



THE CONOMO POINT PLANNING COMMITTEE REPORT  
OF STUDIES, FINDINGS AND RECOMMENDATIONS FOR  
PRESENT AND FUTURE USES OF TOWN-OWNED LAND  
AT CONOMO POINT.

PRESENTED TO THE CITIZENS OF THE TOWN OF ESSEX,  
MASSACHUSETTS, APRIL 12, 1999.

Essex Citizens Who have Served  
on the Conomo Point Planning Committee.

- Tudy Bartlett (Chairman 1994-97, resigned 1997)  
\*Charles Burnham (Secretary 1995-99)  
John Cushing (Resigned 1997)  
\*Margaret Davies  
\*Alfred Dente (Representitive of the Finance Committee. Joined 1998)  
Jerome French (Resigned 1995)  
\*David Folsom (Member, Board of Selectmen, CPPC Chairman 1999)  
\*Gilbert Guerin  
Lisa Lambert (resigned 1995)  
\*David Landry  
Michael Matheson (Resigned 1997)  
\*Edward Neal (Chairman, Board of Health)  
\*Anthony Palumbo (Secretary 1994-95)  
\*Sheldon Pennoyer (Representitive of the Planning Board. Joined 1997)  
\*Peter Perrigo (Member, Conservation Commission)  
\*Ralph Pino (Representitive of the Board of Assessors. Joined 1997)  
Raymond Randall (Joined 1997, resigned 1998)  
Michael Stroman (Chairman 1994, resigned 1994)  
\*James Witham (Chairman 1997-1998)  
\* Present members

## PREFACE

Voters in attendance at the 1999 Essex Annual Town Meeting will be asked to consider no less than eight articles concerning future use of town-owned land at Conomo Point. Four of those articles are placed on the warrant at the request of the Conomo Point Planning Committee (CPPC).

## BACKGROUND

Since the late 1800's the Town of Essex has leased lots at Conomo Point to tenants who wished to have summer cottages there. At the present time, there are 106 such leases. While most remain seasonal, approximately 28 have been permitted year-round occupancy after many years of opposition from the town. All current Conomo leases expire in the year 2011 — the product of a 1991 agreement to settle a class action lawsuit brought against the Town by the tenants. While the arguments in the four-year lawsuit were complex — touching on many aspects of the tenant/landlord relationship — the settlement was simple.

- Tenants got a new ten-year lease with an option for one additional ten-year renewal.
- Rents increased to ten times the rental rate in effect at the time of settlement but remained well below market rate.
- A committee would be appointed by the town to develop a plan for the long-term disposition of its land at Conomo Point.

## COMMITTEE ESTABLISHMENT

There have been four attempts to impanel a long range planning committee. The first three became mired in politics or were disbanded because their membership was predominantly Conomo Point tenants. The fourth, the present Conomo Point Planning Committee, was appointed by the Essex annual town meeting in May 1994. The committee's purpose is to study issues related to town-owned land at Conomo Point and to draft articles for action at future town meetings based on the Committee's findings and recommendations. The article creating the committee was placed on the warrant by petition and specifically limits membership to citizens who have no direct financial interest in Conomo Point. Membership was appointed from the town meeting floor, thereby avoiding previous problems with Selectmen's appointments.

## MEMBERSHIP

Seventeen citizens stood at the 1994 Town Meeting and were appointed to the new Conomo Point Planning Committee including three with known connections to Conomo Point. One chose not to serve and was never sworn in. Another, whose family had owned a cottage at Conomo Point during his childhood, has been an active member with a viewpoint that has been invaluable. The third, who insisted that he had no direct financial interest at Conomo Point, is married to a Conomo Point cottage owner and was appointed in 1991 to represent the tenants on a class action steering committee created to attempt to settle the *Pingree v. Town of Essex* lawsuit. Since his name was not challenged at town meeting, it was later voted that the committee would not challenge his membership. He served on the Conomo Point Planning Committee for three years, resigning in 1997 when the Committee recommended to the Annual Town Meeting that the town keep some of the land at Conomo Point to improve public access and to protect the environment. Recently, this former member signed a document identifying himself as a leaseholder at Conomo Point and authorizing the Fair Solutions Committee to "represent his interest in purchasing his leased lot".

## SCHEDULE AND OPERATIONS

Since its establishment, the CPPC has held regularly scheduled meetings on the second and fourth Wednesday of each month. The committee usually met once during the months of June, July and August and on just the second Wednesday of November and December.

All regular and special meetings were legally posted and open to the public. Attendance by Conomo residents was fairly regular. Additionally, as has been noted, the husband of a Conomo cottage owner served on the committee for the first three years. After the 1997 town meeting, all regular meetings were tape recorded by tenants in attendance.

From our first meeting, some tenants and certain other individuals saw the occasion of our bimonthly meetings as a chance to voice their opposition to the CPPC, its founding and/or its charge. Since this disruptive behavior impeded the work of the Committee, a procedure was adopted whereby the committee would receive public comment during a designated comment period and would exclude discussion and comment from the public during the remainder of the meeting. Tenants regularly participated in the public comment periods held at each meeting and the committee listened carefully to their comments.

There were a few instances where portions of the meeting were held in executive session to discuss legal strategy related to threatened litigation as permitted by the Open Meeting Law, G.L.c. 39, s. 23B, Section VII: Exceptions 3.

## **ORGANIZATION AND RECORDS**

All members were duly sworn by Town Clerk. Minutes of all meetings, along with correspondence and reports, have been filed at Town Hall in a timely fashion and have been available for public viewing under the administration of the Selectman's secretary or the CPPC corresponding secretary.

In recognition of the hard work of prior committees, it was voted that their records and reports would be included in our files. Further, it was also voted to include reports and memorandums from Conomo tenants that had been presented to prior committees.

In 1997, the committee was reorganized by vote of town meeting to establish membership at 12. Further, it was voted that the Planning Board, the Board of Assessors and the Finance Committee should each have a representative on the CPPC.

## **STUDY METHODOLOGY**

By the end of the first summer, the committee began to study all the options open to the town and the implications of each of them. The options, or scenarios studied were as follows:

- 1# SELL ALL THE LEASED LOTS
- #2. SELL SOME OF LEASED LOTS, KEEP SOME FOR TOWN
- #3a. SELL NO LEASED PROPERTY – KEEP ALL FOR TOWN
- #3b. SELL NONE OF LAND – CONTINUE SOME LEASES.
- #4. SELL ALL OF POINT
- 5# GRANT LIFE TENANCY

Debate was facilitated by the use of "T-Charts" comparing the "Pros & Cons" of each Scenario. As areas which needed further study were identified, individual members were assigned to gather information and report back to the committee. In most cases, questions were directed (or assigned for further study) to individual members with topical expertise (Board of Health questions were directed to members on BOH for example). In this regard, the committee was fortunate to have committed participation of members who have served, or are currently serving, on other boards and committees including the Board of Selectmen (2), Board of Health (2), Board of Assessors (2), Finance Committee (2), Personnel Board, Planning Board, Appeals Board, Conservation Commission (2), Historical Commission and Bicentennial Committee.

## **PUBLIC FORUMS**

The committee has conducted two Public Forums. The first was held on August 22, 1996. It was very well attended by Conomo Tenants. Attendance by non-Pointers was disappointing, however.

A second Public Forum was held on April 28, 1998 to present an update on the committee's findings and to get feedback from the public. Again, with the exception of a few individuals, most in attendance were Conomo Point tenants.

## **MEETINGS WITH TOWN BOARDS**

In February and March of 1998, the committee met with the Essex Planning Board, the Conservation Commission and the Essex DPW Commissioners to present our findings and to request input from each board. It should also be noted for the record, that the Conservation Commission, Planning Board, Board of Selectmen and the Health Board all are represented in the CPPC's membership.

## **SITE VISITS**

The committee held several legally posted site visits to Conomo Point. In May of 1995 and again on December 11, 1997, the committee met with representatives of The Massachusetts Coastal Zone Management for walks around Conomo Point.

Committee members also made visits to neighboring towns to study beach and waterfront facilities.

## **REPORTS AND STUDIES**

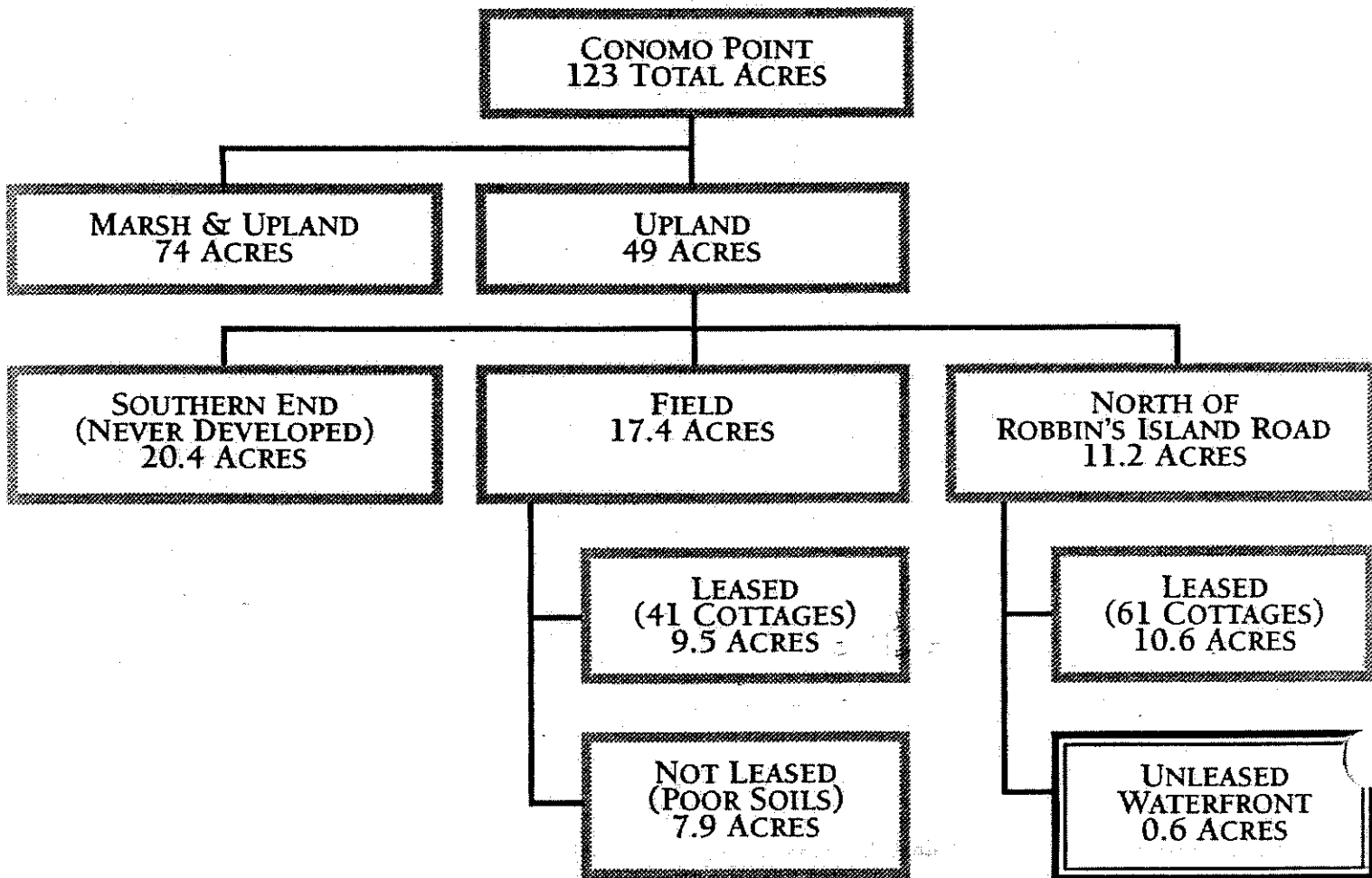
Early in 1995, the committee presented to the selectmen a rebuttal of a Conomo Point Association memorandum which argued that historical documents in their possession were proof of tenant's claims to ownership of town piers at Front Beach. That rebuttal was later expanded into a history of Conomo Point that was mailed by the committee to Essex citizens just prior to town meeting in 1997.

In 1998, members of the committee presented "A Comparative Study of Town-Owned Waterfront in Essex and Neighboring Communities. This year-long assessment of town-owned waterfront facilities included interviews with town officials and the general public. It involved site visits, research and photography, the collection and study of reports, regulations, maps, and fee schedules.

Through this study, the CPPC discovered the following key facts:

1. Essex is the only community between Boston and the New Hampshire line with salt water shorelines that does not offer its citizens recreational facilities.
2. Full public access requires public toilets and changing rooms.
3. Full public access can only be achieved through the creation of open areas clearly separating public & private use.
4. All neighboring Cape Ann communities manage their waterfront at a profit.
5. Beverly, Manchester, Gloucester and Rockport are actively seeking to expand Open Space and Coastal Access.
6. Essex is the only Cape Ann community seriously contemplating whether it should sell waterfront it already owns.
7. The only town-owned waterfront that is not currently leased, measures just over a half-acre in size
8. The only way citizens of Essex can use their 1/2 acre of waterfront at Conomo Point is to park their car in one of the few spaces available at Clammer's Beach and carry your things a fair distance on Front Road. Along the way, on the left, are the porches and front steps of at least ten cottages which are set very close to the edge of this narrow, one way road. To the right is the town's 1/2 acre waterfront, a long, narrow strip of grass delineated by the road and a stone breakwater which averages around four feet in height.

**BREAKDOWN OF CONOMO POINT FROM ASSESSOR'S MAPS, DATA AND AERIAL PHOTOS.**



(Waterfront = Grassy area between road and breakwater, fire lane, Clammer's & Front Beach)

## TOWN MEETING ARTICLES

At the 1995 Annual Town Meeting, it was voted to adopt the committee's recommendations for changes to the Bylaws describing the duties of the Conomo Point Commissioners.

In 1997, at the largest town meeting in Essex history, voters agreed with the CPPC recommendation not to renew the current Conomo leases which expire in 2011. Voters also agreed, by a margin of three to two, to direct this committee to devise a plan that would permit the sale of part of the Point while keeping portions for increased public access to the waterfront and to ensure environmental protection.

At that same town meeting, the newly formed Fair Solutions Committee, purporting to represent the majority of the tenants at Conomo, proposed that the town instruct the Selectman to petition the General Court for a special act enabling the town to sell all the leased lots to the existing tenants. After long debate, their article was indefinitely tabled.

## CONCLUSIONS

### COASTAL ACCESS ISSUES

After long study, the Conomo Point Planning Committee has come to the conclusion that it is in the best interest of the town to increase public access to the waterfront at Conomo Point.

### WHAT IS COASTAL ACCESS?

The following definition of Coastal Access has been posted on The Massachusetts Department of Environmental Management's WebPage.

"Coastal Access is people reaching the shoreline—physically, visually, and psychologically. This may mean different things to different people, for example: a sandy beach for a beach-goer, a rocky shoreline for a walker, an overlook for a picnicker, a boat launch for a sailor, a pathway for a clammer, a parking lot for a visitor, a sign and a map for an out-of-towner, a pier for a commercial fisherman, a coastal view for an artist."

The CPPC has endorsed this definition because it so clearly illustrates the potential benefits of increased access at Conomo Point for all Essex citizens.

The Report of the Open Space Committee, released in 1997, indicated that there is a strong local desire for increased public access to the waterfront and for open space in general. 60% of the respondents to that committee's questionnaire indicated that increased public access areas at Conomo Point for boating & swimming are the #1 priority. The Open Space report strongly supports the Conomo Point Planning Committee's findings — that Essex falls far short of fulfilling its citizen's needs.

Because the cottages at Conomo Point are so tightly sited, they dominate the waterfront and effectively restrict public use of the waterfront, the beach and boat ramps. Ease of use is thereby restricted almost exclusively to Conomo Point residents. Furthermore, there are no public toilets or bathing facilities at the Point. Full public access can only be achieved through the creation of open areas which clearly separate public and private use. There must also be provisions for public toilets and bathing facilities.

### CPPC'S COASTAL ACCESS RECOMMENDATION.

The only practical way to satisfy the town's long-term needs for increased public access to the waterfront, for all town residents, is to reclaim a significant portion of the Town owned land — all the land directly adjacent to the waterfront.

**The CPPC recommends that all lots North of Robbin's Island Road to the Narrows, including all of Robbin's Island and Beach Circle should be retained by the town for public use. — Voted 10/0, April 7, 1999.**

### WASTE WATER ISSUES

Ultimately, how much of the Point can be sold will be determined by its geology and the degree to which the soils there can support wastewater treatment. The options for treatment are further limited by the Massachusetts Department of Environmental Protection which regards Conomo Point as one parcel collectively discharging well over 10,000 gallons of waste to groundwater per day.

One option is to build a communal leaching system large enough to service 100 plus summer cottages. Such a facility would require an estimated five acre parcel. Evaluations of Point soils for just such a facility began in the spring of 1997 with nine test holes dug and paid for by Conomo residents. Upon the recommendation of Conomo Point Planning Committee, the Selectman agreed to request that the Board of Health conduct additional tests at the town's cost utilizing DPW personnel and equipment. Those soil evaluations were completed on January 26, 1998. All told, a total of 21 holes were dug and the town's Wastewater Management Sanitarian witnessed all of them. He reported finding no areas that

would support a communal system larger than two to three houses and, in his opinion, there is little likelihood of finding any other suitable locations at the Point.

Most of the cottages north of Robbin's Island Road are located within flood plains designated as Areas of Critical Environmental Concern (ACEC) by the Massachusetts Office of Environmental Affairs and by Coastal Zone Management. Those cottages that are above this plain are on solid ledge. For these reasons, the Conomo Point Planning Committee regards development in these areas using on-site waste water disposal systems to be neither fiscally nor environmentally sound.

Retention of all the cottages at Conomo Point will require construction of a central waste water collection system which would be included as part of the Town's Sewer District which is currently being defined by Phase 1 of the facility planning process.

**It is the conclusion of the CPPC that it is in the Town's best interest to collaterally reduce the number of Conomo cottages which will remain after 2011. In so doing, the Committee believes the Town will be able to lower waste water emissions such that a Centralized Collection, Treatment & Disposal System will not be required. — Voted 10/0, April 7, 1999.**

#### ENVIRONMENTAL ISSUES

Most of the cottages north of Robbin's Island Road are located within flood plains designated as Areas of Critical Environmental Concern (ACEC) by the Massachusetts Office of Environmental Affairs and by Coastal Zone Management. After long study, the Conomo Point Planning Committee has come to the conclusion that it is in the best interest of the town not to sell lots that lie within the ACEC.

Reclamation of a significant portion of the waterfront would collaterally resolve real and potential pollution problems in the Essex River and Essex Bay. Reclamation would also eliminate several cottages that were built years ago within areas that are now designated Areas of Critical Environmental Concern. Reclamation of the waterfront would also retard degradation of the marsh, which has been witnessed at the Point.

**The CPPC recommends that the town not sell any lots which are located wholly, or in part, within Areas of Critical Environmental Concern. — Voted 10/0, April 7, 1999.**

#### FINANCIAL ISSUES

During our first three years, we received many letters and proposals advocating selling all the lots from persons that would benefit by that sale. We also received several projections extolling the financial benefits to the Town of selling the lots before the leases expired and investing the proceeds.

Over the last five years, the Committee has considered all the potential outcomes for the Town's land at Conomo Point. By majority vote, the Committee decided that retaining a substantial portion of the leased lots for open space created for the benefit of all Essex residents would be a much more fiscally, environmentally and socially responsible use of this extraordinary resource than allowing it to be permanently privatized.

We have evaluated the financial benefits of selling all the leased lots thereby creating a fund which would earn interest to fund other Town projects. We have received and considered several projections of these benefits from individual tenants and tenant groups. We have also worked on our own projections with the welcome assistance of the Town Accountant and the Finance Committee. In producing its cost/benefit analysis contained herein, the Finance Committee has incorporated a conservative application of costs found in the *Growth Impact Handbook*, published by the Massachusetts Department of Communities and Development.

Based on this analysis, it should be of no surprise that all projections indicate the Town would experience a substantial financial benefit from the sale of the Point in the years immediately following the sale. Our projections indicate however, that over time, the costs of providing services to the year-round residences at Conomo Point would increase at a rate exceeding the increase in interest. These expenditures would require a substantial portion of the interest on the proceeds from the sale to offset the cost of services. Within a generation, not only would the Town have lost its waterfront, the benefits from selling all of the lots would have diminished as well.

#### COMPENSATION

As previously stated, the current Conomo Point lease is the product of a negotiated settlement of a four-year long class action lawsuit brought against the Town of Essex by its tenants. From the settlement the tenants got the right to convert cottages for year round use so-long as certain Board of Health requirements are met. Their rents increased from an average of \$60 a year, to \$600 per year. Tenants also got the stability of a new ten-year lease, with an option for an additional

ten-year renewal. As stated in the Joint Memorandum in Support of Settlement, "The residents with no leases, many of whom are elderly, are now assured of twenty years of uninterrupted occupancy".

From the settlement the Town gained, (as stated in the Joint Memorandum in Support of Settlement) "the stability of new leases as well as a revenue increase of ten times the rents existing in 1987. Moreover, the town will be released of the risk of being declared in violation of the existing leases and, perhaps, held accountable in money damages for violating the (tenants) civil rights".

From the settlement, the town also got a lease with an end point. After 2011, the town can, as the Board of Selectmen reported in 1991, "regain full control of some of its property if that is its desire".

With a new negotiated lease, tenants enjoy 20 years of stability. By agreement, they are saving an average \$3,500 per cottage, per year, over what the proposed 3% rent increase would have brought. When projected out to twenty years, each cottage owner will have saved \$70,000. Many Essex residents believe that this sum adequately compensates Conomo tenants for having to leave in 2011.

For each of the past four years there have been over 100 Conomo Point abatement cases before the Massachusetts Appellate Tax Board. In 1997, the ATB ruled in favor of the Essex assessors. That ATB ruling appealed but upheld by the Massachusetts Supreme Judicial Court.

Again in 1998, tenants appealed assessments to the ATB in Richard Condon and Patricia Condon and James C. Jones vs. Essex Board of Assessors. The grounds claimed for abatement were; 1. Absence of community septic system. 2. Absence of a proper water supply. 3. The threat of condemnation by the town. 4. Certain zoning subdivision issues. 5. "Improper comparable sales" for measure value.

Recognizing that the cost of *threatened* future appeals was far greater than the *actual* loss in abatements, the assessors granted all tenants a 30% abatement on the value of leased land for remaining lease term. In exchange, the tenants have agreed they "will not file for abatement with respect to Board's assessed Land Value for Remaining Lease Term".

As a result of this negotiated agreement, Conomo land taxes have been reduced an average of \$570 per lot, per year until the end of the lease in 2011 for a total of around \$7,500 per lot.

**The CPPC believes it is in the best interest of the town to honor the 1991 Settlement. For those parcels of land to be retained by the Town, the CPPC recommends that twenty years of low rent be recognized as full, fair and adequate compensation to tenants for having to leave their cottages in 2011. — Voted 10/0, April 7, 1999.**

#### LEGAL ISSUES

The Town of Essex has struggled for many years to regain some control of its waterfront at Conomo Point. Conomo tenants have a long history of resistance to those efforts. There have been repeated lawsuits and actions over rent, year-round conversions and Chapter 91 Licenses. Today, they continue to counter all investigation of the town's options with threats of lawsuits. Recent tenant proposals, documents and public comments have indicated a willingness to litigate should the town decide not to sell *all* the lots to tenants and to force the town to sell now rather than at the end of the lease term.

**The CPPC believes it is in the best interest of the town to honor the intent of the 1991 Settlement. We strongly recommend the town resolve not to sell Conomo Point lots before the lease expires in 2011. — Voted 10/1, April 7, 1999.**