dwelling, and Lot 3B with 39.42 acres and which is not a buildable lot under this decision but will be reviewed together with the Ballymeade Estates golf course project in the future.

G2. The Commission is currently reviewing the Ballymeade Estates project (JR99028) which is under joint Cape Cod Commission/MEPA review as an 18-hole golf course. The 39.42 acre lot (Lot 3B) that will be created by this subdivision of land is also included in the acreage that is currently under review as part of the Ballymeade Estates golf course project. The purpose of this DRI is to create a separate lot that may be conveyed to CLSV Associates Limited Partnership while retaining the use of the 9.47 acre parcel for residential use. The ANR plan notes that Lot 3B is not a buildable lot.

The scoping letter that the Commission submitted to Massachusetts Environmental Policy Act (MEPA) Unit on the Ballymeade Estates golf course project identified issues that will be examined during review of that project, including water resources, transportation, natural resources and open space, solid and hazardous waste management, community character, historic preservation and economic development.

G3. The Commission is concerned that the potential for future one lot subdivision proposals on Lots 3A and 3B may result in the gradual accumulation of adverse impacts to the resources protected by the Act over time. The Commission finds that any future development of Lot 3A with the exception of additions or expansion of the existing dwelling and detached structures, such as a swimming pool, tennis court, shed, etc., which are typical on a multi-acre single-home residential parcel, and/or any future development of Lot 3B will be reviewed as a DRI, and will need to meet the minimum performance standards of the Regional Policy Plan (RPP) in effect at the time of such future DRI filing. The cumulative impacts on the two lots will be considered together.

G4. The Commission finds that the Ballymeade ANR proposal to subdivide a 48.89 acre lot for the purpose of maintaining an existing single family house lot and creating a second undeveloped lot does not pose a significant impact on the resources protected by the Cape Cod Commission Act, and finds that the mitigation required of this project for impacts to traffic, water, open space, affordable housing, or other interests protected by the Cape Cod Commission Act may be provided prior to any development on Lot 3B, or the commencement of any development which includes Lot 3B.

G5. According to the Falmouth Town Planner, the project is consistent with the Regional Policy Plan as well as Falmouth's Local Comprehensive Plan and development bylaws. The Town Planner suggested that additional language be included on the ANR plan as follows: "Any endorsements made under the subdivision control law will be made without regard to zoning and buildability and subject to other notations thereon."

G6. According to a letter prepared by Michael J. Markoff, Attorney at Law, and a Purchase and Sales Agreement signed by the Frank B. and Christine Wooding and John Callahan of CLSV Associates Limited Partnership, Frank and Christine Wooding (owners of the 48.89 acre lot) knowingly give consent for CLSV Associates Limited Partnership to pursue the subdivision of Lot 3.

G7. The Cape Cod Commission finds that the probable benefits outweigh the probable detriments of the project.

Water Resources Findings:

WR1. Water Resource issues related to Lot 3B will be reviewed as part of the Ballymeade Estates golf course project (JR99028). If the proposed use of the site changes or the golf course project does not go forward, any other future significant development of the 39.42 acre parcel would require DRI review.

WR2. The Commission recognizes that Lot 3A has the potential for further subdivision and development. Of particular concern to the Commission is the potential for this to exceed the Cape-wide nitrogen loading standard of 5 ppm nitrogen (MPS 2.1.1.1). Therefore, if any future development is proposed for Lot 3A with the exception of additions or expansion of the existing dwelling and detached structures such as a swimming pool, tennis court, shed, etc. which are typical on a multi-acre single-home residential parcel, the project should be reviewed as a DRI.

WR3. The Commission recognizes the potential for further subdivision of Lot 3A. With respect to this lot, Minimum Performance Standard (MPS) 2.1.1.6 requires that Developments of Regional Impact dispose of stormwater on-site and that stormwater management Best Management Practices be used. In addition, MPS 2.1.1.3 requires that septic systems shall be sited to avoid contamination of existing and proposed wells. All proposed and existing wells on properties within 400 feet of the project would need to be identified so that the impact of development on these wells could be assessed.

Transportation Findings:

T1. Traffic impacts for Developments of Regional Impact (DRIs) are based on the net increase in vehicle traffic. The trip generation for this project is based on zero net increase in vehicle traffic and therefore is below the threshold of 25 vehicle trips requiring analysis and mitigation under MPS 4.1.1.1 of the RPP (transportation) due to the following:

- At this time, no new development is scheduled for newly created Lot 3A and Lot 3B.
- Lot 3B will be incorporated into the Ballymeade Estates golf course DRI.

- If newly created Lot 3B is not incorporated into the Ballymeade Estates golf course DRI, any other future development of the 39.42 acre parcel would require DRI review.

T2. The Commission is also concerned about the transportation impacts of future development of Lot 3A with respect to safety, access management and trip reduction. If any future development of Lot 3A is proposed with the exception of additions or expansion of the existing dwelling and detached structures, such as a swimming pool, shed, etc., which are typical on a multi-acre single-home residential parcel, the project should be reviewed as a DRI.

Natural Resources Findings:

NR1 The parcel is entirely within a Significant Natural Resources Area (unfragmented forest habitat). The site is not located within estimated habitat of rare species as mapped by the Massachusetts Natural Heritage and Endangered Species Program. No wetlands are shown on the plan, however it is not known at this time whether any exist on the site.

NR2. A natural resources inventory has not been conducted onsite in conformance with the Regional Policy Plans' MPS 2.5.1.3.

NR3. Natural resources impacts related to the development of Lot 3B will be reviewed as part of the Ballymeade Estates golf course project (JR99028) or as part of the DRI review of any other future development proposed for the 39.42 acre parcel.

Open Space Findings:

OS1. The open space requirement for this project is 65% of the total upland area of the parcel due to its location within a Significant Natural Resource Area (SNRA), in accordance with MPS 2.5.1.3. Based on the 48.89 acre project area and excluding 2.25 acres of Commonwealth Electric Company easement, the open space requirement is 30.32 acres. Providing the required amount of open space will be the responsibility of CLSV Associates Limited Partnership.

OS2. The location of the open space should be determined in conjunction with a completed Natural Resources Inventory and is required by the RPP to be within a Significant Natural Resources Area. The open space should consist of unfragmented forest habitat that is designed to be contiguous and interconnecting with other open space. The open space should be provided in accordance with Minimum Performance Standard 2.5.1.3 of the Regional Policy Plan; it must be located on site or off-site within a Significant Natural Resource Area. In the alternative, a cash contribution may be made for the purchase of off-site open space that meets these requirements.

CONCLUSION

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

- that the probable benefits outweigh the probable detriments of the project;
- that, as conditioned, this division of land does not create impacts to the resources protected by the Cape Cod Commission Act;

- that the project as proposed and conditioned complies with the RPP, as noted in the findings;
- that the project complies with local development bylaws and the Falmouth Local Comprehensive Plan.

The Commission hereby approves with conditions the application of CLSV Associates Limited Partnership and Frank B. and Christine Wooding for the proposed Ballymeade ANR as a Development of Regional Impact, provided the following conditions are met:

CONDITIONS

General Conditions:

G1. The site shall be divided consistent with the proposed subdivision plan titled "Plan of Land Prepared for CLSV Limited Partnership in Falmouth." dated March 17, 2000 and revised 5/31/00, of Lot 3 into Lot 3A (9.47 acres and an existing single family residence) and Lot 3B (39.42 acres and not a buildable lot).

G2. This DRI decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of the written decision.

G3. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this decision.

G4. The applicants shall obtain all state and local permits for the proposed project.

G5. No development work, as the term "development" is defined in the Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

G6. The applicants shall forward to the Commission, forthwith, copies of any and all permits and approvals issued in relation to this project and issued subsequent to this decision. A copy of final plans approved by the Falmouth Planning Board shall be submitted to the Commission upon receipt of local approvals.

G7. Any future development of Lot 3A with the exception of additions or expansion of the existing dwelling and detached structures, such as a swimming pool, tennis court, shed, etc., which are typical on a multi-acre single-home residential parcel, and/or any future development of Lot 3B shall be subject to Cape Cod Commission DRI review for consistency with the RPP in effect at the time future development is proposed, including impacts pertaining to traffic, water, open space, natural resources or other interests protected by the Cape Cod Commission Act. The cumulative impacts of development on these two lots shall be considered together.

Natural Resources Conditions:

NR1. A Natural Resources Inventory shall be conducted prior to any development on Lot 3B, or the commencement of any development which includes Lot 3B. This natural resources inventory shall be used to help determine the appropriate location for the required open space. The cost of the Natural Resources Inventory shall be the responsibility of CLSV Associates Limited Partnership.

Open Space Conditions:

OS1. CLSV Associates Limited Partnership shall provide the required amount of open space for the project.

OS2. 30.32 acres of open space shall be permanently restricted prior to any development of or further division of Lot 3B. The location of the open space shall be determined in conjunction with a completed Natural Resources Inventory and is required by the RPP to be within a Significant Natural Resources Area. The open space shall consist of unfragmented forest habitat that is designed to be contiguous and interconnecting with other open space. The open space should be provided in accordance with Minimum Performance Standard 2.5.1.3 of the Regional Policy Plan; it must be located on site or off-site within a Significant Natural Resource Area. In the alternative, a cash contribution may be made for the purchase of off-site open space that meets these requirements.

OS3. Prior to any development on Lot 3B, or the commencement of any development which includes Lot 3B, the applicant shall identify the location of the required open space and either deed the land to the town of Falmouth for conservation purposes or to a qualified land trust, or place it under a Commission-approved permanent Chapter 184 conservation restriction. Proof of recording must be provided to the Cape Cod Commission prior to the issuance of a Certificate of Compliance for any further development of Lot 3B.

The Cape Cod Commission hereby approves with conditions the application of CLSV Associates Limited Partnership and Frank B. and Christine Wooding as a Development of Regional Impact pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended for the proposed Ballymeade ANR located in North Falmouth, MA.



Frank Shephard, Chair, Cape Cod Commission

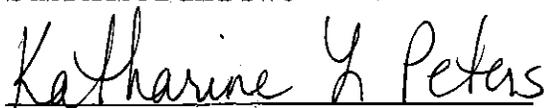
7/13/00

Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 13th day of July, 2000



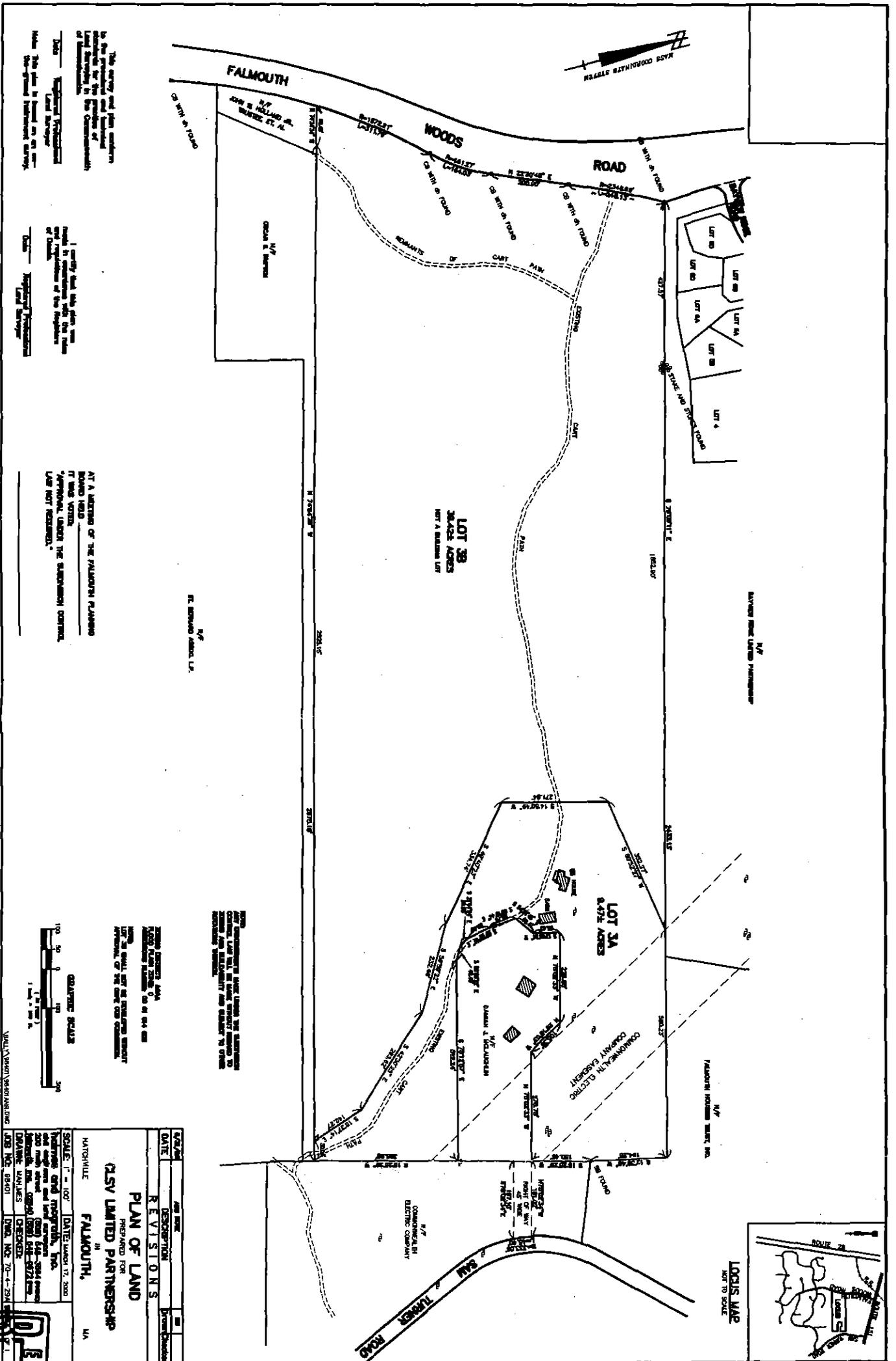
Name, Notary Public

Name, Notary Public

My commission expires:



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The survey and plan numbers shown on this plan are for the purpose of identifying the land shown on the plan and do not constitute a warranty of any kind by the Commission or its staff.

I certify that this plan was made in accordance with the laws and regulations of the State of Virginia.

AT A MEETING OF THE FALMOUTH PLANNING BOARD HELD ON _____ THIS _____ DAY OF _____ APPROVAL UNDER THE SUPERVISION CONTROL LAW NOT REQUIRED.

GRAPHIC SCALE
 1" = 100'
 1" = 200'
 1" = 300'

NOT TO SCALE
 THIS PLAN IS FOR INFORMATION ONLY AND DOES NOT CONSTITUTE A WARRANTY OF ANY KIND BY THE COMMISSION OR ITS STAFF.

DATE	DESCRIPTION	BY
DATE	DESCRIPTION	BY

SCALE: 1" = 100'
 DATE: March 17, 2000
 PREPARED FOR: RSV UNITED PARTNERSHIP
 IN: FALMOUTH, VA
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 JOB NO: 08401
 DWG. NO: 70-4-29A

RECEIVED
 JUN 12 2000
 CAPE COD COMMISSION

FINAL PLAN APPROVED
 BY THE CAPE COD COMMISSION
 DATE: July 13, 2000