



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 August 19, 2004
To Industrial Communications and Electronics, Inc.
From Cape Cod Commission
Project ICE Telecommunications Tower
Sagamore Beach, MA
Project # CCC#TR99016
Applicant Industrial Communications and Electronics, Inc.
Book/Page 1039/449+450

MODIFICATION TO THE DECISION OF THE CAPE COD COMMISSION

INTRODUCTION

The applicant, Industrial Communications and Electronics, Inc. (IC&E) has requested a modification to the Cape Cod Commission's (Commission) Development of Regional Impact (DRI) decision for this project, dated December 16, 1999. The modification pertains to the method in which the applicant will provide the required 2.73 acres of open space. The applicant originally proposed to meet the requirement by providing open space on the site and a cash contribution. The applicant is now proposing to provide the open space off site on a parcel of land in Bournedale adjacent to 151 Herring Pond Road that is part of a lot created through the subdivision of land known as Herring River Lots (approved as a DRI Exemption – EX 20066). This parcel of land is shown on the attached plan of land as Lot 1, consisting of three acres. The applicant would therefore not submit the cash contribution nor place a conservation restriction on the site of the tower. The Commission's Regulatory Committee approved this modification on July 6, 2004.

JURISDICTION

The proposed project qualifies as a Development of Regional Impact under Chapter A, Section 3(i) of the Commission's Regulations of General Application which states that "construction of any wireless communication tower exceeding thirty-five (35) feet in height from the natural grade of the site on which it is located" is presumed to be a Development of Regional Impact.



PROJECT DESCRIPTION

The applicant, IC&E, was granted a DRI approval for a telecommunications tower with a height of 200 feet on a 4.2 acre lot located between Route 3A and Old Plymouth Road in Sagamore Beach, MA, identified as Lot 20.1 on Bourne Assessors Map 3. ICE provides specialized mobile radio service through its subsidiary, Industrial Wireless Technologies. The tower has been constructed and has been in operation without a final certificate of compliance. The project also includes a 2,332 sq ft equipment shelter with seven rental units, four parking spaces, and site access from Route 3A.

MATERIALS SUBMITTED TO THE RECORD

Proponent submittals:

1. Letter dated June 17, 2004 from Donald C. Cody, dated June 17, 2004 to the Regulatory Committee requesting the modification to the decision.
2. Documents supporting the modification request submitted by Donald C. Cody at the Regulatory Committee meeting on July 6, 2004.

Commission submittals:

3. Commission staff report dated June 29, 2004.

FINDINGS

1. The original decision included the following finding:

“The project site is located within a significant natural resource area (SNRA), and therefore is required to provide 65% of the total upland area, or 2.73 acres, as permanently protected open space either through conservation restriction or donation to a conservation organization approved by the Commission. It is appropriate that open space should be configured on the lot in such a manner as to provide permanent buffers to Old Plymouth Road, a scenic road as designated by the Town of Bourne.”

2. The applicant is now proposing to provide the open space off site on a parcel of land in Bournedale adjacent to 151 Herring Pond Road that is part of a lot created through the subdivision of land known as Herring River Lots (approved as a DRI Exemption – EX 20066). This parcel of land, shown on the attached plan of land as Lot 1, consists of three acres. This land shall be donated to the Town of Bourne for permanently protected open space. The Commission finds that the alternative parcel of land now being presented by the applicant for open space is a suitable alternative open space proposal.

CONDITIONS

1. Delete the following condition from the original decision:

“Prior to the issuance of a Certificate of Compliance, the proponent shall provide the Cape Cod Commission with 2.73 acres of open space permanently protected either through deeding the land to a nonprofit conservation trust or through conservation restriction consistent with Massachusetts General Laws Chapter 184, Section 31-33, and accompanying plan to be approved by Commission counsel and recorded at the Registry of Deeds or Registry District of the Land Court on the lot identified on Town of Bourne Assessors Map 3 as Lot 20.1. Open space shall be configured on the lot in such a manner as to provide at least 40 ft permanent

buffers to Old Plymouth Road, a scenic road, and shall be approved by Commission staff. Proof of recording of the open space shall be provided to the Commission prior to the issuance of a Certificate of Compliance.

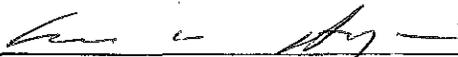
Alternatively, prior to the issuance of a Certificate of Compliance, the proponent shall provide at least 1.73 acres of permanently protected open space onsite by either of the two methods of protection described above, and shall make a \$89,500 cash contribution to be held by the Cape Cod Commission in escrow for the purpose of acquiring and permanently protecting open space within Sagamore Beach, MA. The 1.73 acres of open space onsite shall be configured in such a way as to provide at least a 40 ft buffer to Old Plymouth Road along the length of the subject property, and the open space configuration shall be approved by Commission staff. The Commission's Executive Director shall release the \$89,500 cash contribution to the Town of Bourne or the town's designee for expenditure without further appropriation once a suitable parcel has been identified and is the subject of a purchase and sale agreement for conservation purposes."

2. Add the following condition to the decision:

The applicant shall permanently protect the three acres identified as Lot 1 on the attached plan of land, titled Exhibit "A", drawn by Rick on May 21, 2004 through donation to the town of Bourne Conservation Commission. The form and content of the deed shall be approved by Cape Cod Commission Counsel prior to recording at the Registry of Deeds.

CONCLUSION

THE COMMISSION HEREBY APPROVES THE MODIFICATION BY A MAJORITY VOTE OF THE REGULATORY COMMITTEE. A CERTIFICATE OF COMPLIANCE WILL BE ISSUED FOLLOWING THE CONVEYANCE OF THE OPEN SPACE PARCEL TO THE TOWN OF BOURNE.



Frank Hogan, Regulatory Committee Chair

8/30/04

Date

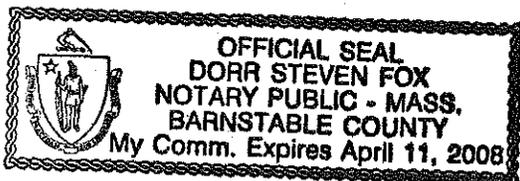
Commonwealth of Massachusetts
Barnstable, ss.

On this 30th day of August, 2004, before me personally appeared Frank Hogan, to be known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

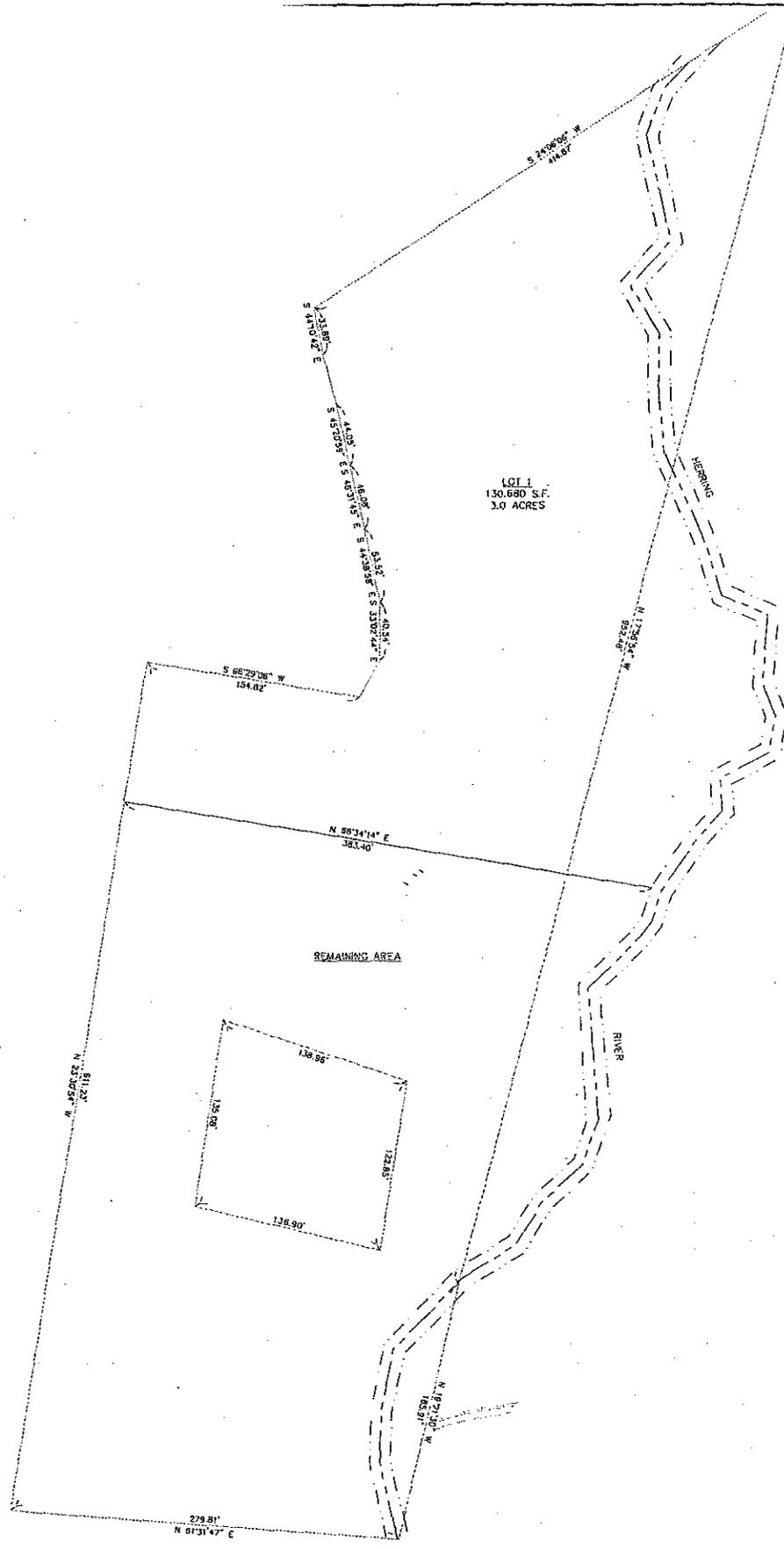


Notary Public

My commission expires:

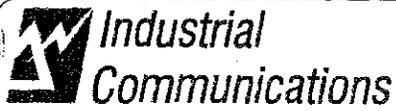


OPTION 2



P.H.

EXHIBIT

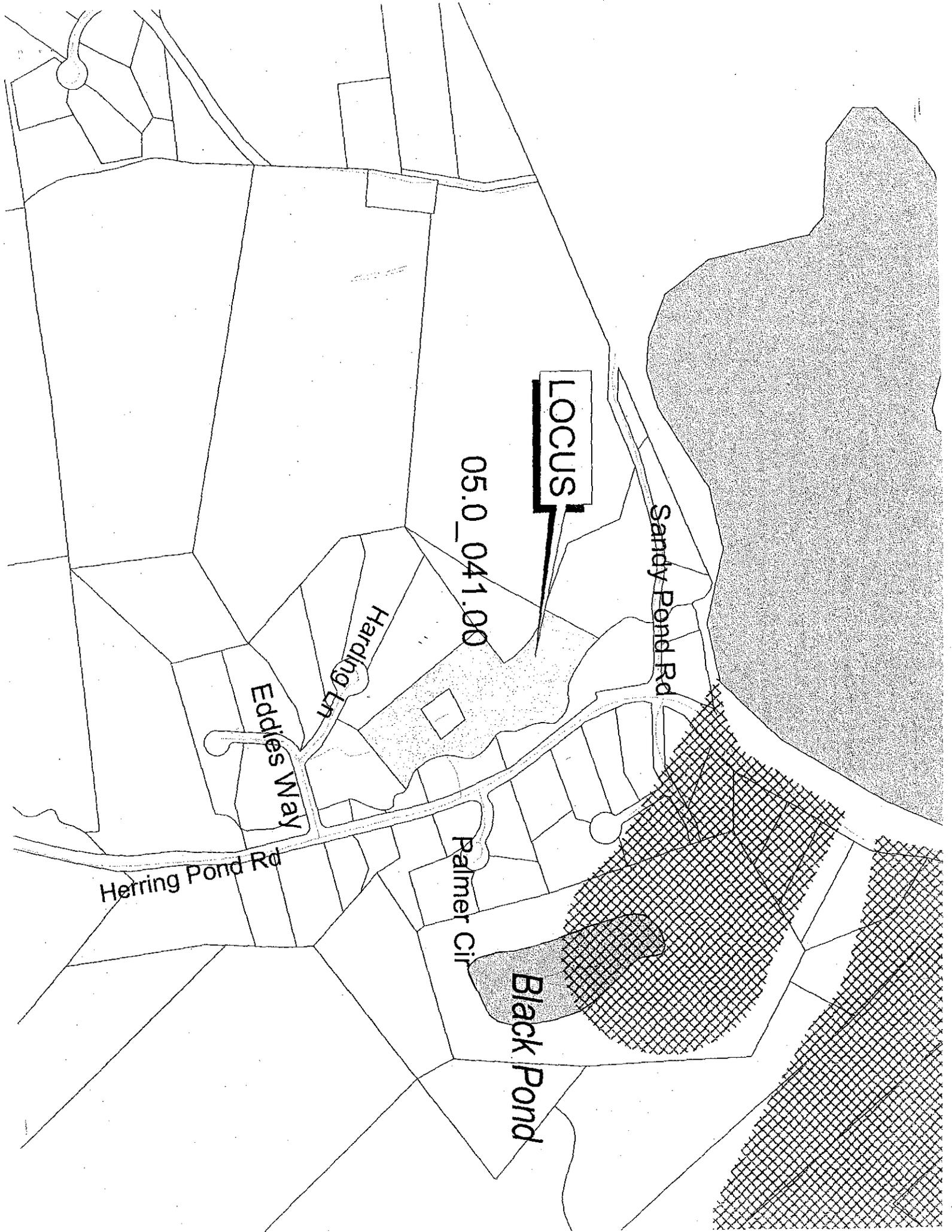


40 LONE STREET
 MARSHFIELD, MA 02050
 781-837-7000 FAX 781-837-4000

DATE DRAWN:
 May 21, 2004
 DRAWN BY:
 Rick
 APPROVED BY:
 Don Coody
 REV. DATE:

HERRING POND ROAD
 BOURNE, MA

EXHIBIT "A"



LOCUS

05.0_041.00

Sandy Pond Rd

Harding Ln

Eddies Way

Herring Pond Rd

Palmer Cir

Black Pond