



# Truro Planning Board Agenda

## Remote Zoom Meeting

Wednesday, November 15, 2023 – 5:00 pm

[www.truro-ma.gov](http://www.truro-ma.gov)

**Join the meeting from your computer, tablet or smartphone:**

**<https://us02web.zoom.us/j/82180192869>**

**Dial in: +1-646-931-3860 or +1-305-224-1968**

**Meeting ID: 821 8019 2869**      **Passcode: 691893**

### **Open Meeting**

This will be a remote public meeting. Citizens can view the meeting on Channel 8 in Truro and on the web on the "Truro TV Channel 8" button under "Helpful Links" on the homepage of the Town of Truro website ([www.truro-ma.gov](http://www.truro-ma.gov)). Click on the green "Watch" button in the upper right corner of the page. Please note that there may be a slight delay (approx. 15-30 seconds) between the meeting and the television broadcast/live stream.

Citizens can join the meeting to listen and provide public comment by entering the meeting link; clicking on the agenda's highlighted link; clicking on the meeting date in the Event Calendar; or by calling in toll free. Citizens will be muted upon entering the meeting until the public comment portion of the hearing. If you are joining the meeting while watching the television broadcast/live stream, please lower or mute the volume on your computer or television during public comment so that you may be heard clearly. Citizens may also provide written comment via postal mail or by emailing Liz Sturdy, Planning Department Administrator, at [esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov).

### **Public Comment Period**

The Commonwealth's Open Meeting Law limits any discussion by members of the Board of an issue raised to whether that issue should be placed on a future agenda. Speakers are limited to no more than 5 minutes.

1. **Planner Report**
2. **Chair Report**
3. **Minutes** – October 4, 2023

### **Temporary Sign Permit Application**

**Marisa Picariello – Payomet Performing Arts Center** for two (2) signs, 48" x 36", to be located on South Highland exit off Route 6E and on Shore Road exit off Route 6W for events October, November, and December.

### **Board Action/Review**

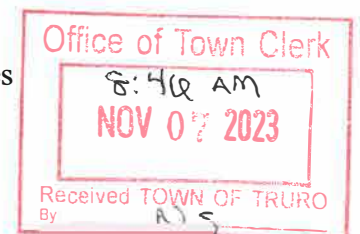
- ◆ Preliminary Subdivision – 9B Benson Road, Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater, Trustees

### **Board Discussion**

- ◆ Memo from Jarrod Cabral, Public Works Director, re: South Highland Road Data
- ◆ Temporary Sign Permits
- ◆ Planning Board Budget Request for FY2025
- ◆ Planning Board priorities for possible 2024 ATM zoning bylaw changes

**Next Meeting:**      Wednesday, December 6, 2023 at 5:00 pm

### **Adjourn**





# TOWN OF TRURO

## PLANNING BOARD

Meeting Minutes

October 4, 2023 – 5:00 pm

### REMOTE PLANNING BOARD MEETING

**Members Present (Quorum):** Rich Roberts (Chair); Anne Greenbaum (Vice Chair); Jack Riemer (Clerk); Paul Kiernan; Ellery Althaus; Caitlin Townsend; Virginia Frazier

**Members Absent:**

**Other Participants:** Town Planner/Land Use Counsel Barbara Carboni; Chair of the Truro Housing Authority Kevin Grunwald; Vice Chair of the Truro Housing Authority Betty Gallo; Brian Boyle (Truro Resident); Ron Fichtner (Truro Resident); Michael Forgione (Truro Resident)

Remote meeting convened at 5:00 pm, Wednesday, October 4, 2023, by Chair Greenbaum who announced that this was a remote public meeting aired live on Truro TV Channel 18 and was being recorded. Vice Chair Greenbaum provided information as to how the public may call into the meeting or provide written comment. Members introduced themselves to the public.

**Public Comment Period**

Public comment, for items not on the agenda, was opened by Chair Roberts who recognized Mr. Boyle. Mr. Boyle commented briefly on the current housing issues as well as the Housing Production Plan (HPP) before Chair Roberts asked him to present his comments later in the meeting when the HPP will be presented by the Truro Housing Authority.

Chair Roberts recognized Member Kiernan who said that he would like to add a review of the update to the Road Survey to the agenda of a future meeting. There was no objection.

**Planner Report**

Town Planner/Land Use Counsel Carboni announced that the Pre-Town Meeting will occur tomorrow, Thursday, October 5, 2023, at the Community Center, at 5 pm. Town Planner/Land Use Counsel Carboni reported that the Walsh Property Community Planning Committee (WPCPC) and the Local Comprehensive Plan Committee (LCPC) are working hard to present their plans at Town Meeting.

**Chair Report**

Chair Roberts noted that the Fall Town Meeting will be on Saturday, October 21, 2023.

**Minutes**

Chair Roberts led the review of the minutes from July 5, 2023, for corrections or edits.



**Member Althaus made a motion to approve the minutes of July 5, 2023, as written.**

**Member Riemer seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**

**Member Townsend – Aye**

**Member Althaus – Aye**

**Member Frazier - Aye**

**Member Riemer – Aye**

**Member Kiernan – Aye**

**Chair Roberts - Aye**

**So voted, 7-0-0, motion carries.**

Chair Roberts led the review of the minutes from July 19, 2023, for corrections or edits.

**Vice Chair Greenbaum made a motion to approve the minutes of July 19, 2023, as amended.**

**Member Frazier seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**

**Member Townsend – Aye**

**Member Althaus – Aye**

**Member Frazier - Aye**

**Member Riemer – Aye**

**Member Kiernan – Aye**

**Chair Roberts - Aye**

**So voted, 7-0-0, motion carries.**

Chair Roberts led the review of the minutes from August 2, 2023, for corrections or edits.

**Member Frazier made a motion to approve the minutes of August 2, 2023, as written.**

**Member Riemer seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**

**Member Townsend – Aye**

**Member Althaus – Aye**

**Member Frazier - Aye**

**Member Riemer – Aye**

**Member Kiernan – Aye**

**Chair Roberts - Aye**

**So voted, 7-0-0, motion carries.**

Chair Roberts led the review of the minutes from August 9, 2023, for corrections or edits.

**Member Riemer made a motion to approve the minutes of August 9, 2023, as written.**

**Member Frazier seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**

**Member Townsend – Aye**

**Member Althaus – Aye**  
**Member Frazier - Aye**  
**Member Riemer – Aye**  
**Member Kiernan – Aye**  
**Chair Roberts - Aye**  
**So voted, 7-0-0, motion carries.**

Chair Roberts led the review of the minutes from August 23, 2023, for corrections or edits.

Chair Roberts announced that these minutes would not be voted on this evening pending the revision submission of the minutes of August 23, 2023. The vote on these minutes would then be added to the agenda of a future meeting.

Chair Roberts led the review of the minutes from September 13, 2023.

**Member Frazier made a motion to approve the minutes of September 13, 2023, as written.**  
**Member Riemer seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**  
**Member Townsend – Aye**  
**Member Althaus – Aye**  
**Member Frazier - Aye**  
**Member Riemer – Aye**  
**Member Kiernan – Aye**  
**Chair Roberts - Aye**  
**So voted, 7-0-0, motion carries.**

#### **Public Hearing (Continued)**

**2023-002/SPR Robert J. Martin** for property located at 100 Rt 6 (Atlas Map 55, Parcel 12). Applicant seeks Commercial Site Plan approval (selling firewood and other materials); on property located in the Seashore District.

Chair Roberts confirmed with Town Planner/Land Use Counsel Carboni that a request for a continuance had been submitted. Town Planner/Land Use Counsel Carboni added that the Applicant was scheduled to appear in front of the ZBA on October 23, 2023, and that the zoning issue needs to be resolved first.

**Member Frazier made a motion to continue the matter of 2023-003/SPR to November 1, 2023.**  
**Member Riemer seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**  
**Member Townsend – Aye**  
**Member Althaus – Aye**  
**Member Frazier - Aye**  
**Member Riemer – Aye**  
**Member Kiernan – Aye**  
**Chair Roberts - Aye**  
**So voted, 7-0-0, motion carries.**

## **Board Action/Review**

Chair Roberts recognized Chair Grunwald who presented the final version of Truro's Housing Production Plan (HPP) with input from Vice Chair Gallo. Chair Grunwald's presentation included a review of: the corrections and changes from Revision #5 of the HPP; the purpose of the HPP; and housing goals.

Chair Roberts, Chair Grunwald, Vice Chair Gallo, and the Members discussed the following highlighted topics: the definition of workforce housing (differences between federal government's definition and the Commonwealth of Massachusetts' definition); the current undetermined number of units for needed for seasonal housing and the projections starting in 2024; Truro's Subsidized Housing Inventory (SHI) that was left blank on page 65 in the HPP; and the Smart Growth Zoning District (M.G.L. 40R) and its applicability to the Walsh Property; the absence of numbers in this HPP for specific locations (i.e. Cloverleaf) and the inability to assess compliance.

Chair Roberts recognized Mr. Boyle, Mr. Fichtner, and Mr. Forgione who commented on the HPP and expressed their concerns.

Chair Roberts invited Members to express their thoughts on the HPP prior to the vote on the HPP. Vice Chair Greenbaum, Member Townsend, Member Althaus, Member Frazier, Member Kiernan, and Chair Roberts expressed their support for the HPP.

Member Riemer and Chair Roberts appreciated the hard work in the preparation of the HPP but both expressed concerns about the disconnect between the data as presented and the numerical goals as presented.

A brief discussion then ensued among the Members regarding the Members' desire to increase housing.

**Member Frazier made a motion to approve the Housing Production Plan.**

**Vice Chair Greenbaum seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**

**Member Townsend – Aye**

**Member Althaus – Aye**

**Member Frazier - Aye**

**Member Riemer – Abstained**

**Member Kiernan – Aye**

**Chair Roberts - Nay**

**So voted, 5-1-1, motion carries.**

Chair Grunwald and Vice Chair Gallo thanked the Members before departing the meeting.

Chair Roberts introduced the discussion on the proposed 2024 Planning Board Meeting Schedule and Members had no comments on this topic.

**Member Althaus made a motion to approve the 2024 Planning Board Meeting Schedule.**

**Member Frazier seconded the motion.**

**Roll Call Vote:**

**Vice Chair Greenbaum – Aye**

**Member Townsend – Aye**

**Member Althaus – Aye**

**Member Frazier - Aye**

**Member Riemer – Aye**

**Member Kiernan – Aye**

**Chair Roberts - Aye**

**So voted, 7-0-0, motion carries.**

### **Discussion of Warrant Articles**

Chair Roberts asked Members for any comments regarding the Warrant Articles and Vice Chair Greenbaum stated that she and Member Althaus will attend tomorrow evening's Pre-Town Meeting. Vice Chair Greenbaum will present the Duplex Bylaw at the Pre-Town Meeting with input from Member Althaus. Vice Chair Greenbaum confirmed that Town Planner/Land Use Counsel Carboni will present the Special Permit Bylaw at tomorrow evening's Pre-Town Meeting.

Member Riemer asked if the Warrant has been printed and Town Planner/Land Use Counsel Carboni stated that the Warrant had been submitted to the printer. Member Riemer asked that the DPW Facility Warrant Article be added to the agenda for the Planning Board meeting on October 18, 2023, and there were no objections. Following the cautionary recommendations made by Vice Chair Greenbaum and Member Kiernan, Chair Roberts concurred with them and noted that any discussion of the DPW Facility Warrant Article would be informative as to how the Article reads and why it is controversial.

Chair Roberts asked Members if they would like to discuss the recently received draft Stormwater Bylaw at the next meeting and there were no objections.

**Member Kiernan made a motion to adjourn the meeting at 6:54 pm.**

**The recording of the meeting then concluded without a second or a vote on the motion.**

Respectfully submitted,



Alexander O. Powers

Board/Committee/Commission Support Staff





## Elizabeth Sturdy

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**From:** Stephen Loffredo <sjloffredo@gmail.com>  
**Sent:** Wednesday, September 6, 2023 10:01 AM  
**To:** Elizabeth Sturdy  
**Cc:** Helen Hershkoff  
**Subject:** Comments on Fisher Road Realty Trust Subdivision Application  
**Attachments:** Fisher Trust Loffredo Comments.pdf

Dear Ms. Sturdy:

Enclosed per our conversation earlier this morning are comments on the Fisher Road Realty Trust Subdivision Application. Thank you in advance for distributing them to the members of the Planning Board. Of course feel free to contact me with any questions. Please confirm that this email and the attachment reached you.

Best regards,  
Stephen Loffredo

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**Stephen Loffredo  
Helen Hershkoff**

September 6, 2023

By Email

Town of Truro Planning Board  
c/o Liz Sturdy  
esturdy@truro-ma.gov

Re: Preliminary Subdivision Plan Application of Fisher Road Realty Trust

Dear Members of the Town of Truro Planning Board:

We are the owners of 9 Benson Road, one of the properties over which the road proposed by this Application would run. Please accept these comments to the Application for Approval of Preliminary Plan submitted by the Fisher Road Realty Trust. As we only recently received notice of the application, these comments are provisional and noncomprehensive, and we reserve the right to alter or supplement them. Should the Board wish documentation of any of the statements herein, we would be pleased to supply it. Although both of us are attorneys and law professors, we offer these comments *pro se*, as we are not admitted to practice law in the Commonwealth of Massachusetts. We have serious objections to this preliminary plan, but it is our hope that this matter can be resolved without resort to further litigation.

By way of background, this Board considered a very similar proposal by the Applicant in 2014. By Decision dated May 6, 2014, three of the four participating Board members voted to approve a substantially modified version of the proposal, including a list of mitigation measures and conditions. Though the May 2014 Decision did not take effect because it lacked four votes, we attach this Decision and related Staff Reports for the Board's convenience as we will ask that similar mitigation measures and conditions accompany any plan the Board now approves.

**1. Noncompliance with zoning regulations.**

As an initial matter, we note that Section 3.2 of the Town of Truro Rules and Regulations Governing the Subdivision of Land ("the Subdivision Regulations") prohibits the Board from approving any plan that does not "comply with applicable zoning regulations." The Applicant's preliminary plan does not satisfy this requirement because its parcel lacks frontage on a "street" as required by Truro Zoning Bylaw § 10.4 ("Street" definition) and § 50.1. At minimum, any approval of this application should provide that no construction of the roadway may begin unless and until the Applicant secures the zoning variances and other permits needed for construction of a house on its lot. The Applicant's preliminary plan depicts a roadway that will forever displace pristine, environmentally sensitive land. It will cut a broad and deep swath into a hill of rare coastal heath and result in the destruction of many mature trees and other vegetation. Whatever

else the Board may decide, we strongly urge that you not allow such environmentally destructive and irreversible actions unless and until the zoning and permitting issues are resolved. To do otherwise would risk the senseless despoiling of environmentally sensitive land and needless injury to surrounding property owners.

## **2. One single-family dwelling.**

The preliminary plan proposes the subdivision of Applicant's parcel into two lots. We do not object to the subdivision if the second lot is permanently protected from any development (for instance, by assignment to the Truro Conservation Trust). We ask that any approval of the Applicant's plan include a condition limiting development of the parcel to one single-family dwelling only. The Board's May 6, 2014 Decision included this limitation.

## **3. Failure to minimize destruction of natural landscape and environment.**

Section 3.1 of the Subdivision Regulations requires that proposed roads and lots be "developed so as to protect the natural landscape...and the natural features of the land." Section 3.3, "Respect for Natural Landscape," states that "[p]roposed roads and lot configuration should be designed with the goal of minimizing the volume for cut and fill...the area over which vegetation will be disturbed, the number of mature trees . . . and specimen trees removed... Consideration should be shown for the protection of natural features, such as large trees [and] scenic views..."

The Applicant's preliminary plan does nothing to minimize its devastating impact on these important resources. To the contrary, the proposed road would require a massive cut and fill, obliterating a 100-plus-foot-wide swath of fragile coastal heath and destroying everything in its path, including the unnecessary destruction of many large, mature pine and oak trees. The proposed design is incompatible with Section 3.3 of the Regulations and with the aesthetic of this area. Although not depicted on the plans, these dramatic land alterations would also likely mandate hundreds of feet of guardrails. Not only does the proposed design dramatically and detrimentally impact the scenic views from the abutters' properties, it also elevates the proposed driveway to an unsafe height. Applicant's current proposal (at a 9% grade) would result in even more violence to the natural landscape than its 2014 proposal (at a 10% grade), which our engineer, Bob Perry of Cape Cod Engineering, Inc., described as follows:

A review of the [2014] plan shows accommodating a 10% max. grade requires a massive earth fill in the valley as it passes through STA 2+00 to 3+00. The fill lifts the route surface a maximum of 8 ft. above the natural ground elevation, an unsafe condition on a narrow way with or without guardrails. The resulting limit of clearing and fill slope is 90 ft. wide

[C]arving the proposed route into the hill owned by the Truro Conservation Trust results in an approximate 150 ft. wide earth cut with steep side slopes. For comparison, examination of the larger alterations required to construct Rte. 6 in Truro show the roadway pavement, shoulders and side slopes occupy a width of between 80 and 100 ft. The distance spanning the newest (1970) segment of *four*

lane highway Rte 6 including the wide median near Exit 9A measures approximately 150 ft. in width.

This 150 ft. wide earth cut at STA 5+00 penetrates a maximum of 14 ft. deep below the natural ground at the center line causing for earth slopes to be reset such that a steep side slope is needed to a height of 32 ft. above the pavement level at STA 5+00 right.

The southerly vista impact caused by such a grade change to the neighboring property of Clark is of concern. Guardrails are not shown explicitly but would likely be necessary. Including the approximate 140 ft. run of guard rail that must accompany both sides of such a starkly elevated route bed combines to create an obstructed view that is complete between 4 and 8 ft. above grade with obstructing guardrails ranging between 7 ft. and 11 ft. above natural ground. The view to the south from a standing position on the Clark deck is interrupted by the earth fill and guard rail to a level above the Cape Cod Bay horizon, blocking it.

The 90 ft. wide clearing and geometrically angled earth fill appears as a vast interruption, eradicating the scrub pine and oak populated terrain of the Loffredo and Clark property, replacing the natural land with a geometrically uniform, elevated paved route with the need for soldiered guardrails on both sidelines because of the stark elevation above grade. The Loffredo family will look down directly at this vast, unnatural alteration of the natural landscape.

Our engineer calculated that the 2014 proposal involved the clearing, cutting, and/or filling of over 36,000 square feet of land not belonging to the Applicant.

Ultimately, three of the four participating Board members voted for a series of modifications to reduce the appalling damage the 2014 proposal would inflict on environmentally sensitive land. These included an increase of the maximum grade to 16% for one stretch of the drive, a modification that would reduce the amount of cutting and filling, improve safety by reducing or eliminating raised roadway, minimize the attendant side slope impacts on the impacted properties, and create a design more compatible with Section 3.3 of the Regulations. That modification was informed by the expert submissions of our engineer, by the Board's Definitive Subdivision Staff Report #3, dated May 5, 2014 showing numerous driveways and roads in Truro at grades exceeding 20%,<sup>1</sup> and by the fact that the proposed "road" would serve only the very limited of function of a driveway to one single-family house. The

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<sup>1</sup> "The Board also asked for examples of grades. Paul Morris, DPW Director provided the following examples:

<u>Road/Driveway</u>	<u>%</u>	<u>Road/Driveway</u>	<u>%</u>
Driveway 51 Castle	23.0	Corn Hill	54
Driveway 31 Castle	21.5	Snow Rd.	14-18
Driveway 55 Castle	20.1	Gospel Path	16.3
Driveway Tim Dickey	22.4	Bridge Rd.	14.5
Driveway Williams	21.6	Old Pamet	19.0
North Pamet 24 Driveway	26.9	Longnook Dr.	21.4"

Land Court itself recognized the need for increased grade to mitigate harm to the natural landscape and to the adjoining property owners, ordering that the finished grade be “*equal to or greater than ten (10) percent*” wherever the slope of the natural terrain equals or exceeds ten percent. *Cater v. Bednarek*, Amended Judgment After Rescript dated February 4, 2013 (Fourth Decretal Paragraph).

The Board should impose the same grade requirement as set forth in its May 6, 2014 Decision in order to mitigate the severe impact of Applicant’s proposed road. Applicant’s current proposal, setting a maximum grade of only 9%, would disturb an even vaster area and result in even more damage to the natural landscape than the 2014 and 2015 proposals that this Board rejected. Moreover, the current proposal simply ignores the Land Court’s directive that the grade equal or exceed 10% where the natural terrain equals or exceeds that slope. We note that waiving the ordinary grade limitation comports with Subdivision Regulation 3.7 (“Rural Road Alternative”) and with the Land Court’s ruling that the Board may waive grade limitations despite any bylaw purporting to disallow a category of waiver. *Cater v. Bednarek*, Amended Judgment After Rescript dated February 4, 2013 (“The waiver opportunity made available by the legislature under § 81R must be respected, and the board’s attempt to wall off certain aspects of its regulations from any possible waiver would need to yield.”)

We also urge the Board to engage its own expert consultants to evaluate the special dangers posed by Applicant’s proposed road, dangers that have become more acute with the growing severity of weather conditions on Cape Cod. Our engineer concluded that even under Applicant’s less severe 2014 proposal

“the purely mineral soil revealed by cutting away the topsoil and subsoil has no composition for proper growth and development of stabilizing plant material. Over-cutting of this zone producing related slope stability complications above and beyond it are necessary to create room to replace a suitable quality subsoil thickness and appropriate topsoil necessary to begin to restore the 16,000 s.f. hillside area.”

In light of that finding, and the increasing frequency and intensity of severe storms, we question whether any measures to restore Applicant’s massive cut and fill on this steep hillside would have time to take hold before the elements caused serious erosion and irreparable damage to fragile landscape and to the abutters. Subdivision Regulation 1.7 authorizes the Board to “require that the Applicant pay a reasonable ‘project review fee’ of a sufficient sum to enable the Board to retain consultants chosen by the Board alone.” Given the sheer magnitude of Applicant’s clearing on landscape that the Land Court correctly characterized as “sensitive” and in “fragile environmental condition,” the prospect of large scale damage should cause the Board to obtain an impartial, expert assessment before proceeding, including preparation of view corridors that visualize the impact of the proposal on the landscape, trees and native vegetation.

Lastly, the negative impact of Applicant’s plan on the natural landscape and the abutters could be reduced by requiring that the project be designed with a narrower paved surface, especially since it is only intended to serve one single family house. The proposed road is a straight shot with few curves or bends. These factors, together with the fact that this road is



proposed on environmentally sensitive land not owned by the Applicants, support limiting its width to the absolute minimum necessary. Therefore, we request that the Board condition the width of the road to 8 feet with 2-foot-wide hardened shoulders on either side (i.e., a maximum hardened width of 12 feet). See Truro General Bylaw § 1-9-13 (traveled way of a roadway or driveway must be at least 8 feet, with a total clearance of 14 feet.). While we believe that the entire road can be so limited, at a minimum, it would be appropriate to do so on the relatively flat portion that passes over our property.

By way of example and to provide some context, we note that there are numerous roads in the Town of Truro which are unpaved and narrower than 10 feet, including shoulders. Moreover, many of these roads provide adequate access to multiple lots/houses.

Examples include:

- a) Katherine Road- 9 feet wide/ processed stone surface - serves 5 houses
- b) Ryder Hollow Road - 9 feet wide / earth and processed stone surfaces - serves 3 houses
- c) Rolling Hills Road - 9 feet wide / bituminous paved - serves 7 houses
- d) Atwood Lane - 9 feet wide / earth surface - serves 4 houses
- e) Eagle Neek Road (aka Stick Bridge Rd) - 10 feet wide / processed - recycled surface - serves 2 houses
- f) Freeman Road - 9 feet wide / earth - processed surface - serves 2 houses
- g) Marian Lane - 9 feet wide / earth surface - serves at least 2 houses
- h) Old Bridge Road - 9 feet wide / earth - processed surface - serves 8 houses
- i) Phats Valley Road - 9 feet wide / earth surface - serves 3 houses, 1 lot
- j) Wellsweep Lane (off Fisher Beach Road)- 10 feet wide/ bituminous surface - serves 6 houses
- k) Perry's Hill Way - 8.5 feet wide/ earth surface - serves 5-6 houses (2 photos enclosed)

#### **4. Overburdening of easement and unlawful taking.**

The preliminary plan shows what appears to be a 70- to 80-foot incursion at the northwest corner of our property (and destruction of large trees that form the view directly behind our home) to support the 7-foot right-of-way the Land Court allowed across our land. Applicant's easement is not a license to build a road no matter the extent of destruction and intrusion on abutters, and the intrusion proposed by the preliminary plan far exceeds what Applicants represented to the Land Court when seeking the easement. We would not accede to such an intrusion and urge substantial modification of the plan along the lines specified by this Board's Decision of May 6, 2014. As it stands, the preliminary plan overburdens the easement and, in our opinion, would work an unconstitutional taking of private property if sanctioned by the Town. Should the Board approve such a plan, we would be compelled to litigate the issue before the Land Court and possibly in federal court, pursuant to the Supreme Court's recent rulings authorizing immediate judicial challenges to governmental actions (including judicial actions) alleged to violate the Fifth Amendment's Takings Clause.

## **5. Septic system on Loffredo/Hershkoff property.**

The Report of Town's Health/Conservation Agent concerning the Applicant's 2015 plan -- which proposed a road along the same path as the current Preliminary Plan -- states that "the proposed road crosses over the leach pit for a septic system that serves 9 Benson Road;" that "the leach pit is not designed for H-20 loading to withstand vehicular traffic;" and that a new system would need to be designed and approved before any work were to begin on the road. Memo of Truro Health/Conservation Agent to ATA/Town Planner dated August 26, 2015. (Attached). Our engineer similarly located the leach pit -- by measurement and direct observation - under the proposed road. The Board's May 6, 2014 Decision (at ¶ 4) provided that:

"No work related to the roadway shall commence until the septic system serving 9 Benson Road has been designed, permitted, and relocated in accordance with the requirements of Title 5 (31O CMR 15.000 et seq) and the Truro Board of Health Regulations, and the new system has been put into operation. This shall be so noted on the plan and within the Planning Board Covenant."

The Land Court similarly directed that the Applicants bear the cost of "any reasonably necessary or desirable upgrade, repair, or relocation of the [Loffredo/Hershkoff] septic system that may be caused directly or indirectly by the construction of a driveway or roadway within the Easement." *Cater v. Bednarek*, Amended Judgment After Rescript dated February 4, 2013 (Sixth Decretal Paragraph). We ask that the Board impose the same condition in any approved plan.

## **6. Drinking water well on Loffredo/Hershkoff property.**

The preliminary plan places catch basins and leaching basins within a 100-foot radius of the drinking water well for 9 Benson Road. This poses an unacceptable health risk and potential source of contamination from de-icing chemicals, minor oil drips, hydraulic oil, etc. The Board's May 6, 2014 Decision (at ¶ 13) directed that these leach pits be relocated outside a 100-foot radius from our drinking well and we ask for the same condition here.

## **7. Driveway Apron Detail and Flare Out.**

The plan shows a 20-foot wide, 50-foot deep "Temporary Driveway Apron" which should be eliminated and this portion designed in accordance with Comment #3 above. It is also noted that the Applicants' do not have the legal right to construct a 20-foot-wide traveled surface as this detail purports. The plan also depicts an even wider flare out at the junction with Benson Road towards the dead end to the south. This should be eliminated. It is entirely unnecessary, runs all the way to our existing driveway and encroaches on our property beyond the terms of the easement.

## **8. Name of road.**

We oppose naming the road Hopper View Drive. Naming the road this way would likely attract people believing they can drive up the road for a view of the Hopper cottage. This is a result none of the parties should welcome. The proposed road is, at most, for use by the owners

of a single-family home and is not legally intended as a tourist attraction. No party should welcome excess traffic that could further affect fragile terrain. If the Board approves a road, we propose that it exercise its authority under the Town of Truro General Bylaws § 1-5-1 to assign the name Baker Road after the historic owner of the land, Lorenzo Baker.

#### **9. Other mitigation measures and conditions.**

Without waiving any rights, we ask that the Board disapprove any plan that does not include, at minimum, the mitigation measures and other conditions set forth in the Board's May 6, 2014 Decision.

Finally, we note that the Land Court judgment related to this matter settled only an issue of property rights as between private parties. It did not purport to determine any issue of land use, planning or zoning law. Nor did it in any way restrict the authority of the Town and its boards to consider any relevant factors -- including the magnitude and severity of damage to the natural environment -- in determining whether to permit the development proposed in this application.

Thank you for your work on this Board and for considering our views, which by necessity we prepared quickly for the upcoming meeting on September 13.

Very truly yours,

Helen Hershkoff  
Stephen Loffredo [sjloffredo@gmail.com]

**Attachments:**

Planning Board Decision, dated May 6, 2014

Definitive Subdivision Staff Report #3, dated May 5, 2014

Memo of Truro Health/Conservation Agent to ATA/Town Planner, dated August 26, 2015.



COMMONWEALTH OF MASSACHUSETTS  
TOWN OF TRURO  
PLANNING BOARD – NOTICE OF ACTION

**DEFINITIVE SUBDIVISION**

**Reference No.** 2014-001

**Atlas Sheet 50 Parcel 53**

**9B Benson Road, North Truro**

**Applicant:** Willie J. Cater and Gloria J. Cater

**Meeting Dates** February 18, 2014, March 4, 2014, April 1, 2014, April 15, 2014 and May 6, 2014

**Decision Date** May 6, 2014

At a duly posted and noticed public hearing opened on February 18, 2014 and continued to March 4, 2014, April 1, 2014, April 15, 2014 and continued to and closed May 6, 2014, the Town of Truro Planning Board, acting in the matter of Reference Number **2014-001** voted on a motion, with conditions to approve a 1-Lot Definitive Subdivision Plan for Doctor Willie J. and Gloria J. Cater. The Board's vote was three (3) in favor and one (1) opposed, resulting in the vote not acquiring the required majority vote of the Planning Board (seven members total).

In the Planning Board's deliberations, the following plans and submittals were reviewed:

Submitted by the applicant to the Town Clerk on January 15, 2014, as follows:

- 1) Willie J Cater, Gloria J. Cater, Town of Truro Planning Board, Application for Approval of Definitive Subdivision Plan.
- 2) Definitive Subdivision Plan of Land prepared for Doctor Willie J. and Gloria J. Cater, Assessors Map 53, Parcel 50, Truro, MA, May 13, 2013, Scale 1" = 40' (Plan ols#155-1).
- 3) Hopper's View Lane, Road Construction Plan, Prepared for Doctor Willie J. and Gloria J. Cater, Outermost Survey, Inc. and Clark Engineering, Inc. 07-01-2013.
- 4) Hopper's View Lane, Profile Plan, Prepared for Doctor Willie J. and Gloria J. Cater, Outermost Survey, Inc. and Clark Engineering, Inc. 07-01-2013, revision 12-06-13.

Submitted by the applicant to the Town Clerk on April 30, 2014, as follows:

- 1) Letter dated April 28, 2014 from Attorney Bruce W. Edmands
- 2) Definitive Subdivision Plan of Land prepared for Doctor Willie J. and Gloria J. Cater, Deed Book 22682, Page 84, Assessors Map 53, Parcel 50, Truro, MA, May 13, 2013, Scale 1" = 40' (Plan ols#155-1).
- 3) Hopper's View Lane, Road Construction Plan, Prepared for Doctor Willie J. and Gloria J. Cater, Outermost Survey, Inc. and Clark Engineering, Inc. 07-01-2013, revised 12-06-13, 03-31-14 and 4-22-14.

- 4) Hopper's View Lane, Profile Plan, Prepared for Doctor Willie J. and Gloria J. Cater, Outermost Survey, Inc. and Clark Engineering, Inc. 07-01-2013, revised 12-06-13, 03-31-14 and 4/25/14.
- 5) Invasive Species Management/Restoration Plan, April 28, 2014, Hopper's View Lane - Road Construction Area, Truro, Massachusetts, by BlueFlax.
- 6) Restoration/Planting Plan, April 28, 2014, Hopper's View Lane – Road Construction Area, Truro, MA, scale 1"=40' (Black and White), by BlueFax.
- 7) Reduced Restoration/Planting Plan, April 28, 2014, Hopper's View Lane – Road Construction Area, Truro, MA, scale 1"=40' (Color), by BlueFax.

After much discussion and testimony, the Planning Board reviewed all the waivers and conditions, deliberated and closed the hearing at 9:17pm on May 16, 2014.

### **Decision**

On a motion from Leo Childs, seconded by Christopher Lucy, the Board voted to approve the Definitive Subdivision of Land prepared for Doctor Willie J. and Gloria J. Cater as submitted and to approve the method of construction for access from Benson Road to the subject property, pursuant to MGL c.41, §81-T and §81U and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land, located at 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53, with the following conditions:

1. The paved portion of the road shall have a width of 10' paved, with a 1½' berm on one side, with 2' of hardened shoulders on either side. This is exclusive of the T-turnaround in the cul-de-sac.
2. The unpaved portion of the road shall have a width of 10', with 2' of hardened shoulders loamed and seeded.
3. The unpaved portion of the road shall be constructed with a dense grated base with a natural surface. A detail of the construction shall be provided.
4. No work related to the roadway shall commence until the septic system serving 9 Benson Road has been designed, permitted, and relocated in accordance with the requirements of Title 5 (310 CMR 15.000 et seq) and the Truro Board of Health Regulations, and the new system has been put into operation. This shall be so noted on the plan and within the Planning Board Covenant.
5. The guard rail shall begin approximately at Station 2+75 rather than at Station 2+00.
6. The proposed limit of clear for the T-turnaround shall be restricted to within the confines of the cul-de-sac area.
7. There shall be no lighting of the roadway on the Truro Conservation Trust, Loffredo or Clark properties.
8. The applicant shall deposit with the Town a cash or other approved bond in the amount of \$25,000, in addition to a Planning Board Covenant. The bond shall be remitted to the applicant upon completion of all construction and restoration in accordance with the approved plans, and verification by the Planning Board that vegetation has stabilized and is reasonably expected to survive and grow normally. No Certificate of Occupancy shall issue for the property until the bond has been deposited with the Town.



9. There shall be no construction of the roadway during the months of July and August in any year.
10. The applicant shall set aside as open space through a plan notation and covenant, or through a conservation restriction, an area of land on the Cater property at least equal in square footage to the area of Trust land disturbed for the project.
11. A Statement of Condition will be executed and shall include the provision that the roadway shall not be constructed except in connection with the construction of a single family dwelling on the Cater property.
12. The applicant shall count all trees measuring 6" DBH (for example Pitch Pine, Oak, Cherry), but not including invasive species, which are to be removed from the Loffredo property (9 Benson Road) within the limit of work area, and for every such tree removed, one shall be planted on the Loffredo property in a location acceptable to the Loffredos.
13. The leach pits located at Station 2+00 shall be relocated outside the 100 feet radius to the well on the Loffrado property.
14. The subdivision road shall be known as "Hopper Lane".
15. The temporary apron, to be used during construction, shall be reduced to 10' on the Construction Plan. Following construction of the road the temporary apron shall be removed and shall be reconstructed in conformity with the remainder of the unpaved road. Any disturbed areas shall be revegetated.
16. The Eastern Red Cedar shown on the BlueFax Restoration/Planting Plan within the 100' radius of the Loffrado well, shall be relocated to outside the "white" area as shown on the plan.
17. Any monuments disturbed during construction shall be replaced.
18. No construction of the way shall commence until Natural Heritage's Massachusetts Endangered Species Act (MESA) has acted and/or signed-off.
19. All waivers, in item 20, shall be noted on the definitive plan prior to endorsement.
20. The Board approved the following waivers from the Town of Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Recommended Geometric Design Standards for Subdivisions:

Standard	Requirement	Proposed	Waiver Requested
<b>Roadway Layout</b>			
Minimum right of way width	40 feet	12 feet	28 feet
Minimum roadway width	14 feet	12 feet	2 feet
Shoulder width	4 feet	2 feet	2 feet
<b>Grade</b>			
Maximum grade	8% or 10% For 100 feet	16% For 200+/- feet	8% or 6% 100+/- feet
<b>Intersection Standards</b>			
Minimum intersection angle	60 deg.	32 deg.	28 deg.
Minimum curb radius	20 feet	0 feet	20 feet
<b>Dead-end Street</b>			
Minimum radius of circular turnaround, to curb or to edge of pavement	40 feet	T-Turnaround	T-Turnaround

### Board Vote

The Board's vote was three (3) in favor (Messer's Childs and Lucy and Karen Snow) and one (1) vote against (Bruce Boleyn). As a simple majority of the Planning Board is required for approval and the Truro Planning Board is a seven (7) member Board, the approval was not received.

Karen Snow 5/13/14  
Planning Board Chair Date

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Received, Office of the Town Clerk: [Signature] MAY 13, 2014  
Signature Date

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# TOWN OF TRURO

Charleen L. Greenhalgh, ATA/Planner  
P.O. Box 2030, Truro, MA 02666  
Tel: (508) 349-7004, Ext. 27 Fax: (508) 349-5505  
asstownadm@truro-ma.gov

To: Planning Board  
From: Charleen Greenhalgh, ATA/Planner  
Date: May 5, 2014  
Re: Definitive Subdivision Staff Report #3

**2014-001**      **Willie J. Cater and Gloria J. Cater** have filed an application for approval of a Definitive Plan with the Clerk of the Town of Truro pursuant to MGL c.40A, Section 81T and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to their property known and numbered 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53. The Application seeks approval of a single lot subdivision access to and egress from which will be served by a driveway located over a right of way as meeting the specifications set forth in a Judgment entered in the Commonwealth of Massachusetts Land Court.

The Planning Board opened the public hearing on this application on February 18, 2014. No testimony or discussion was taken and the Board immediately continued the hearing to March 4, 2014, it was then continued to April 1 and April 15, 2014.

## **Description**

The applicant seeks approval of a 1-Lot Definitive Subdivision Plan. A preliminary plan was not filed for the property, nor is one required.

Please refer to Tab 1 of the bound application ("Application") provided by Attorney Bruce Edmunds. This is an Introductory Statement, which provides the background and history of the property.

A very short cul-de-sac is shown on the Cater property with a "driveway" over an easement running from Benson Road. This is shown on plans submitted to the Town Clerk on January 15, 2014, as follows:

- 1) Definitive Subdivision Plan of Land prepared for Doctor Willie J. and Gloria J. Cater, Assessors Map 53, Parcel 50, Truro, MA, May 13, 2013, Scale 1" = 40' (Plan ols#155-1).
- 2) Hopper's View Lane, Road Construction Plan, Prepared for Doctor Willie J. and Gloria J. Cater, Outermost Survey, Inc. and Clark Engineering, Inc. 07-01-2013.
- 3) Hopper's View Lane, Profile Plan, Prepared for Doctor Willie J. and Gloria J. Cater, Outermost Survey, Inc. and Clark Engineering, Inc. 07-01-2013, revision 12-06-13.

Three road names have been provided: Hopper View Lane, alternatively Cater Heights Road or Cater Hill Road.

Since the hearing was first opened, the Board has received a great deal of testimony and other communications regarding this application. The Board held an on-site on March 17, 2014. For the on-site the Surveyor, Donald Poole, staked the centerline of the proposed road/drive and the limits of clearing. The following are notes that I had from the April 15, 2014 meeting:

1. The Board agreed in principal with a 10' wide improved surface, with 12" berms and 2' of hardened shoulders.
2. The Board agreed in principal that it did not have a problem with waivers to the intersection standards.
3. The Board agreed in principal with up to a 16% grade along a short section of road (200' +/-).
4. The Board agreed in principal that there should be no further division of this lot.
5. It was discussed that there should be revegetation with like materials (i.e. bearberry.)
6. It was discussed that there should be a turn-out approximately half-way (Station 3.50) and that it should be of a hardened surface.
7. It was discussed that there could be a T-turn-around within the cul-de-sac, rather than a complete circle turn-around.

The Board also asked for examples of grades. Paul Morris, DPW Director provided the following examples:

<u>Road/Driveway</u>	<u>%</u>
Driveway 51 Castle	23.0
Driveway 31 Castle	21.5
Driveway 55 Castle	20.1
Driveway Tim Dickey	22.4
Driveway Williams	21.6
North Pamet 24 Driveway	26.9
Corn Hill	54
Snow Rd.	14- 18
Gospel Path	16.3
Bridge Rd.	14.5
Old Pamet	19.0
Longnook Dr.	21.4

The latest information filed by the applicant was included in the Board's packets for the May 6, 2014 meeting. That material is as follows:

1. Letter dated April 28, 2014 from Attorney Bruce W. Edmands
2. Definitive Subdivision Plan of Land prepared for Doctor Willie J. and Gloria J. Cater, Deed Book 22682, Page 84, Assessors Map 53, Parcel 50, Truro, MA, May 13, 2013, Scale 1" = 40' (Plan ols#155-1).
3. Hopper's View Lane, Road Construction Plan, Prepared for Doctor Willie J. and Gloria J. Cater, Outermost Survey, Inc. and Clark Engineering, Inc. 07-01-2013, revised 12-06-13, 03-31-14 and 4-22-14.

4. Hopper's View Lane, Profile Plan, Prepared for Doctor Willie J. and Gloria J. Cater, Outermost Survey, Inc. and Clark Engineering, Inc. 07-01-2013, revised 12-06-13, 03-31-14 and 4/25/14.
5. Invasive Species Management/Restoration Plan, April 28, 2014, Hopper's View Lane - Road Construction Area, Truro, Massachusetts, by BlueFlax.
6. Restoration/Planting Plan, April 28, 2014, Hopper's View Lane – Road Construction Area, Truro, MA, scale 1"=40' (Black and White)
7. Reduced Restoration/Planting Plan, April 28, 2014, Hopper's View Lane – Road Construction Area, Truro, MA, scale 1"=40' (Color)

In addition, you received in your packets for the May 6, 2014 meeting correspondence from Paul Kiernan and Joan Holt. On May 5, 2014 you received via email, letters from Attorney Benjamin Zehnder and Attorney Eliza Cox.

### **Waivers**

Tab 1 (page 6) and Tab 6 of the Application provided a list of the requested waivers. A waiver from the Vertical Alignment – Clear sight distance is not required. The Maximum Grade would need to be increased to 16%. A clear concise list would need to be added to Definitive Plan (prior to endorsement), as well as being included the Decision, provided the subdivision is approved.

**Completeness of Application** - At this time it appears that application, with waivers, is complete. Please refer to Additional Staff Comments.

**Fee** - A filing fee of \$275.00 was paid on January 15, 2014.

### **Comments from Other Boards/Committees/Departments**

**Health/Conservation:** Provided previously.

**Police:** Reviewed the plan, no comments.

### **Additional Planning Staff Comments**

- A. There has been much discussion as to what it is the Planning Board has been asked to approve. The subdivision, in my opinion, is the creation of the cul-de-sac, to provide the necessary frontage for the Cater parcel. The Subdivision Regulations and MGL define a subdivision as two or more lots; however, I do believe that this is something that the Board has the right to waive, if it so desires.

Additionally, in my opinion, for the easement and/or right-of-way from the Cater property to Benson Road, the Board is providing to the applicant the standard, design and method for the construction. It is not approving the right-of-way or the right of access. That has been decided by the court. The court has circumscribed what the Board can do.

- B. The Board has the right and authority to waive any and all requirements within the Town of Truro Rules and Regulations Governing the Subdivision of Land. If such a waiver(s) is/are or appears to be inconsistent with zoning, then it would be a determination by the Building Commissioner, as the Chief Zoning Officer, whether to issue a building permit or whether further relief would be required, in my opinion.



- C. It appears that this area falls within the requirements of the Natural Heritage's Massachusetts Endangered Species Act (MESA). The applicants will need to file the necessary documents with MESA to determine if the project will result in a "take" or not. The Planning Board should include this as a condition within the Covenant and the Decision, provided the subdivision is approved. No construction of the way shall commence until MESA has acted and/or signed-off.
- D. A proposed Covenant has not been filed; however, the applicant has indicated a willingness to do so. The Covenant would include those items which would need to be completed before the Covenant could be released. A note would still need to be added to that plan about the Covenant. On the Subdivision Plan, there is also a note regarding a Statement of Conditions. This is a very good tool to use when there are specific restrictions, conditions, etc. that the Board wants to have run with the property. This document would be recorded just as a Covenant would; however a Statement of Conditions would never (in most instances) be released by the Planning Board. The Board can require that the Covenant and the Statement of Conditions be submitted prior to the endorsement of the plan, provided the subdivision is approved.
- E. §2.5.2.b (17) requires a notation on the plan regarding permanent bounds to be set. There are already iron pipes on the lot corners, which the Board previously determined where adequate.
- F. §2.5.2.b (18) requires notation of the waivers on the definitive plan. These can be added prior to the endorsement of the plan, provided the subdivision is approved.
- G. The Plan and Profile and Construction plans will need to be stamped by the P.E. prior to endorsement of the subdivision, provided the subdivision is approved.
- H. If there are amendments/changes to the plan as a result of the letters from Attorneys Zehnder and Cox, or any other change, these can be incorporated in the Decision and can be required prior to the endorsement of the plan, provided the subdivision is approved.

### **Board Options**

Pursuant to MGL c.41, §81-U and §2.5 of the Truro Rules and Regulations the Planning Board must, within 135-days of submission of a Definitive plan, notify the applicant and the Town Clerk of its action. The time in which the Board has to file the decision with the Town Clerk is **May 30, 2014**. The Planning Board "shall approve, or, if such plan does not comply with the subdivision control law or the rules and regulations of the planning board or the recommendations of the health board or officer, shall modify and approve or shall disapprove such plan. In the event of disapproval, the planning board shall state in detail wherein the plan does not conform to the rules and regulations of the planning board or the recommendations of the health board or office and shall revoke its disapproval and approve a plan which, as amended conforms to such rules and regulations or recommendations."

Based on the above, the Board has the following options:

1. To approve the Definitive Subdivision of Land prepared for Doctor Willie J. and Gloria J. Cater as submitted and to approve the method of construction for access from Benson Road to the subject property, pursuant to MGL c.41, §81-T and §81U and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land, located at 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53.
2. To approve the Definitive Subdivision of Land prepared for Doctor Willie J. and Gloria J. Cater as submitted and to approve the method of construction for access from Benson Road to the subject property, pursuant to MGL c.41, §81-T and §81U and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land, located at 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53, with the following conditions and/or modifications: *(Note: need to state the conditions/modifications)*
3. To disapprove the Definitive Subdivision of Land prepared for Doctor Willie J. and Gloria J. Cater as submitted and to approve the method of construction for access from Benson Road to the subject property, pursuant to MGL c.41, §81-T and §81U and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land, located at 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53, based on the following findings: *(Note: need to state reasons for disapproval)*
4. To continue the review of the Definitive Plan to a date and time certain. A waiver from the time period in which the Board has to file a decision would be necessary if continued to a date beyond **May 30, 2014**.



## Health/Conservation Agent Town of Truro

Phone: (508) 349-7004 ext. 32

# MEMO

**To:** Charleen Greenhalgh, ATA/Town Planner  
**From:** Patricia Pajaron *PP*  
**CC:**  
**Date:** August 26, 2015  
**Re:** **Definitive Subdivision Plan Review, 9B Benson Rd**

RECEIVED  
AUG 27 2015  
BY: *CJA*

The applicants seek approval of a 1 3.46 acre lot subdivision. I have reviewed the Definitive Subdivision Plan of Land prepared for Fisher Road Realty Trust, by Donald T. Poole, P.L.S. of Outermost Land Survey Inc. dated May 13, 2013 and the Hopper's View Lane Road Construction Plan prepared for Fisher Road Realty Trust by Clark Engineering for the construction of a road layout and offer the following comments:

*\*Note: Both site plans are not stamped by the engineer and/or land surveyor.*

### CONSERVATION

1. A portion of the proposed retaining wall and limit of clearing are just within the 100 foot buffer zone to a coastal bank which will require a filing with the Conservation Commission.
2. Per the NHESP map dated October 2008, it appears that the entire lot is in the Estimated Habitat of Rare Wildlife therefore NHESP review will be required for the proposed work.

### HEALTH

1. The site plan only shows a road layout at this time. Should the applicant construct a dwelling in the future, only buildable upland\* area shall be used for nitrogen loading limitations ( 440 gallons per day per acre) unless a variance is granted by the Board of Health to include the coastal bank in the nitrogen loading calculations.
2. The proposed road crosses over the leach pit for a septic system that serves 9 Benson Road, Map 53, Parcel 52. Per the site and sewage plan on file with this department for this property, the leach pit is not designed for H-20 loading to withstand heavy loading or vehicular traffic. A site and sewage plan shall be prepared in accordance with 15.220 of Title 5, to include location of locus and abutting wells and septic components and be submitted to the Health Agent for review prior to construction of the road. In addition, the new soil absorption system must be designed to current Title 5 regulations.

*\*Article 1 defines Buildable Upland as area of contiguous upland on a lot exclusive of a Wetland. A Wetland as defined shall mean "any area that contains swamp, bog, dry bog, fresh or salt marsh, areas of exposed groundwater, embayments, rivers, ponds, lakes, streams, inland banks, coastal banks, and coastal dunes*

1. The site plan only shows a road layout at this time. Should the applicant construct a dwelling in the future, only buildable upland shall be used for nitrogen loading limitations ( 440 gallons per day per acre) unless a variance is granted by the Board of Health.

*\*Note: the site plan entitled "Hopper's View Lane Road Construction" prepared by Clark Engineering Inc. and Outermost Land Survey Inc. dated July 1, 2013 with a most recent revision date of December 6, 2013 is not stamped by the engineer and land surveyor.*

***\*Article 1 defines Buildable Upland as area of contiguous upland on a lot exclusive of a Wetland. A Wetland as defined shall mean "any area that contains swamp, bog, dry bog, fresh or salt marsh, areas of exposed groundwater, embayments, rivers, ponds, lakes, streams, inland banks, coastal banks, and coastal dunes".***

**Elizabeth Sturdy**

---

**Subject:** RE: Loffredo - Preliminary Subdivision Plan - November 2023 Meeting - 9B Benson Road, Truro, MA

**From:** Daniel Johnston <[DJohnston@nutter.com](mailto:DJohnston@nutter.com)>

**Sent:** Monday, November 13, 2023 10:03 AM

**To:** Barbara Carboni <[bcarboni@truro-ma.gov](mailto:bcarboni@truro-ma.gov)>

**Cc:** Eliza Cox <[ECox@nutter.com](mailto:ECox@nutter.com)>

**Subject:** Loffredo - Preliminary Subdivision Plan - November 2023 Meeting - 9B Benson Road, Truro, MA

Barbara,

Please find attached a supplemental letter on behalf of Stephen Loffredo and Helen Hershkoff regarding the proposed subdivision of 9B Benson Road. Please forward this letter to the Planning Board ahead of their meeting this Wednesday, November 15. We look forward to providing comments at the meeting as well.

Best,  
Dan



**Daniel Johnston**

Associate

Nutter McClennen & Fish LLP

155 Seaport Blvd / Boston, MA 02210

Direct / 617-439-2173

[DJohnston@nutter.com](mailto:DJohnston@nutter.com)

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**Daniel C. Johnston**

Direct Line: 617-439-2603

Fax: 617-310-9603

E-mail: [djohnston@nutter.com](mailto:djohnston@nutter.com)

November 13, 2023  
0114552-00001

**VIA EMAIL**

Town of Truro Planning Board  
c/o Town Planner Barbara Carboni  
24 Town Hall Road  
Truro, Massachusetts 02666  
Attention: Anne Greenbaum

Re: Preliminary Subdivision Plan – 9B Benson Road, Truro, Massachusetts 02072

Dear Chair Greenbaum:

This office represents Stephen Loffredo and Helen Hershkoff, owners of the property located at 9 Benson Road, Truro, Massachusetts 02072. This letter supplements our clients' submission to the Truro Planning Board (the "**Board**") dated September 6, 2023 (the "**September 2023 Letter**") regarding the above-referenced Preliminary Subdivision Plan submitted by the Fisher Road Realty Trust ("**Applicant**"). We have reviewed Applicant's updated plan and ask that the Board decline to approve it for the reasons stated in the September 2023 Letter as supplemented by this letter. We refer the Board to our client's earlier submission and summarize several points below:

1. The Board should not approve any subdivision plan, nor the construction of a roadway, unless and until Applicant secures all permits, variances, and other approvals necessary to develop its currently unbuildable lot. To do otherwise would risk the senseless despoiling of environmentally sensitive land and needless injury to the neighboring property owners.
2. The revised plan does not sufficiently reduce its negative impacts on the natural landscape and environment. The plan depicts construction of a roadway that would irreparably devastate a pristine, scenic, and environmentally fragile area within the historically and culturally unique "Hopper Landscape."
3. The revised plan continues to show extensive cutting and filling, dramatic land alterations, and destruction of trees and natural growth across a broad swath of steep hillside not owned by Applicant. The proposed construction on that hillside threatens serious erosion and irreversible damage to the landscape, to the abutting property owners, and to the neighborhood, especially in light of the increasing frequency and intensity of severe storms on Cape Cod.
4. The Board should engage its own expert consultants to evaluate the special dangers posed by the proposed roadway. Subdivision Regulation 1.7 authorizes the Board to "require that the Applicant pay a reasonable 'project review fee' of a sufficient sum to retain consultants chosen by the Board alone." The Board should also conduct a site visit in order to understand the special



Anne Greenbaum, Chair, Truro Planning Board  
November 13, 2023  
Page 2

fragility of the land and the extreme challenges of constructing a roadway directly up the steep hillside.

5. Moreover, as Applicant's proposal involves a complex development with a destructive impact on an environmentally sensitive area, the Board should exercise its discretionary authority to refer this development to the Cape Cod Commission for review and comment.

6. Should the Board conclude that a roadway of sufficiently steep grade to minimize cut and fill and avoid severe damage to this environmentally fragile land would be unsafe for travel, the proper course would be to deny permission to construct such a roadway. As noted in the September 2023 Letter, the Land Court judgment related to this matter settled only an issue of property rights as between private parties. It did not purport to determine any issue of land use, planning, or zoning law. Nor did it in any way restrict the authority of the Town and its boards to consider any relevant factors – including the magnitude and severity of damage to the natural environment – in determining whether to permit the development proposed in this application.

We also note that Applicant has requested the recusal of two Board members from consideration of this subdivision application. Based on established case law and State Ethics Commission's reports, there is nothing indicating that Mr. Kiernan and/or Mr. Riemer are unable to fairly consider this subdivision application.

Thank you very much for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Johnston", with a long horizontal line extending to the right.

Daniel C. Johnston

cc: Stephen Loffredo  
Helen Hershkoff  
Eliza Cox, Esq., Nutter, McClennen & Fish, LLP

## Elizabeth Sturdy

---

**From:** Courtney A. Simmons <[csimmons@DavisMalm.com](mailto:csimmons@DavisMalm.com)>  
**Sent:** Friday, November 10, 2023 12:46 PM  
**To:** Elizabeth Sturdy  
**Subject:** Lucy Clark Abutter Response to 9B Benson Road, Preliminary Subdivision Application  
**Attachments:** Ltr to Planning Board - Clark Response to Preliminary Subdivision Application.pdf; Ltr to Planning Board - Response to Request for Recusal.pdf

Good afternoon Liz,

See the attached letters with regard to the above-referenced matter. I represent the abutter, Lucy Clark, who owns the property at 7 Benson Road. Please ensure that these responses are shared with the Planning Board and applicant.

Hard copies of the same are also being sent.

Thank you,  
Courtney

### COURTNEY A. SIMMONS

Attorney at Law  
Davis Malm  
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P: 617.589.3832 | F: 617.523.6215  
[csimmons@DavisMalm.com](mailto:csimmons@DavisMalm.com) | [www.davismalm.com](http://www.davismalm.com)



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**Courtney A. Simmons**

P: 617.589.3832 | F: 617.523.6215  
csimmons@davismalm.com

November 10, 2023

**VIA FIRST CLASS MAIL AND EMAIL**

Truro Planning Board  
c/o Liz Sturdy, Planning Department Administrator  
Truro Town Hall  
24 Town Hall Road, P.O. Box 2030  
Truro, MA 02666  
esturdy@truro-ma.gov

Re: Application for Preliminary Subdivision Plan – 9B Benson Road, Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater, Trustees

Dear Members of the Truro Planning Board:

In advance of the hearing scheduled for Wednesday, November 15, 2023 on the above-referenced matter, I am submitting this correspondence on behalf of my client, Lucy Clark, who owns the property located at 7 Benson Road (Map 53, Lot 51) (the “Clark Property”). This letter is in response to the November 6, 2023 supplemental filing to the Preliminary Subdivision Plan Application submitted by Willie J. Cater and Gloria Cater, Trustees of the Fisher Road Realty Trust (the “Caters”), owners of 9B Benson Road (Map 53, Lot 50) (the “Cater Property”), who propose to construct a subdivision road that traverses the Clark Property. Ms. Clark has serious objections to the Preliminary Subdivision Plan.

By way of background, Ms. Clark, and others in the Benson Road neighborhood, have been subjected to a protracted and costly legal process as a result of the Caters’ attempt, after ninety-eight years of silence, to exercise ancient easement rights, and to develop their property which has no frontage. In prior proceedings, *Cater, et al. v. Bednarek, et al*, 98 MISC 250365, a judge of the Land Court determined that, despite the many years of silence, the Caters had an easement for access to the Cater property from Benson Road over the boundary of the Clark Property and 9 Benson Road (Map 53, Lot 52) (the “Loffredo Property”), and over the Truro Conservation Trust (the “TCT”) property at 9A Benson Road (Map 53, Lot 56) (the “Trust Property”). It is over this easement that the Caters propose to construct the subdivision road.<sup>1</sup>

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<sup>1</sup> The Caters have twice applied for subdivision approval from the Planning Board and been denied. On May 13, 2014, the Planning Board denied the Caters’ request to construct a 12-foot-wide roadway with a maximum grade of 16 %. On December 17, 2015, the Planning Board denied the Caters’ request to construct a 12-foot-wide roadway with a maximum grade of 14% on the ground

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There is no road layout available to the Caters which would entitle them to subdivision approval as of right. The affected land will not accommodate construction of a roadway that satisfies the Design Standards under Section 3 and Appendix 2, Table 1 of the Rules and Regulations Governing the Subdivision of Land (“Subdivision Rules”). The Cater Property is nonconforming as to frontage under the applicable zoning regulations and nonconforming as to road width and maximum grade under the Subdivision Rules. The Caters can only gain subdivision approval if the Planning Board grants them several waivers from the Subdivision Rules. However, such waivers directly conflict the purpose and language of the Subdivision Rules, which require due regard for coordinating the ways in a subdivision with neighboring subdivisions, conforming with zoning, providing safe and adequate access, and respecting the natural landscape.

Here, the Clark Property already has a subdivision road, Thornley Road, running close to its northern boundary. The proposed subdivision road would hem in the Clark Property with subdivision roads on either side. The proposed road is also approximately 12 feet wide where the Subdivision Rules require at least 14 feet, a shoulder of four feet, and a right of way of forty feet. It has a maximum grade of 14% where the Subdivision Rules permit a maximum grade of 8%. The proposed road is also approximately 500 feet long (350 feet of which it will be over 10% grade), has reduced site distances and a dead-end turnaround of less than 40 feet. Overall, it is not designed for safe travel and adequate access as required by the Subdivision Rules and would present a safety hazard. The inescapable conclusion is that the Caters’ proposed roadway is insufficient to permit safe and adequate vehicular and emergency access to their property.

In addition, the proposed road does not respect the natural landscape. It is not designed with the goal of minimizing the volume of cut and fill, minimizing disturbance of vegetation and mature trees, and fails to consider the protection of natural features. The proposed roadway would change the natural contours of the land dramatically for the worse, which would effectively destroy large sections of scenic views, precious coastal health and fragile habitat on land not belonging to the Caters. It is also not clear what will be done about erosion to the surrounding land, including the Clark Property, resulting from the road construction. There is no amount of screening that would reduce this impact and, any such screening could result in a greater disturbance of the natural features and greater loss of scenic views. Ms. Clark requests that prior to reaching a decision, the Planning Board conduct a site visit and view of the location of the proposed right of way and the existing terrain over which the proposed road will be located to see these impacts firsthand.

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that such a roadway would present a public safety hazard. This application should meet the same fate.



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Moreover, the plan to subdivide the Cater Property into two parcels and gift one of those parcels to the TCT, which adjoins the current Trust Property, is problematic. The Land Court determined that the easement to the Cater Property was a “general right of way serving a single house.” The original scope of the easement was not intended to serve multiple parcels or benefit conservation land open to the members of the public. The additional land gifted to the TCT also cannot be used to access the other Trust Property. The Caters cannot unilaterally grant an easement right to the second parcel to benefit the additional Trust Property that the easement was never intended to serve. Such expanded uses of the easement would impermissibly overburden and overload the easement, which has been expressly disallowed by Courts in the Commonwealth for decades. See *Taylor v. Martha’s Vineyard Land Bank Com’n*, 475 Mass. 682 (2016); *McLaughlin v. Board of Selectmen of Amherst*, 422 Mass. 359 (1996); *Murphy v. Mart Realty of Brockton, Inc.*, 348 Mass. 675 (1965).

The Caters have further not proposed any covenants or other protections for the long-term care of the roadway and adjacent land, even though there are obvious concerns, such as erosion.

Therefore, Ms. Clark respectfully requests that the Planning Board deny the Caters’ Preliminary Subdivision Plan Application.

Sincerely,

*/s/ Courtney Simmons*

Courtney A. Simmons

cc: Lucy Clark (via email)  
Christoph Marino, Esq. (via email)



**Courtney A. Simmons**

P: 617.589.3832 | F: 617.523.6215  
csimmons@davismalm.com

November 10, 2023

**VIA FIRST CLASS MAIL AND EMAIL**

Truro Planning Board  
Truro Town Hall  
24 Town Hall Road, P.O. Box 2030  
Truro, MA 02666  
Attn: Anne Greenbaum, Chair  
esturdy@truro-ma.gov

Re: Response to Recusal Letter  
Application for Preliminary Subdivision Plan – 9B Benson Road, Fisher Road Realty  
Trust, Gloria J. Cater and Willie J. Cater, Trustees

Dear Chairwoman Greenbaum:

In advance of the hearing scheduled for Wednesday, November 15, 2023 on the above-referenced matter, I am submitting this correspondence on behalf of my client, Lucy Clark. This letter is in response to the November 3, 2023 recusal request made by counsel to the above-named applicant, seeking to have Planning Board members Jack Riemer and Paul Kiernan recuse themselves from consideration of the Fisher Road Realty Trust's Application for Preliminary Subdivision Plan (the "Application"). We think the request for recusal improper and there is no basis for require their recusal from considering the Application.

Mr. Riemer and Mr. Kiernan's participation as private citizens, in public hearings, nearly a decade ago, for an entirely different proposal of a definitive subdivision plan, does not mean that they are unable to act in a fair and objective manner in considering the Application before the Planning Board. Prior opposition to a different subdivision application regarding the same property, is not grounds for recusal. The cases cited by the applicant's counsel in support of their request for recusal do not support such a position and are distinguishable from the circumstances here.

In both *Windsor v. Planning Board of Wayland*, 26 Mass. App. Ct. 650 (1988) and *Winchester Boat Club, Inc. v. Zoning Board of Appeals of Winchester*, 2021 EL 1700846 (Mass. Land Ct., April 29, 2021), a current board member was also direct abutter to the subject property and opposed the application for the project presently before the board. The board members recused



Chairwoman Greenbaum  
November 10, 2023  
Page 2

themselves from voting so they could represent their own private interests. In those situations, there was a direct conflict of interest. It is clear that when a board member is also a direct abutter who opposes an application, a reasonable person could conclude that such board member is “likely to act or fail to act as a result of kinship, rank, position, or undue influence” requiring recusal. G.L. c. 268A, § 23(b). That is not the case here.

Mr. Riemer and Mr. Kiernan are not direct abutters to the applicant’s property, and they have not objected, as private citizens, to the Application before the Planning Board. Aside from the fact that almost ten years ago Mr. Riemer and Mr. Kiernan expressed concerns at a public hearing and voiced objections to a different subdivision application, there is no evidence to suggest that they will oppose the present Application. Because they are not direct abutters and otherwise have no personal or financial interest in the matter, there is nothing that would call into question their ability act impartially. Public officials, such as board members, enjoy a strong presumption that they act honestly and in good faith. See *James Constr. Co. v. Comm’r of Pub. Health*, 336 Mass. 143, 146 (1957); *LaPoint v. License Bd. of Worcester*, 389 Mass. 454, 459 (1983); *Nantasket Beachfront Condos., LLC v. Hull Redev. Auth.*, 87 Mass. App. Ct. 455, 464 (2015).

Accordingly, because the applicant has put forth nothing to suggest that Mr. Riemer and Mr. Kiernan are incapable of acting in a fair and unbiased manner in reviewing and considering the Application, there is no basis to require their recusal from the Planning Board.

Sincerely,

/s/ Courtney Simmons

Courtney A. Simmons

cc: Lucy Clark (via email)  
Christopher Marino, Esq. (via email)

## Elizabeth Sturdy

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**From:** Emily Beebe  
**Sent:** Tuesday, November 14, 2023 8:54 AM  
**To:** Elizabeth Sturdy; Barbara Carboni; Robin Reid  
**Subject:** 9B Benson Road- prelim subdivision plans

Good Morning,

I have reviewed this preliminary subdivision plan, and on behalf of the Board of Health make the following comments:

- The 2-lot subdivision has been developed with respect for the Truro Board of Health regulations that remove the area within wetland resources from upland area, which is the local basis for calculating Nitrogen Loading.
- It appears that future development would be restricted to lot 1, and the upland area of 45,849 sf is suitable to support a 4-bedroom dwelling.
- The shape of the lot appears conducive for the proper siting of a private well and an on-site septic system.

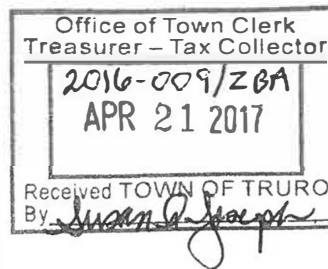
At this time, I make these comments on behalf of the board, although they have not yet formally reviewed the preliminary proposal. They will meet next on December 5, and the preliminary will appear on that agenda as an advisory to the Board of Health, however, we did want to make comment for the benefit of the Planning Board about the preliminary plans.

Once definitive plans have been filed, the Board of Health will review the plans in a timely fashion at a public hearing to make final comments for the Planning Board.

Thank you for your acceptance of our review comments.

Sincerely,  
Emily

Emily Beebe, RS  
Truro Health & Conservation Agent  
24 Town Hall Road  
Truro, MA 02666



DAVIS MALM &  
D'AGOSTINE P.C.  
ATTORNEYS AT LAW

J. Gavin Cockfield

April 21, 2017

**HAND DELIVERY**

Cynthia A. Slade, Town Clerk  
Town of Truro  
24 Town Hall Road  
Truro, MA 02666

Re: Notice of Service - G.L. c. 40A, § 17

Lucy Clark v. Arthur F. Hutlin, Jr., Nick Brown, John Dundas, Fred Todd, Bertram Perkel, as they are members of the Truro Zoning Board of Appeals and Willie J. Cater and Gloria J. Cater, as Trustees of Fisher Road Realty Trust

Dear Ms. Slade:

You are hereby notified pursuant to G.L. c. 40A, Section 17 that the plaintiff in the above-referenced action filed a complaint in the Land Court on April 20, 2017 appealing a decision of the Town of Truro Zoning Board of Appeals, filed with your office on April 10, 2017, which granted a variance to Willie J. Cater and Gloria J. Cater, as Trustees of the Fisher Road Realty Trust. A copy of the complaint is attached hereto.

Please acknowledge the date of the receipt of this letter on the copy provided as well as on the original and return the acknowledged copy to me.

Very truly yours,

  
J. Gavin Cockfield

JGC/ew  
Encls.

cc: Client (Letter Only)

Received:

By: \_\_\_\_\_  
Cynthia A. Slade, Town Clerk

Commonwealth of Massachusetts  
Land Court  
Department of the Trial Court

Case No. \_\_\_\_\_

**Civil Cover Sheet**

First Plaintiff Lucy Clark First Defendant Arthur F. Hutlin, Jr.

Locus Address/Description 9B Benson Road, T City/Town Truro

**Instructions**

**Part I - To Be Completed by Plaintiff(s)' Counsel:**

**FOR ALL MISCELLANEOUS CASES (EXCEPT cases filed pursuant to Servicemembers Civil Relief Act):**

1. Using the list below, please number, with the **Number 1**, the main cause of action on which you base your complaint.

and

2. Place a check mark next to each other cause of action in your complaint.

and

3. Is this complaint verified ? ☐ Yes ☒ No

and

4. Are there any related cases filed in the Land Court Department ? ☒ Yes ☐ No

If yes, please provide the Case No.(s) : 16MISC000522 and 98MISC250365

X	ZAC	Appeal from Zoning Board G. L. c. 40A, § 17
	ZAD	Appeal from Planning Board G. L. c. 41, § 81BB
	ZJA	Validity of Zoning G. L. cc. 240, § 14A, 185, § 1 (j ½)
	ZEN	Enforcement of Zoning G. L. c. 40A, § 7
	COT	Remove Cloud on Title G. L. c. 240, § 6 - 10
	DOM	Discharge of Old Mortgage G. L. c. 240, § 15
	LVT	Affirm Tax Foreclosure - Land of Low Value - G. L. c. 60, § 80B
	MTB	Try Title G. L. c. 240, § 1 - 5
	MWA	Recover Freehold Estate (Writ of Entry) - G. L. c. 237
	MRC	Determine Validity of Encumbrances G. L. c. 240, § 11 - 14
	CER	Enforce Restrictions G. L. c. 240, § 10A - 10C

	MAD	Determine Fiduciary Authority G. L. c. 240, § 27
	PAR	Partition G. L. c. 241
	RED	Redemption G. L. c. 60, § 76
	SP	Specific Performance of Contracts G. L. c. 185, § 1 (k)
	MBF	Determine Municipal Boundaries G. L. c. 42, § 12
	MFE	Determine Boundaries of Flats G. L. c. 240, § 19
	CNC	Certiorari - G. L. c. 249, § 4
	MAN	Mandamus - G. L. c. 249, § 5
	TTRE	Trespass to Real Estate Involving Title - G. L. c. 185, § 1 (o)
	EQA	Equitable Action Involving Any Right, Title or Interest in Land G. L. c. 185, § 1 (k)
	AHA	Affordable Housing Appeal G. L. c. 40B, § 21
	OTA	Other



**Part II. - Uniform Counsel Certificate** - to be filled out by **Plaintiff(s)' Counsel** at the time of initial filing. **All other counsel** shall file within thirty (30) days of initial entry into the case, whether by answer, motion, appearance or other pleading.

**FOR ALL MISCELLANEOUS CASES (EXCEPT Mortgage Foreclosures under the Servicemembers Civil Relief Act)**

I am attorney-of-record for: Lucy Clark  
~~Plaintiff/Defendant~~ in the above-entitled matter.

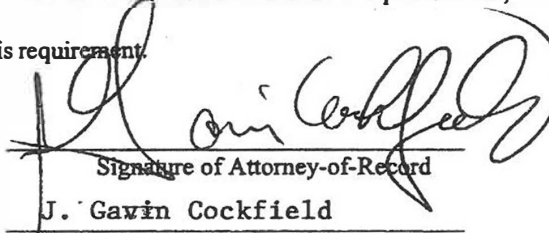
If Defendant(s)' Attorney, please provide Case No. \_\_\_\_\_

In accordance with Rule 5 of the Supreme Judicial Uniform Rules on Dispute Resolution (SJC Rule 1:18) which states in part: "... Attorneys shall: provide their clients with this information about court-connected dispute resolution; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent ..."

I hereby certify that I have complied with this requirement.

BBO# 553208

Date: 4-20-17

  
\_\_\_\_\_  
Signature of Attorney-of-Record  
J. Gavin Cockfield  
\_\_\_\_\_  
Please Print Name

**Exempt Cases:** Tax Foreclosures, Mortgage Foreclosures under the Servicemembers Civil Relief Act and all cases related to original and subsequent registration under G. L. c. 185, § 1.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

LAND COURT  
MISC. CASE NO.

LUCY CLARK,

Plaintiff

v.

ARTHUR F. HUTLIN, JR., NICK  
BROWN, JOHN DUNDAS, FRED TODD,  
BERTRAM PERKEL, as they are members  
of the TRURO ZONING BOARD OF  
APPEALS and WILLIE J. CATER AND  
GLORIA J. CATER, as Trustees of  
FISHER ROAD REALTY TRUST,

Defendants.

**COMPLAINT**

This action is a G.L. c. 40A, § 17 appeal of a decision of the Truro Zoning Board of Appeals ("ZBA") on remand from this Court in 16 Misc. 000522 granting variances from the frontage requirements of the Truro Zoning Bylaw. ("Bylaw"). The ZBA acted in excess of its authority because, among other reasons, the locus ("Property") has no frontage and a lack of frontage cannot, as a matter of law, be cured by a frontage variance. The ZBA exceeded its authority in granting the variances and that decision should be annulled. Plaintiff Lucy Clark abuts the proposed road that would provide access to the Property and is a statutory abutter to the Property.

**PARTIES**

1. Plaintiff Lucy Clark owns land located at 7 Benson Road Truro, Massachusetts.
2. Defendant members of the ZBA are as follows:
  - a. Arthur F. Hutlin, Jr., P.O. Box 504, North Truro, Massachusetts
  - b. Nick Brown, P.O. Box 1121, Truro, Massachusetts
  - c. John Dundas, P.O. Box 649, Truro, Massachusetts

- d. Fred Todd, P.O. Box 625, Truro Massachusetts
- e. Bertram Perkel, P.O. Box 383, North Truro, Massachusetts.
- 3. Defendants Willie J. Cater and Gloria J. Cater as Trustees of Fisher Road Realty Trust own the Property located at 9B Benson, Road, Truro, Massachusetts.

### **FACTS**

4. In 98 Misc. 250365, Piper, J entered an Amended Judgment After Rescript in February of 2013 ("Easement Decision"). The Easement Decision determined that the Property has the benefit of an access easement located in part on Clark's property and setting forth widths, maximum grades and other provisions concerning the construction of an access road or driveway. The Easement Decision also contemplated that the Caters would seek waivers or other approvals to construct the new access.

5. The Caters twice applied to the Truro Planning Board for subdivision approval of an access road as contemplated by the Easement Decision, seeking waivers of the Planning Board's Rules and Regulations. The Caters did not appeal either denial.

6. The Caters then applied for a frontage variance from the ZBA. They failed to receive the required super majority and that application was denied.

7. Because the ZBA denied the application, Clark did not appeal.

8. The Caters appealed that denial to this Court in 16 Misc. 00522. Pursuant to a joint motion, the matter was remanded to the ZBA.

9. After a public hearing, the ZBA voted to grant variances of the definition of Street under the Bylaw and of the frontage requirement. The ZBA filed a copy of its "Decision" with the Town Clerk on April 10, 2017, an attested copy of which is attached hereto as Exhibit A.

10. The Caters' original variance application was accompanied by a one sheet plan depicting the location, width and regrading proposed for their driveway.

11. That same design was the subject of one of the two subdivision applications to the Planning Boards and required numerous waivers.

12. The Planning Board in denying those requested waivers found that the following waivers, given the proposed design, would constitute a “public safety hazard”:

- a. Reduce minimum right of way width by 28 feet;
- b. Reduce minimum roadway width by 2 feet;
- c. Reduce minimum shoulder width by 2 feet;
- d. Reduce the required site distance by 75 feet;
- e. A proposed grade of 14 percent;
- f. Allowing an intersection radius of 32 degrees; and,
- g. Allowing a dead end turnaround of less than 40 feet.

13. That decision of the Planning Board was not appealed. A true and accurate copy of that decision is attached as Exhibit B.

14. The Appeals Court in the case of *Schiffhenaus v. Kline*, 79 Mass. App. Ct. 1133 (2011) determined that the Bylaw definition of “street” requires an actual road providing adequate access.

15. The driveway design originally proposed to the ZBA does not provide adequate access and as such varying the frontage requirement is inconsistent with the purposes of the By-law.

16. Lot frontage is defined in the Bylaw as “That portion of a lot fronting upon and having access to a street.”

17. The Bylaw goes on to say that “When a street(s) is to be used for lot frontage, the street(s) shall conform to the requirements of the Town of Truro Subdivision Regulations,

Section IV, Design Standards, (b), (c), & (d) as they existed on January 1, 1989.” A true and accurate copy of those 1989 design standards are attached as Exhibit C.

18. The driveway design originally submitted to the ZBA does not meet those standards.

19. Those Design Standards require a right-of-way width of 40 feet. As noted above, the *Kline* case has also construed this provision to require actual, adequate access.

20. The Property has no frontage as defined in the Bylaw. Although it has an access easement, that easement creates no frontage for the Property.

21. A lack of frontage cannot as a matter of law be cured with a frontage variance because lack of frontage is not a condition related to shape, soil or topography.

22. The Caters do not suffer any legally recognized harm that could support the issued variances because any harm must relate to a unique shape, soil or topographic condition. The harm they suffer is related to a lack of frontage only which is not a condition of shape, soil or topography and as such they do not suffer a harm that can support the issuance of a variance.

23. Issuance of the variances was an error because the design of the proposed driveway will cause a substantial detriment to the public good as any fire, police, or ambulance personnel, or other third parties, using the driveway for access to the Property will face a safety risk from the substandard, dangerous driveway.

24. The ZBA failed to make sufficiently detailed findings on each of the criteria necessary for the grant of a variance, thereby committing error.

25. The ZBA based its decision to grant the variances in large part upon the Caters' legal expense to establish and locate their access easement. That issue is not a factor that can support the grant of a variance.

26. The ZBA found that the topography of the Property was unique, however, the topography of the Property is not the issue that results in the Property having no frontage, and in any event is not sufficiently unique to warrant the issuance of the variances. Moreover, the area of difficult topography is not located on the Property; rather it is located on abutting property over which the Caters' driveway would be located.

27. Although the Caters submitted a one sheet plan depicting a proposed driveway in their original application, they did not submit a plan to the ZBA at the remand hearing and the Decision does not reference any plan or condition the variances upon constructing the originally proposed driveway or any driveway.

28. The ZBA failed to address or analyze how any particular access would be adequate.

29. The Property does not meet any of the criteria necessary for the issuance of the granted variances.

30. For the foregoing reasons, the ZBA exceeded its authority in granting the variances and the Decision should be annulled.

31. Clark is aggrieved by the Decision.

[Intentionally blank]

WHEREFORE, Ms. Clark respectfully requests that the Decision be annulled and such other relief as this Court deems appropriate.

Respectfully submitted,  
**LUCY CLARK,**  
By her attorney,



J. Gavin Cockfield/BBO #553208  
Davis, Malm & D'Agostine, P.C.  
One Boston Place  
Boston, MA 02108  
617-367-2500  
jcockfield@davismalm.com

Dated: April 20, 2017

# EXHIBIT A



**Town of Truro  
Zoning Board of Appeals  
Decision**

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**Case #2016-009ZBA – Fisher Road Realty Trust**

**Applicant:** Fisher Road Realty Trust,  
Willie J. Cater & Gloria J. Cater, Trustees  
by Agent Christopher Snow, Esq.  
**Site:** 9B Benson Road, Truro  
**Atlas Sheet/Parcel:** Map 53 Parcel 50  
**Remanded Hearing Dates:** March 27, 2017  
**Decision Date:** March 27, 2017

**Procedural Summary:**

On May 17, 2016 Fisher Road Realty Trust filed an application for a variance with the Truro Zoning Board of Appeals (ZBA) seeking a variance from the terms of section 10.4 of the Truro Zoning Bylaw concerning construction of a road with a 12 foot width, 2 foot shoulder width and intersection radius of 0 feet. The road construction was intended to provide access to a 3.46-acre parcel on which the applicant proposed to build a single-family dwelling.

The ZBA held a duly notice public hearing on this application on July 18, 2016 and continued to August 22, 2016, and on August 22, 2016 the ZBA voted 3-2-0 on a motion to grant a variance to the applicant. The motion failed owing to the requirement for a 4-vote super majority to grant a variance. On May 17, 2016 the applicant filed an appeal of this decision with the Massachusetts Land Court. A Joint Motion for Remand was filed on behalf of the applicant and the ZBA on January 26, 2017, and on February 1, 2017 the Land Court issued a docket entry allowing the motion to remand the case to the ZBA for "a full and fair lawfully noticed public hearing on the plaintiffs' application for zoning variances. ..." A duly advertised public hearing was conducted on March 27, 2017 at 7 pm. The ZBA heard testimony from the applicants' attorney, Christopher Snow, and other abutters and abutters' representatives.

Following testimony, the ZBA closed the public hearing, deliberated and voted on the matter.

**Findings of Fact:**

Mr. Hultin made the following motion:

To grant a Variance to Fisher Road Realty Trust, 9B Benson Road from the Street definition set forth in Section 10.4 of the Truro Zoning By-Law and from the frontage requirements set forth in Section 50.1 of the Truro Zoning By-Law based upon the following Findings:

1. Pursuant to the provisions of G.L. c.40A §10 a permit granting authority can grant a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.



2. The unique legal proceedings concerning and governing this property, the topography of the land and the restrictions imposed by the Land Court on any road/driveway distinguish this lot from every other lot in the Zoning District.
3. In the absence of the requested variance, the Caters would suffer a substantial financial hardship as they have fought successfully in the Courts since 1998 for the right to access their landlocked property at great personal expense including enriching the Town's treasury by payment of real estate taxes annually on a lot assessed as buildable for residential purposes. Additionally almost twenty years of litigation to obtain a court judgment confirming that they had the right to access their property would be for naught and definitely result in continued litigation.
4. The variance can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the By-law as a single family use of the oversized property eliminates the possibility of a more intensive use or subdivision of the property. Furthermore, location, route and roadway specifications as directed by the Land Court ensure that any roadway on the right of way would be the shortest possible and produce the lowest impact on the natural environment and aesthetic characteristics of the area. Permitting construction of a roadway in consonance with the Land Court directive preserves, to the fullest extent possible, the natural environment, scenic vistas, property values and privacy for the benefit of all members of the surrounding community which benefit the public good in both a legal and equitable manner.
5. The granting of the requested variance from sections 10.4 and 50.1 of the Zoning Bylaw is in keeping with the purpose and intent of the Zoning Bylaw, and does not result in a condition more substantially detrimental to the surrounding neighborhood. The test of financial hardship has been demonstrated by finding #3 above. The variance is granted on conditions that (a) the 3.46 lot shall be used for one single-family dwelling and (b) shall not be subdivided at any point in the future.

Mr. Brown seconded the motion made by Mr. Hultin.

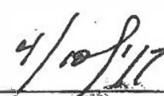
#### **Decision**

The ZBA voted 4-1-0 to approve the motion made by Mr. Hultin and seconded by Mr. Brown, with Msrs. Dundas, Brown, Hultin, and Todd in favor of the motion and Mr. Perkel voting against the motion.

#### **Ordered**

2016-009ZBA Fisher Road Realty Trust has been granted a variance from the Street definition set forth in Section 10.4 of the Truro Zoning By-Law and from the frontage requirements set forth in Section 50.1 of the Truro Zoning By-Law for property located at 9B Benson Road, Map 53 Parcel 50, on condition that the lot shall only be used or one single family dwelling and shall not be subdivided. This decision must be filed at the Barnstable County Registry District of the Land Court for it to be in effect. The relief authorized by this decision must be exercised within three years. Appeals of this decision, if any, shall be made pursuant to M.G.L. Chapter 40A, Section 17 within twenty days after the date of the filing of this decision in the office of the Town Clerk. The Applicant has the right to appeal this decision as outlined in M.G.L. Chapter 40B, Section 22.

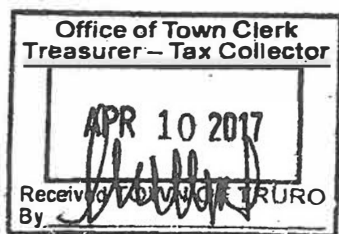
  
Bertram Perkel, Chair

  
Date Signed

I, Cynthia Slade, Clerk of the Town of Truro, Barnstable County, Massachusetts, hereby certify that twenty (20) days have elapsed since the Zoning Board of Appeals filed this decision and that no appeal of the decision has been filed in the office of the Town Clerk.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2016 under the pains and penalties of perjury.

\_\_\_\_\_  
Cynthia Slade, Town Clerk



## EXHIBIT B



COMMONWEALTH OF MASSACHUSETTS  
TOWN OF TRURO  
PLANNING BOARD – NOTICE OF ACTION

DEFINITIVE SUBDIVISION

Reference No. 2015-007

Atlas Sheet 53 Parcel 50

9B Benson Road, Truro

Applicant: Willie J. Cater and Gloria J. Cater

Meeting Dates October 6, 2015, November 18, 2015

Decision Date November 18, 2015

At a duly posted and noticed public hearing opened on October 6, 2015 and continued to and closed on November 18, 2015, the Town of Truro Planning Board, acting in the matter of Reference Number **2015-007** voted on a series of motions to deny waivers of the Town of Truro Regulations Governing the Subdivision of Land, and subsequently voted on a motion to deny approval of a one-lot Definitive Subdivision Plan for Doctor Willie J. and Gloria J. Cater. The Board's vote was five (5) in favor of the motion to deny, none opposed and one (1) abstention.

The hearing was opened on October 6<sup>th</sup>, at which time questions were raised by the applicant's attorney regarding disclosures filed with the Truro Town Clerk by three Planning Board members (Mr. Riemer, Ms. Tobia, Mr. Worthington). The applicant's attorney provided a summary of the procedural history pertaining to the Definitive Subdivision Plan and requested a continuance to allow more time to review the disclosures. As a result, no substantive discussion of the proposal took place on October 6<sup>th</sup>.

At the request of the applicant at the November 18<sup>th</sup> continuance, Ms. Tobia recused herself from discussing or voting on the matter and the Vice Chair, Mr. Sollog, assumed the Chair of the Board for the deliberation of the matter.

In the Planning Board's deliberations, the following plans and submittals were reviewed:

Submitted by the applicant to the Town Clerk on August 13, 2015, September 16, 2015 and September 17, 2015:

- 1) Form C Application for Approval of A Definitive Subdivision Plan, including supplemental information contained in Tabs A through S, with a fee payment of \$275 submitted on August 13, 2015, and submitted to the Town Clerk of Truro.
- 2) Definitive Subdivision Plan of Land prepared for Fisher Road Realty Trust, Deed book 22682, Page 84, Assessors Map 53, Parcel 50, Truro, MA, July 24, 2015, Scale 1" = 40' (Plan ols#155-1), dated and stamped by Donald T. Poole, PLS on September 14, 2015. Note: revised plan replaced the plan as shown in the application as Tab K (Subdivision Plan).
- 3) Topographic Plan of Land prepared for Doctor Willie J. and Gloria J. Cater, Assessors Map 53, Parcel 50, Truro, MA, April 22, 2009, Scale 1"=40' (Plan ols#155-1).

- 4) Hopper's View Lane, Road Construction Plan, Prepared for Fisher Road Realty Trust, Outermost Survey, Inc. and Clark Engineering, LLC, dated 07-01-2013, latest revision date 09-15-15, scales as noted, Drawing No.: 0802010D, Sheet No.: 1. Note: revised plan replaced the plan as shown in the application as Tab L (Hopper View Lane Construction Plan).
- 5) Hopper's View Lane, Profile Plan, Prepared for Fisher Road Realty Trust, Outermost Survey, Inc. and Clark Engineering, LLC, dated 07-01-2013, latest revision date 09-15-15, scales as noted, Drawing No.: 0802010D, Sheet No.: 1. Note: revised plan replaced the plan as shown in the application as Tab M (Hopper View Lane Profile Plan).

Submitted by the applicant to the Town Clerk on October 8, 2015:

- 6) Hopper's View Lane Profile Plan, Prepared for Fisher Road Realty Trust, Outermost Survey, Inc. and Clark Engineering, LLC, dated 07-01-2013, latest revision date 10-06-15, scales as noted, Drawing No.: 0802010D, Sheet No.: 1.
- 7) Hopper's View Lane Drainage Calculations Prepared for Fisher Road Realty Trust, Truro, MA by Clark Engineering LLC, dated July 20, 2015.

Mr. Sollog invited Town Counsel, Mr. Silverstein, to address the Board on matters of law directly related to the Board's deliberation. Principally, Mr. Silverstein opined that the subdivision control provisions of Massachusetts General Law define a subdivision as two or more building lots and, further, that the proposed definitive plan as described in case file 2015-007 does not meet the limited conditions for approval of a single-lot subdivision. Mr. Silverstein further opined that the Planning Board is not empowered to grant waivers of provisions of the Town of Truro Zoning Bylaw.

After much discussion and testimony by the applicant, the applicant's representatives, and members of the public, the Planning Board deliberated on the requests for waivers and merits of the request for approval of the definitive subdivision plan.

### **Decision**

On a motion by Mr. Herridge and seconded by Mr. Riemer, the Board voted to consider each waiver requested by the applicant. The Board's vote was six (6) in favor (Mr. Sollog, Mr. Riemer, Mr. Boleyn, Mr. Roderick, Mr. Herridge, Mr. Hopkins), none opposed and none abstained.

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the Board voted to deny the waiver of the Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Design Standards to reduce the required minimum right of way width by 28 feet. The Board voted four (4) in favor of the motion to deny (Mr. Sollog, Mr. Boleyn, Mr. Herridge, Mr. Riemer), none opposed, and two (2) abstained (Mr. Roderick and Mr. Hopkins). Board members expressed that the requested waiver would present a public safety hazard. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Boleyn and seconded by Mr. Riemer, the Board voted to deny the waiver of the Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Design Standards to reduce the minimum required roadway width by two (2) feet. The Board voted four (4) in favor of the motion to deny (Mr. Herridge, Mr. Hopkins, Mr. Boleyn, Mr. Riemer), one (1) opposed (Mr. Sollog) and one (1) abstained (Mr. Roderick). Board members expressed that the requested waiver would present a public safety hazard. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the Board voted to deny the waiver of the Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Design Standards to reduce the required shoulder width by two (2) feet. The Board voted four (4) in favor of the motion to deny (Mr. Riemer, Mr. Herridge, Mr. Boleyn, Mr. Sollog), one (1) opposed (Mr. Hopkins) and one (1) abstained (Mr. Roderick). Board members expressed that the requested waiver would present a public safety hazard. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the Board voted to deny the waiver of the Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Design Standards to reduce the required clear site distance by 75 feet. The Board voted four (4) in favor of the motion to deny, one (1) opposed (Mr. Hopkins) and one (1) abstained (Mr. Roderick). Board members expressed that the requested waiver would present a public safety hazard. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny the waiver of the Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Design Standards to allow a maximum grade of 14% as shown on the plan. The Board voted five (5) in favor of the motion to deny (Mr. Sollog, Mr. Riemer, Mr. Boleyn, Mr. Herridge, Mr. Hopkins), none opposed and one (1) abstained (Mr. Roderick). Board members expressed that the requested waiver would present a public safety hazard. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny the waiver of the Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Design Standards to allow for an intersection standard of 32 degrees (tied into the curb radius). The Board voted four (4) in favor of the motion to deny (Mr. Sollog, Mr. Riemer, Mr. Boleyn, Mr. Herridge), none opposed and two (2) abstained (Mr. Roderick and Mr. Hopkins). Board members expressed that the requested waiver would present a public safety hazard. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny the waiver of the Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Design Standards to allow for a dead end turnaround less than 40 feet. The Board voted five (5) in favor of the motion to deny (Mr. Sollog, Mr. Riemer, Mr. Boleyn, Mr. Herridge, Mr. Hopkins), none opposed and one (1) abstained (Mr. Roderick). Board members expressed that the requested waiver would present a public safety hazard. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Riemer and seconded by Mr. Herridge the Board voted to deny the request for a waiver of the requirement under §2.5.2.b (1 & 28) for a legend on the Definitive Plan. The Board voted four (4) in favor of the motion to deny, one (1) opposed (Mr. Sollog), and one (1) abstained (Mr. Roderick). Board members expressed that the requested waiver was unnecessary. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny a request for a

waiver of the requirement under §2.5.2.b (30) to show trees 10' in diameter or greater on the Definitive Plan. The Board voted five (5) in favor of the motion to deny, none opposed, and one (1) abstained (Mr. Roderick). Board members expressed that the requested waiver was unnecessary and that identification of such trees on the plan was necessary and appropriate. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny a request for a waiver of the requirement under §2.5.2.b (31) to show the location of ancient ways, historic walls etc. The Board voted five (5) in favor of the motion to deny (Mr. Sollog, Mr. Riemer, Mr. Boleyn, Mr. Herridge, Mr. Hopkins), none opposed and one (1) abstained (Mr. Roderick). Board members expressed that the requested waiver was unnecessary. The Board thus denied the requested waiver as not in the public interest or consistent with the intent and purpose of the Subdivision Control Law.

On a motion by Mr. Boleyn and seconded by Mr. Herridge, the Board voted to close the public hearing at 8:27 p.m. The Board voted six (6) in favor of the motion (Mr. Sollog, Mr. Riemer, Mr. Boleyn, Mr. Herridge, Mr. Hopkins, Mr. Roderick), none opposed and none abstained.

On a motion by Mr. Hopkins and seconded by Mr. Herridge, the Board voted to reaffirm in total all votes taken prior to the close of the public hearing. The Board voted five in favor of the motion to affirm (Mr. Sollog, Mr. Riemer, Mr. Boleyn, Mr. Herridge, Mr. Hopkins), none opposed and one (1) abstained (Mr. Roderick).

On a motion by Mr. Herridge and seconded by Mr. Boleyn, the Board voted to deny approval of the Definitive Plan and method of road construction for Fisher Road Realty Trust, Dr. Willie J. Cater and Gloria J. Cater, Trustees, as submitted and with the requested waivers pursuant to MGL c.41, §81T and §81 U and Section 2.5 of the Town of Truro Rules and Regulations Governing Subdivision of Land, for property located at 9B Benson Road, Truro, and shown as Parcel 50 on Truro Assessor's Map, Sheet 53 based on the following findings: (1) all of the requested waivers necessary for the construction of a roadway have been denied based on inadequate evidence that the granting of said waivers would be in the public interest and consistent with the purposes of the Subdivision Control Law and the Town of Truro Regulations Governing the Subdivision of Land as set forth in §1.2 of said regulations; (2) the proposed Definitive Subdivision Plan constitutes a one-lot subdivision that would not appear to qualify for Definitive Plan Endorsement pursuant to the definitions set forth in MGL c41 §81L; and (3) the proposed subdivision road does not comply with the definition of Street necessary to satisfy frontage requirements under §10.4 of the Town of Truro Zoning Bylaw, a requirement which it is not in the power of the Planning Board to waive.

#### **Board Vote**

The Board voted five (5) in favor of the motion to deny (Mr. Sollog, Mr. Boleyn, Mr. Herridge, Mr. Hopkins, Mr. Riemer), none opposed and one (1) abstained (Mr. Roderick).



Steven Sollo  
Planning Board Vice Chair

12/17/2015  
Date

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Received, Office of the Town Clerk:

(Signature)  
Signature

DECEMBER 17, 2015  
Date

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## EXHIBIT C

- (b) The minimum width of street right-of-ways shall be 40 feet.
- (c) Property lines at street intersections shall be rounded to provide for a curb radius of not less than 20 feet.
- (d) Dead-end streets shall be provided at the closed end with a turnaround having a property line diameter of at least 80 feet. When ways requiring turnarounds may be extended in future subdivisions, the Board may require only an area equal to the above requirement to be shown and marked "Reserved For Turning." Upon extension of the way through this turning area, the portions not included in the way shall revert to their respective lots.
- (e) All streets in the subdivision shall be continuous wherever practicable.
- (f) 1. Provisions satisfactory to the Board shall be made for the proper projection of streets, or for access to adjoining property not yet subdivided. At least one street in the new subdivision will connect with a road which will provide access to the new subdivision, and said road shall in the opinion of the Board be adequate to reduce the danger to persons and property and to secure safety in the case of emergency.  
2. The board may disapprove a plan if it determines the access road to the subdivision is inadequate.  
3. Subdivisions of 30 or more lots will be required to have more than one access from an existing major street. This requirement for more than one access may be waived by the Board when in its opinion it is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law.
- (g) On land of single ownership where the intent is to subdivide into no more than two lots of legal area and a way is required for one lot, this may be exempt from any or all of the requirements of the design standards, excepting for those requirements specified in the Bylaws. It shall be at the discretion of the Board to grant these waivers and to set requirements for the way. Any such way established shall not be used to provide access to any lot other than the lot established by approval of the way. There shall be no further subdivision of the lot serviced by the way established. Any way established under this provision of waiver of design standards shall not be subject to acceptance by the Town as a public way.
- (h) No street shall intersect any other street at less than sixty (60) degrees.
- (i) Street construction
  - 1. The width of the pavement and the shoulders (four (4) feet from each side of the pavement) shall be cleared of all stumps, brush, roots, boulders, trees and like material. All such material shall be disposed of outside the subdivision unless authorized by the Planning Board.
  - 2. All materials not suitable for foundation shall be removed from an area eight (8) feet wider than the paved width (four (4) feet from each side of the

# Robin B. Reid

Mediator  
Attorney at Law

**Mailing address:** Post Office Box 1713  
Provincetown, Massachusetts 02657

**Telephone:** (508) 487-7445  
**E-mail:** Robin@RobinBReidEsq.com

August 11th, 2023

Kaci Fullerton  
Town Clerk  
Town of Truro

Barbara Carboni  
Town Planner  
Town of Truro

Emily Beebe  
Health Agent  
Town of Truro

by hand at Truro Town Hall

**RE:** 9B Benson Road  
Fischer Road Realty Trust  
Gloria J. Cater and Willie J. Cater, trustees

## APPLICATION FOR APPROVAL OF PRELIMINARY PLAN

Dear Ms. Fullerton, Ms. Carboni and Ms. Beebe

I represent the Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater trustees.

Enclosed please find an application by the Fisher Road Realty Trust for Approval of a Preliminary Subdivision Plan, which includes:

- i. Form B, application for Approval of a Preliminary Plan,
- ii. Preliminary Subdivision Plan, Donald T. Poole, PLS, Outermost Land Survey Inc.,
- iii. Access Right of Way Plan, David A. Clark, PE, Clark Engineering, LLC,
- iv. 2.4 Checklist,

Kaci Fullerton, Town Clerk

Barbara Carboni, Town Planner

Emily Beebe, Health Agent

Town of Truro

Re: 9B Benson Road  
page 2 of 2

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- v. Abutters List,
- vi. Proposed Notice, and
- vii. my check for the \$275.00 filing fee

Please place this matter on the Planning Board's  
September 13 agenda for hearing.

Thank you for your consideration in this matter.  
Please do not hesitate to call if you have any questions.

Yours truly,



Robin B. Reid, Esq.

cc. Elizabeth Sturdy, Planning Department Administrator  
esturdy@truro-ma.gov

Gloria and Willie Cater

Kate Carter, Dain, Torphy, Le Ray, Weist & Garner, PC



# Town of Truro Planning Board

P.O. Box 2030, Truro, MA 02666

## FORM B

### APPLICATION FOR APPROVAL OF A PRELIMINARY PLAN

To the Planning Board of the Town of Truro, MA

Date 08/07/23

The undersigned, being the applicant as defined under Chapter 41, Section 81-L, for approval of a proposed subdivision shown on a plan entitled Preliminary Subdivision Plan of Land prepared for Fisher Road Realty Trust

by Donald T. Poole PLS, Outermost Land Survey, Inc. dated 06/06/23 and described as follows:

Located: 9B Benson Road Assessor's Map(s) and Parcel(s): Map 53, Parcel 50

Number of Lots Proposed: 2 Total Acreage of Tract: 175,610 sq ft/4.03 acres

Said applicant hereby submits said plan as a *Preliminary* subdivision plan in accordance with the Rules and Regulations of the Truro Planning Board and makes application to the Board for approval of said plan.

The undersigned's title to said land is derived under deed from Willie J. Cater and Gloria J. ~~cater~~ Cater, dated 03/19/07, and recorded in the Barnstable Registry of Deeds Book and Page 22682/84 or Land Court Certificate of Title No. \_\_\_\_\_ registered in Barnstable County.

Applicant:

Robin B. Reid, Esq., o/b/o Fisher Road Realty Trust

(Printed Name of Applicant)



(Signature of Applicant)

Applicant's Telephone Number(s) 508 487 7445

Applicant's Legal Mailing Address POB 1713, Provincetown, MA 02657

Owner's Signature if not the applicant  
or applicant's authorization if not the owner:

WJC:   
Willie J. Cater (Aug 9, 2023 22:38 EDT)

Willie J. Cater and Gloria J. Cater, trustees of the Fisher Road Realty Trust

(Printed Name)

GJC:   
Gloria J. Cater (Aug 9, 2023 22:23 EDT)

(Signature)

Owner's Legal Mailing Address 559 Chestnut Hill Avenue, Brookline, MA 02445-4113

Surveyor Name/Address Donald T. Poole, PLS, Outermost Land Survey  
(or person responsible for preparation of the plan)

**File ten (10) copies each of this form and applicable plan(s) with the Town Clerk; and a complete copy, including all plans and attachments, submitted electronically to the Planning Department Administrator at**

[esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov)

**L I M I N    Y   S U B D I V I S I   N   L   N    V I    C H   C   L I S T            l i c a n t**

<b>Address:</b> <u>9B Benson Road</u>					<b>Applicant Name:</b> <u>Fisher Road Realty Trust</u>					<b>Date:</b> <u>08/11/23</u> .				
No.	Requirement				Included	Not Included	Explanation, if needed							
<b><u>2.4.2 Submission Requirements for Preliminary Plans</u></b>														
A submission of a Preliminary Plan shall include the following supporting documentation:														
a.	A properly executed application for Subdivision Preliminary Plan Review. (Form B)				x									
b.	A list of the names and addresses of all abutters, as defined in Section 1.6 and as certified by the Deputy Assessor.				x									
c.	Ten (10) copies of the plan showing:				x									
c.1	the subdivision name, boundaries, north point, date, scale, legend and title "Preliminary Plan";				x									
c.2	the names of the record owner and the applicant and the name of the designer, engineer or surveyor;				x									
c.3	the names of all abutters, as determined from the most recent local tax list;				x									
c.4	the existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner;				x									
c.5	the proposed system of drainage, including, adjacent existing natural waterways, in a general manner;				x									
c.6	the approximate boundary lines of proposed lots, with approximate areas and dimensions;				x									
c.7	the names, approximate location and widths of adjacent streets; and				x									
c.8	the topography of the land in a general manner.				x									

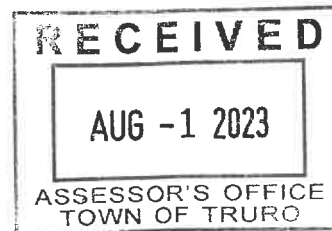


# TOWN OF TRURO

## Assessors Office

### Certified Abutters List

### Request Form



DATE: 08/01/23

NAME OF APPLICANT: Fisher Road Realty Trust, Gloria J and Willie J Cater, trustees

NAME OF AGENT (if any): Robin B Reid Esq

MAILING ADDRESS: POB 1713, Provincetown, MA 02657

CONTACT: HOME/CELL 508 487 7445 EMAIL robin@RobinBReidEsq.com

PROPERTY LOCATION: 9B Benson Road  
(street address)

PROPERTY IDENTIFICATION NUMBER: MAP 53 PARCEL 50-0 EXT. (if condominium)

#### ABUTTERS LIST NEEDED FOR:

FEE: \$15.00 per checked item

(please check all applicable)

(Fee must accompany the application unless other arrangements are made)

<input type="checkbox"/> Board of Health <sup>5</sup>	<input type="checkbox"/> Planning Board (PB)	<input type="checkbox"/> Zoning Board of Appeals (ZBA)
<input type="checkbox"/> Cape Cod Commission	<input type="checkbox"/> Special Permit <sup>1</sup>	<input type="checkbox"/> Special Permit <sup>1</sup>
<input type="checkbox"/> Conservation Commission <sup>4</sup>	<input type="checkbox"/> Site Plan <sup>2</sup>	<input type="checkbox"/> Variance <sup>1</sup>
<input type="checkbox"/> Licensing	<input checked="" type="checkbox"/> Preliminary Subdivision <sup>3</sup>	
Type: _____	<input type="checkbox"/> Definitive Subdivision <sup>3</sup>	
<input type="checkbox"/> Other _____	<input type="checkbox"/> Accessory Dwelling Unit (ADU) <sup>2</sup>	

(Fee: Inquire with Assessors)

(Please Specify)

**Note: Per M.G.L., processing may take up to 10 calendar days. Please plan accordingly.**

#### THIS SECTION FOR ASSESSORS OFFICE USE ONLY

Date request received by Assessors: 8/1/2023

Date completed: 8/1/2023

List completed by: J. Farrell

Date paid: 8/1/2023 Cash/Check # 4660

<sup>1</sup>Abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line.

<sup>2</sup>Abutters to the subject property, abutters to the abutters, and owners of properties across the street from the subject property.

<sup>3</sup>Landowners immediately bordering the proposed subdivision, landowners immediately bordering the immediate abutters, and landowners located across the streets and ways bordering the proposed subdivision. **Note:** For Definitive Subdivision only, responsibility of applicant to notify abutters and produce evidence as required.

<sup>4</sup>All abutters within 300 feet of parcel, except Beach Point between Knowles Heights Road and Provincetown border, in which case it is all abutters within 100 feet. **Note:** Responsibility of applicant to notify abutters and produce evidence as required.

<sup>5</sup>Abutters sharing any boundary or corner in any direction – including land across a street, river or stream. **Note:** Responsibility of applicant to notify abutters and produce evidence as required.





**TRURO ASSESSORS OFFICE**

PO Box 2012 Truro, MA 02666

Telephone: (508) 214-0921

Fax: (508) 349-5506

**Date:** August 1, 2023

**To:** Robin B. Reid, Esq., Agent for Fisher Road Realty Trust

**From:** Assessors Department

**Certified Abutters List:** 9B Benson Road (Map 53, Parcel 50)

**Planning Board/ Preliminary Subdivision**

Attached is a combined list of abutters for the property located at 9B Benson Road.

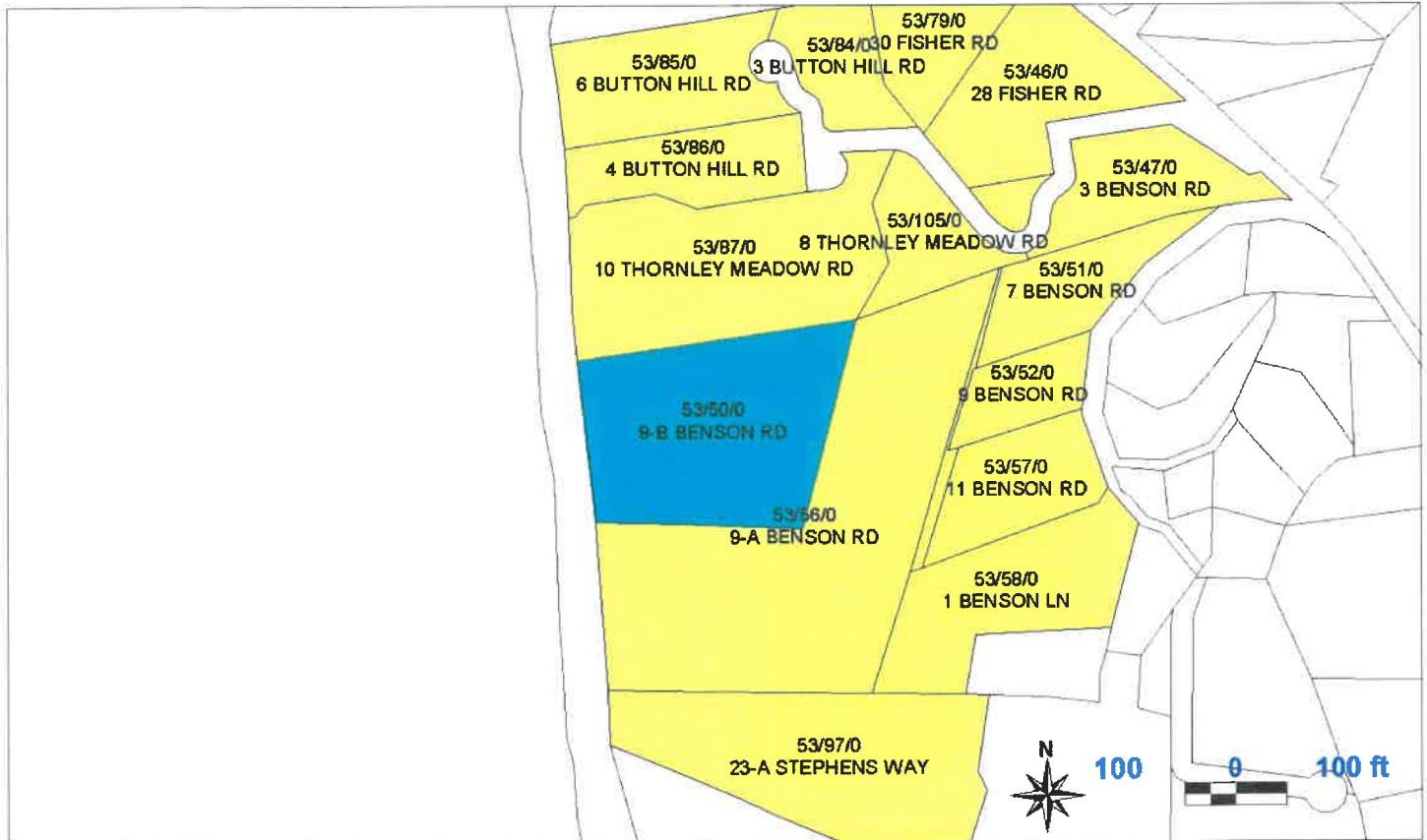
The current owner is Fisher Road Realty Trust, Willie J. & Gloria J. Cater, Trustees.

The names and addresses of the abutters are as of July 21, 2023 according to the most recent documents received from the Barnstable County Registry of Deeds.

Certified by:

Olga Farrell  
Assessing Clerk

### Custom Abutters List



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
3191	53-46-0-R	SCHIMEL REALTY TRUST TRS: SCHIMEL DAVID & ELIZABETH	28 FISHER RD	C/O PHYLLIS SCHIMEL 34 N 7th ST, APT 9G	BROOKLYN	NY	11249
3192	53-47-0-R	THORNLEY JOHN M & NANCY O C/O JOHN M THORNLEY LIVING TR	3 BENSON RD	PO BOX 23	TRURO	MA	02666
3195	53-51-0-R	CLARK LUCY P	7 BENSON RD	1217 E ST SE	WASHINGTON	DC	20003
3196	53-52-0-R	LOFFREDO STEPHEN & HERSHKOFF HELEN	9 BENSON RD	242 WEST 12TH ST	NEW YORK	NY	10014
3200	53-56-0-E	TRURO CONSERVATION TRUST TRS: BETSEY BROWN ET AL	9-A BENSON RD	PO BOX 327	NO TRURO	MA	02652-0327
3201	53-57-0-R	11 BENSON ROAD LLC ACCTG: LAURA GERBERICK	11 BENSON RD	KEYS & SIMPKINSON 8280 MONTGOMERY RD, SUITE 102	CINCINNATI	OH	45236
3202	53-58-0-R	MUELLER TRURO REALTY TRUST MUELLER PHILIP P III ETAL -TRS	1 BENSON LN	171 WIG HILL RD	HADDAM	CT	06438
3220	53-79-0-R	EHRENREICH PAUL & RIKER ELLEN	30 FISHER RD	7400 BARRA DR	BETHESDA	MD	20817
3225	53-84-0-R	AVERBACK MARIAN E & ROBERT S	3 BUTTON HILL RD	601 ELIOT DR	URBANA	IL	61801
3226	53-85-0-R	COLLINS WILLIAM B & COLLINS FELICE IRVINE-	6 BUTTON HILL RD	197 STERLING RD	PRINCETON	MA	01541
3227	53-86-0-R	DUBINSKY JOHN P & YVETTE D	4 BUTTON HILL RD	625 S SKINKER BLVD APT 1503	ST LOUIS	MO	63105-2345
3228	53-87-0-R	TIMSNECK LLC c/o LUCIA LETENDRE	10 THORNLEY MEADOW RD	36 HOLLY WOODS RD	MATTAPOISETT	MA	02739
3229	53-88-0-R	THORNLEY ANN BLAIR-	9 THORNLEY MEADOW RD	3510 PERSHING AVE	SAN DIEGO	CA	92104-3874
3230	53-89-0-R	CABOT-CLARK-FOX REAL EST TRUST TRS: CABOT SUSAN B ET AL	0 BENSON RD	1217 E ST. SE	WASHINGTON	DC	20003
3235	53-97-0-R	SHAMBLES REALTY TRUST TRS: CALLANDER NANCY F ET AL	23-A STEPHENS WAY	3043 HARTWICKE DRIVE	FITCHBURG	WI	53711

*TRURO*  
8/1/2023

Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
7367	53-105-0-R	TIMSNECK LLC c/o LUCIA LETENDRE	8 THORNLEY MEADOW RD	36 HOLLY WOODS RD	MATTAPOISETT	MA	02739

02/28/2023

<p>53-46-0-R</p> <p>SCHIMEL REALTY TRUST            TRS: SCHIMEL DAVID &amp; ELIZABETH            C/O PHYLLIS SCHIMEL            34 N 7th ST, APT 9G            BROOKLYN, NY 11249</p>	<p>53-47-0-R</p> <p>THORNLEY JOHN M &amp; NANCY O            C/O JOHN M THORNLEY LIVING TR            PO BOX 23            TRURO, MA 02666</p>	<p>53-51-0-R</p> <p>CLARK LUCY P            1217 E ST SE            WASHINGTON, DC 20003</p>
<p>53-52-0-R</p> <p>LOFFREDO STEPHEN &amp;            HERSHKOFF HELEN            242 WEST 12TH ST            NEW YORK, NY 10014</p>	<p>53-56-0-E</p> <p>TRURO CONSERVATION TRUST            TRS: BETSEY BROWN ET AL            PO BOX 327            NO TRURO, MA 02652-0327</p>	<p>53-57-0-R</p> <p>11 BENSON ROAD LLC            ACCTG: LAURA GERBERICK            KEYS &amp; SIMPKINSON            8280 MONTGOMERY RD, SUITE 102            CINCINNATI, OH 45236</p>
<p>53-58-0-R</p> <p>MUELLER TRURO REALTY TRUST            MUELLER PHILIP P III ETAL -TRS            171 WIG HILL RD            HADDAM, CT 06438</p>	<p>53-79-0-R</p> <p>EHRENREICH PAUL &amp; RIKER ELLEN            7400 BARRA DR            BETHESDA, MD 20817</p>	<p>53-84-0-R</p> <p>AVERBACK MARIAN E &amp; ROBERT S            601 ELIOT DR            URBANA, IL 61801</p>
<p>53-85-0-R</p> <p>COLLINS WILLIAM B &amp;            COLLINS FELICE IRVINE-            197 STERLING RD            PRINCETON, MA 01541</p>	<p>53-86-0-R</p> <p>DUBINSKY JOHN P &amp; YVETTE D            625 S SKINKER BLVD APT 1503            ST LOUIS, MO 63105-2345</p>	<p>53-87-0-R</p> <p>TIMSNECK LLC            c/o LUCIA LETENDRE            36 HOLLY WOODS RD            MATTAPOISETT, MA 02739</p>
<p>53-88-0-R</p> <p>THORNLEY ANN BLAIR-            3510 PERSHING AVE            SAN DIEGO, CA 92104-3874</p>	<p>53-89-0-R</p> <p>CABOT-CLARK-FOX REAL EST TRUST            TRS: CABOT SUSAN B ET AL            1217 E ST. SE            WASHINGTON, DC 20003</p>	<p>53-97-0-R</p> <p>SHAMBLES REALTY TRUST            TRS: CALLANDER NANCY F ET AL            3043 HARTWICKE DRIVE            FITCHBURG, WI 53711</p>
<p>53-105-0-R</p> <p>TIMSNECK LLC            c/o LUCIA LETENDRE            36 HOLLY WOODS RD            MATTAPOISETT, MA 02739</p>		

**PLN 23-**

Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater, trustees, for property located at 9B Benson Road (Atlas Map 53, Parcel 50-0, Barnstable County Registry of Deeds Book 22682 and Page 84). Applicant seeks Approval of a Preliminary Subdivision Plan, a 2 lot subdivision; for property located in the Residential Zoning District.



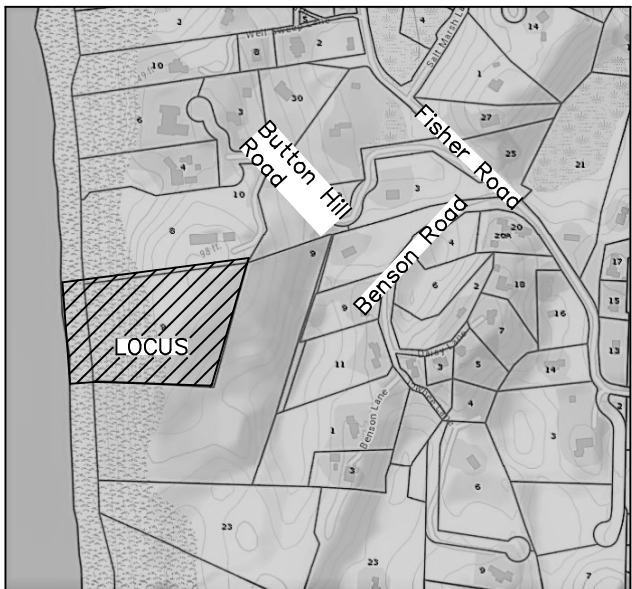
Plan Note:  
1) No Lots may be conveyed and no building permits shall be issued by the Town of Truro until all applicable requirements of the rules and Regulations Governing the Subdivision of Land have been met.  
2) All utilities shall be underground.  
3) Zoning District = Residential  
4) Owner: Fisher Road Realty Trust  
559 Chestnut Hill Avenue  
Brook line MA 02146  
5) Concrete bounds to be set as required by the Truro Planning Board.  
6) There are not any ancient ways or historic walls to be identified on this plan

Preliminary Approval  
Truro Planning Board

Application Date

Date Approved

Timsneck LLC  
#10 Thornley Meadow Road  
Deed Book 30529 Page 134  
Assessors Map 53, Parcel 87  
Lot 4C Plan Book 617, Page 20



For Registry Use only

LEGEND

□ = Concrete Bound, with drill hole, to be set

Truro Board of Health Approval  
Date

Area within Subdivision =  
175,610± Sq.ft. or 4.03 Acres  
Wetland Area =



S 65°10'02" E

420±

Truro Conservation Trust  
#9-A Benson Road  
Deed Book 21988, Page 71  
Assessors map 53, Parcel 56

I, \_\_\_\_\_, Clerk of the  
Town of Truro, hereby certify that  
the notice of approval of this plan  
by the Planning Board has been  
recieved and recorded at this  
office and no notice of appeal  
was recieved during the next 20  
days after such receipt and  
reording of said notice.

Truro Town Clerk



Preliminary Subdivision Plan of Land  
prepared for  
Fisher Road Realty Trust  
Deed Book 22682, Page 84  
Assessors Map 53, Parcel 50  
Truro, MA  
June 6, 2023 Scale 1"=40'  
ols#155-1

Steven Loffredo & Helen Hershkoff  
#9 Benson Road Road  
Deed Book 27930 Page 94  
Assessors Map 53, Parcel 52  
Plan Book 264, Page 13

Cabot Clark Fox Real Estate Trust  
#10 Benson Road Road  
Deed Book 9328, Pages 146 to 149  
Assessors Map 53, Parcel 89  
Plan Book 439, Page 79

Cape Cod Bay (tidal)  
Approx. Mean High Water

Approx. Bottom of Bank

Approx. Flood Zone  
Elev= 16 NGVD 1929

Top of Bank and Limit of Coastal Bank

S 82°02'40" E 475±

Lot 1  
45,849± or  
1.1 Acres to Top of Bank  
18,667± Sq.Ft. below the Top of Bank  
or 0.42 Acres, 25.2% of the Lot Area

350± to top of bank

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# Robin B. Reid

Mediator  
Attorney at Law

**Mailing address:** Post Office Box 1713  
Provincetown, Massachusetts 02657

**Telephone:** (508) 487-7445  
**E-mail:** Robin@RobinBReidEsq.com

November 6th, 2033

Elizabeth Verde  
Town Clerk  
Town of Truro

Barbara Carboni  
Town Planner  
Town of Truro

Emily Beebe  
Health Agent  
Town of Truro

by hand at Truro Town Hall

**RE:** 9B Benson Road  
Fischer Road Realty Trust  
Gloria J. Cater and Willie J. Cater, trustees

## **SUPPLEMENTAL FILING APPLICATION FOR APPROVAL OF PRELIMINARY PLAN**

Dear Ms. Verde, Ms. Carboni and Ms. Beebe

As you may recall, I represent the Fisher Road Realty Trust, Gloria J. Cater and Willie J. Cater trustees, in the matter of an Application for Approval of a Preliminary Subdivision Plan.

This matter is scheduled for hearing before the Truro Planning Board on November 15, 2023.

Enclosed please find a Supplemental Filing to that application, which includes:

- i. my revised narrative;
- ii. a second access right of way plan;



Elizabeth Verde, Town Clerk  
Barbara Carboni, Town Planner  
Emily Beebe, Health Agent  
Town of Truro

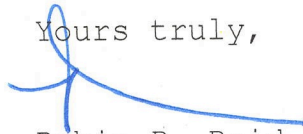
Re: 9B Benson Road  
page 2 of 2

---

- iii. the 2014 Blue Flax landscape and restoration plan;  
and
- iv. a recusal request for members of the Planning Board,  
Mr. Jack Riemer and Mr. Paul Kiernan, from my co-  
counsel, Kate Carter, of Dain Torpy.

Thank you for your consideration in this matter.  
Please do not hesitate to call if you have any questions.

Yours truly,



Robin B. Reid, Esq.

cc. Elizabeth Sturdy, Planning Department Administrator  
esturdy@truro-ma.gov

Gloria and Willie Cater

Kate Carter, Dain, Torphy, Le Ray, Weist & Garner, PC



## **NARRATIVE**

### **Application for Approval of a Preliminary Subdivision Plan**

#### **9B BENSON ROAD**

Assessors Map 53 and Parcel 50-0

#### **Fisher Road Realty Trust**

Willie J. and Gloria J. Cater, trustees

This is a proposal to create a 2 parcel subdivision and approval is sought for Preliminary Subdivision Plan pursuant to §2.4. of Truro's Rules and Regulations Governing the Subdivision of Land.

The proposed subdivision is as shown on the plan titled Preliminary Subdivision Plan of Land for Fisher Road Realty Trust, by Outermost Land Survey, Inc., dated June 6, 2023; and is included in the application.

The application has been submitted in accordance with the Filing Procedure found at §2.4.1, and the Submission Requirements at §2.4.2 of Truro's Rules and Regulations Governing the Subdivision of Land.

The proposed Lot 1 shall be the site of a single family home; the application includes plans for the proposed turn around and driveway to serve the dwelling unit.

Lot 2 is intended as a gift to the Truro Conservation Trust. Lot 2 abuts an existing TCT parcel.

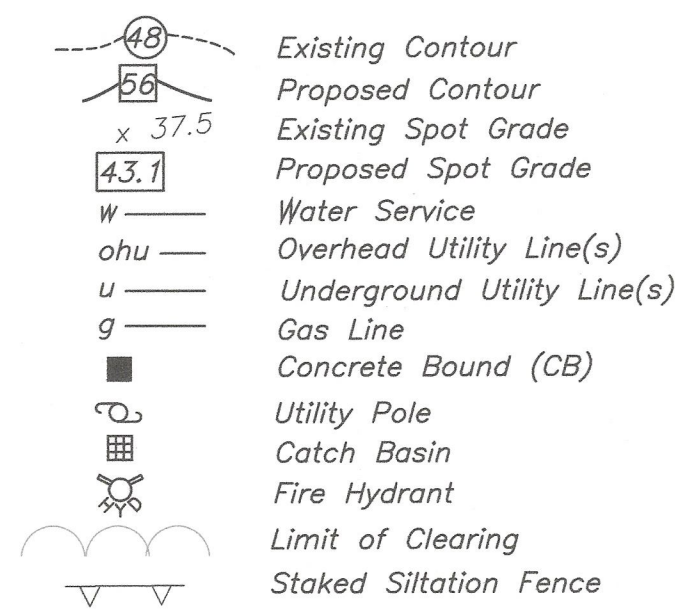
9B Benson Road has a long history with this board and the Town's Zoning Board of Appeals, and a long history in Massachusetts state courts.

The Supreme Judicial Court, has affirmed the existence and validity of the access right of way to serve 9B Benson Road. And the Land Court has fixed the location of the access right of way.

This access right of way is as shown on the plan titled Access Right of Way Construction Plan for Dr. Willie J. and Gloria J. Cater, by Clark Engineering, LLC, dated July 14, 2023. A second plan has been prepared, titled Access Right of Way Construction Plan for Dr. Willie J. and Gloria J. Cater, by Clark Engineering, LLC, dated October 25, 2023, in response to comments from abutters. Both plans are included in the application.



# LEGEND



## DRAINAGE SYSTEM #3

STATION 4+17

- 1 4' I.D. PRECAST CONCRETE CATCH BASINS
- 3 6'X4' PRECAST CONCRETE LEACHING BASINS W/ 2' STONE

## DRAINAGE SYSTEM #2

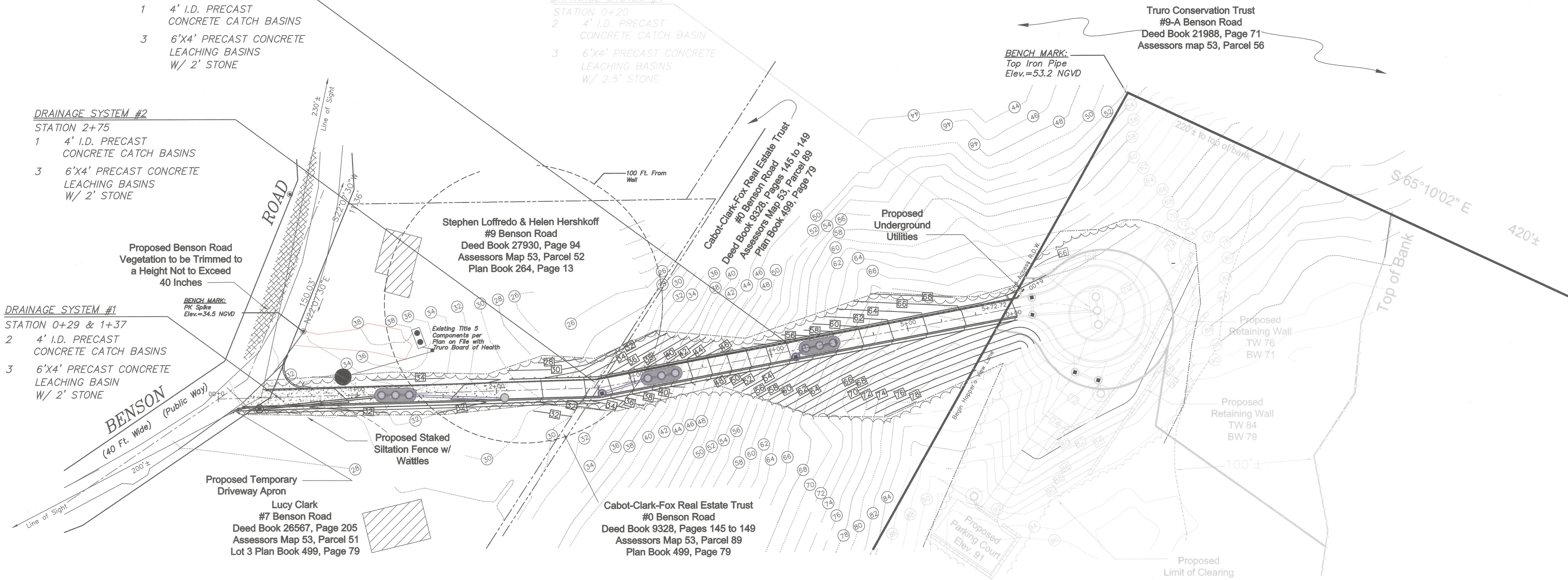
STATION 2+75

- 1 4' I.D. PRECAST CONCRETE CATCH BASINS
- 3 6'X4' PRECAST CONCRETE LEACHING BASINS W/ 2' STONE

## DRAINAGE SYSTEM #1

STATION 0+29 & 1+37

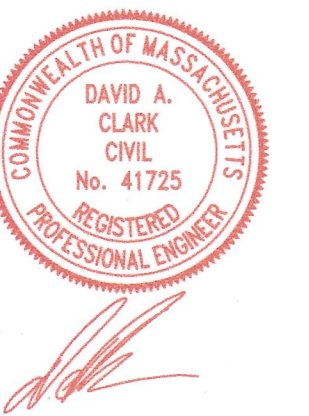
- 2 4' I.D. PRECAST CONCRETE CATCH BASINS
- 3 6'X4' PRECAST CONCRETE LEACHING BASIN W/ 2' STONE



PLAN VIEW

## ACCESS RIGHT OF WAY IMPROVEMENTS

SCALE: HORIZONTAL 1"=40'



## ACCESS RIGHT OF WAY CONSTRUCTION PLAN

Prepared For

DOCTOR WILLIE J.  
and GLORIA J. CATER

## OUTERMOST LAND SURVEY, INC.

3904 Main Street, Brewster, MA 02631  
Tel.: (508) 255-0477; Fax.: (508) 255-0577

## CLARK ENGINEERING LLC

156 Crowell Road Suite B, Chatham, MA. 02633  
Tel.: (508) 945-5454; Fax.: (508) 945-5458

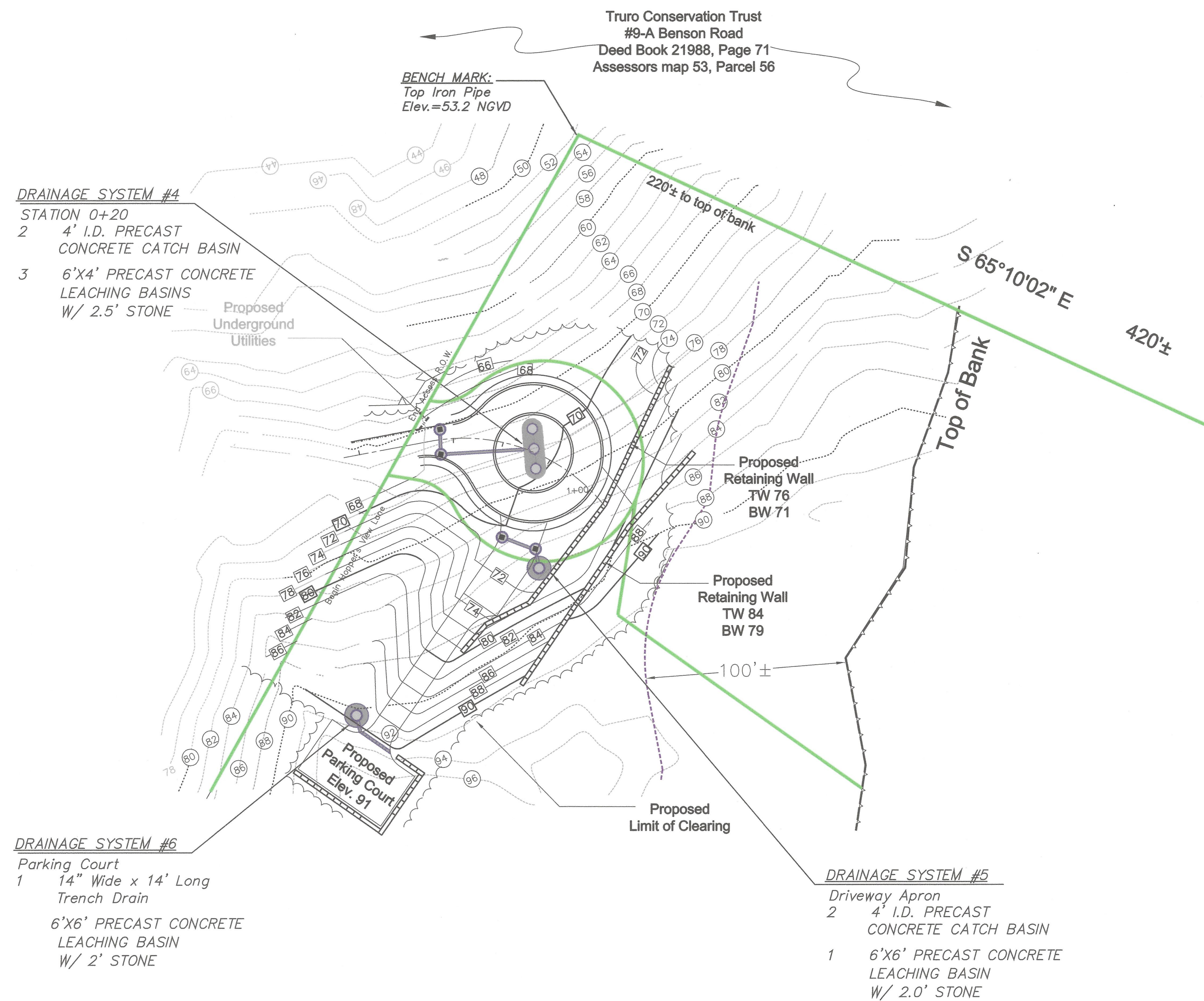
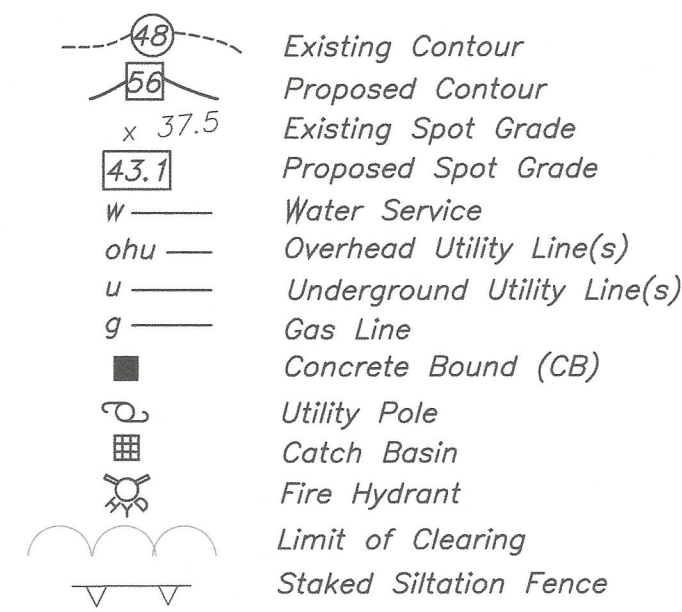
Rev. #	Description of Revision	Date
1	Regraded access driveway to 14%	
	Relocated stormwater infiltration outside 100' Buffer from Potable Well	10-25-23

Date: 07-14-2023  
Scale: SEE PLAN

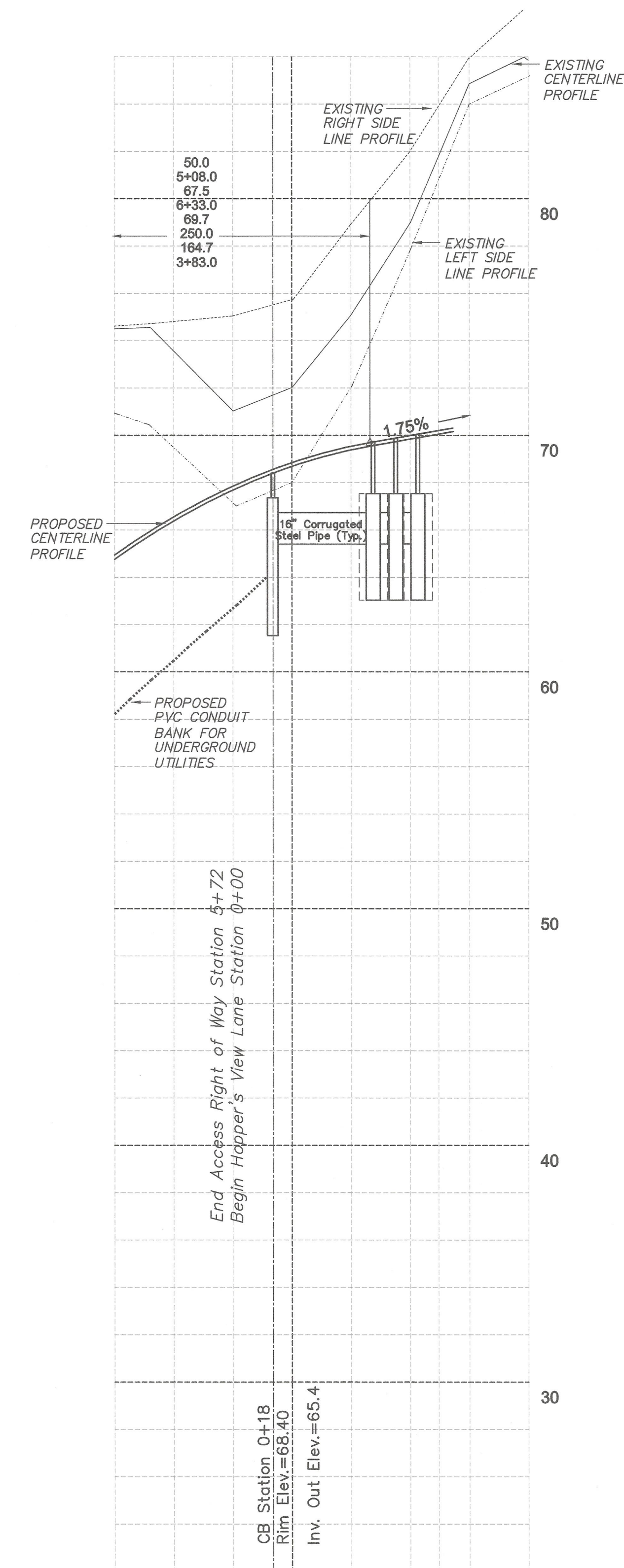
Drawing No.: 0802010D  
Sheet No.: 2 of 5



# LEGEND

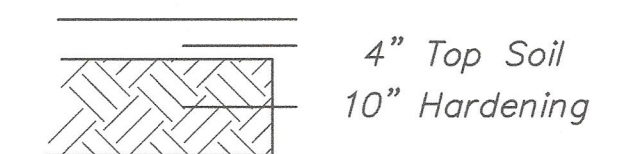
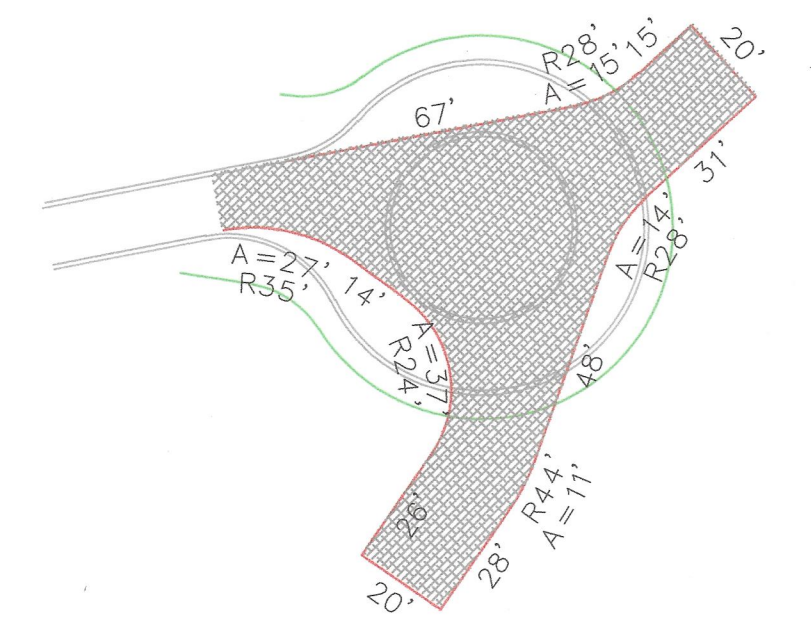


PLAN VIEW  
**HOPPER'S VIEW LANE**  
SCALE: HORIZONTAL 1"=40'

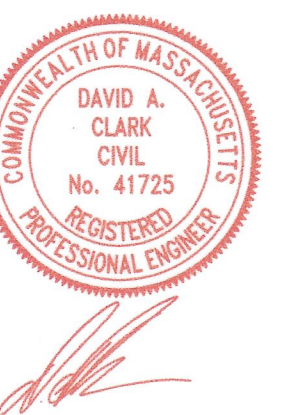


74.5	64.95	73.6	66.56	71.0	67.86	72.0	68.85	75.1	69.54	79.0	70.00	88.4.9
5+25	5+50	0+03	0+28	0+53	0+78	1+03	1+28					

PROFILE VIEW  
**HOPPER'S VIEW LANE**  
SCALE: HORIZONTAL 1"=40'  
VERTICAL 1"=4'



DETAIL  
**FIRE ACCESS ROUTE PAVING**  
Scale 1"=1'



**HOPPER'S VIEW LANE  
PLAN AND PROFILE**  
Prepared For  
**DOCTOR WILLIE J.  
and GLORIA J. CATER**

**OUTERMOST LAND SURVEY, INC.**  
3904 Main Street, Brewster, MA 02631  
Tel.: (508) 255-0477; Fax.: (508) 255-0577

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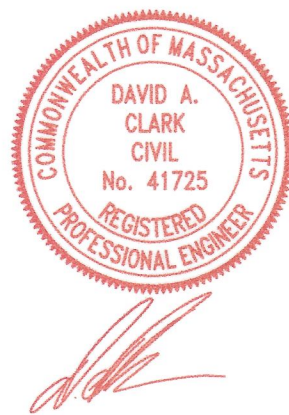
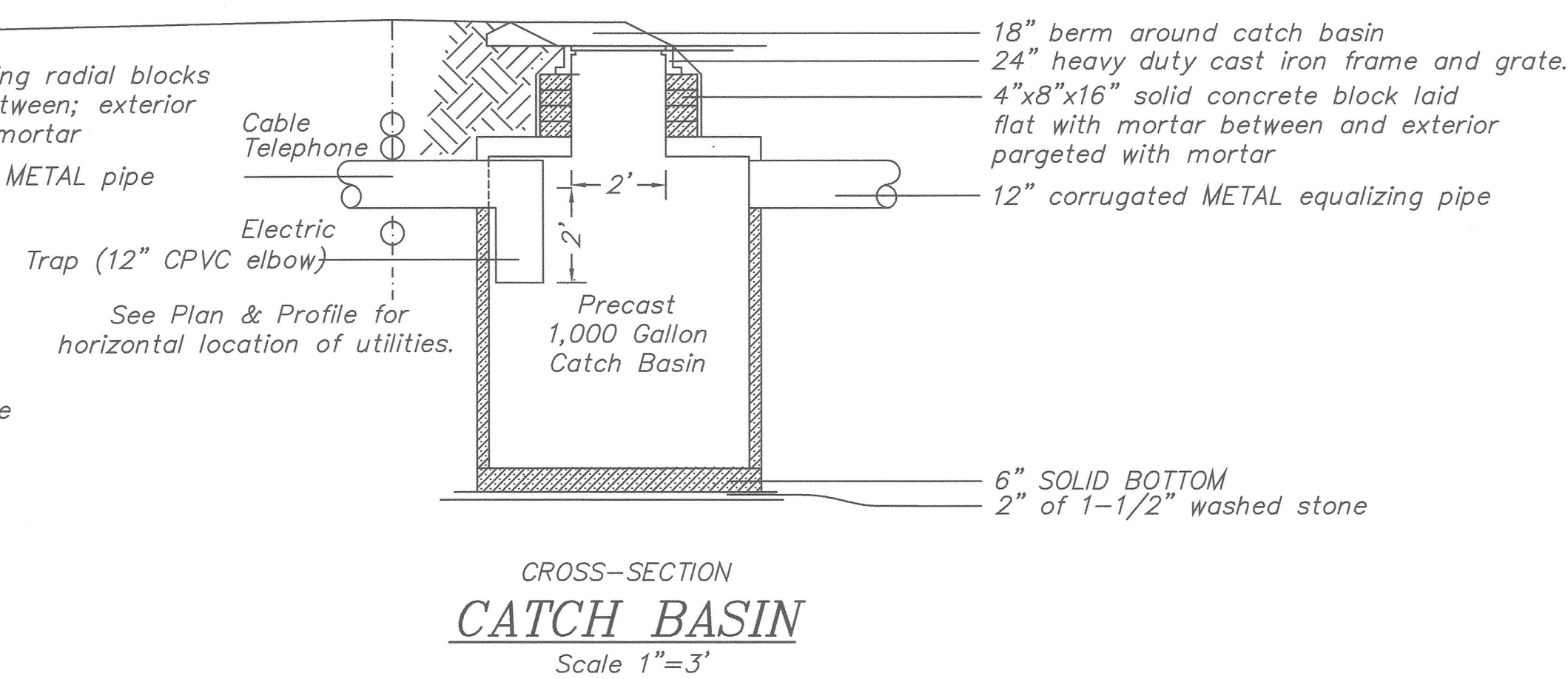
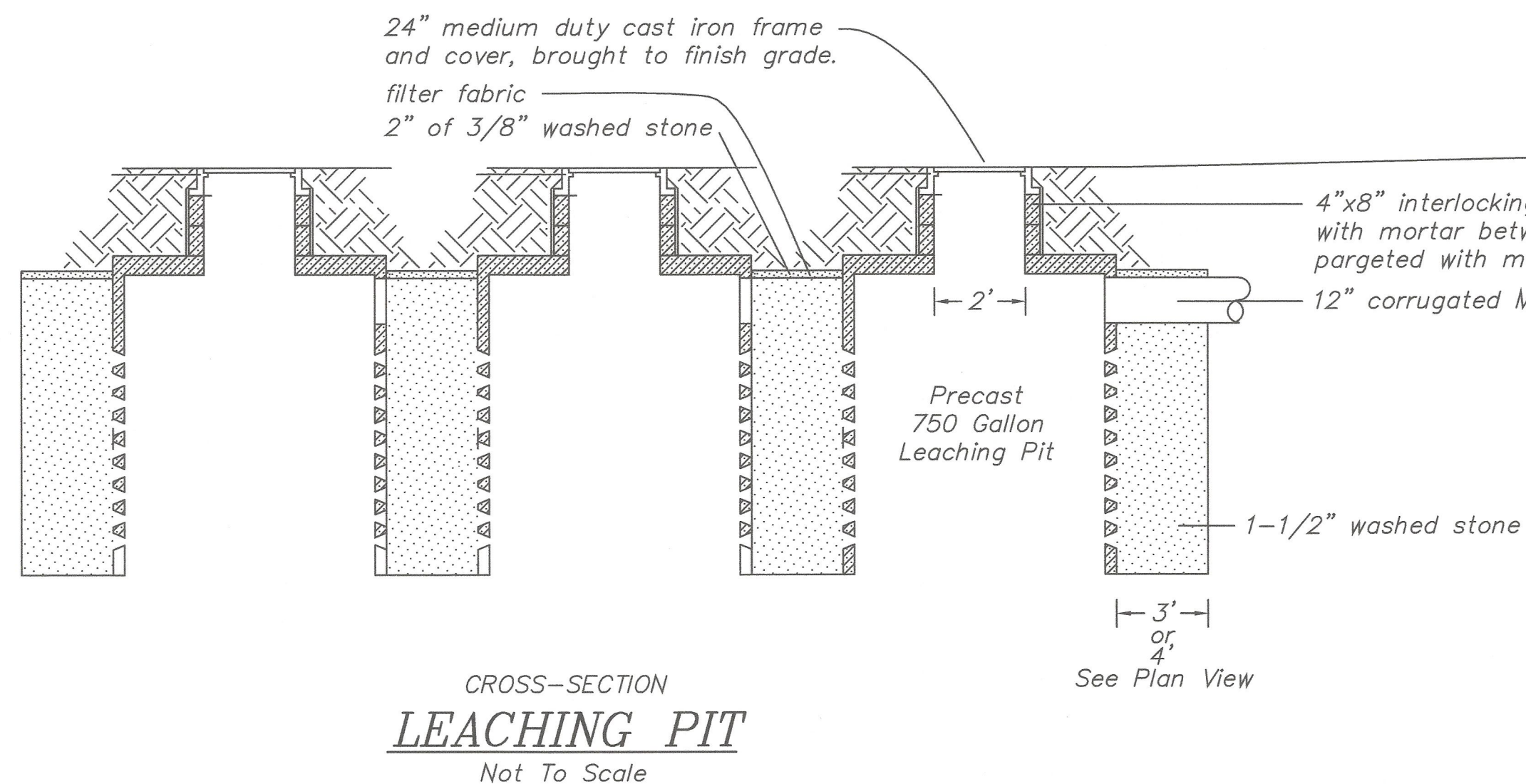
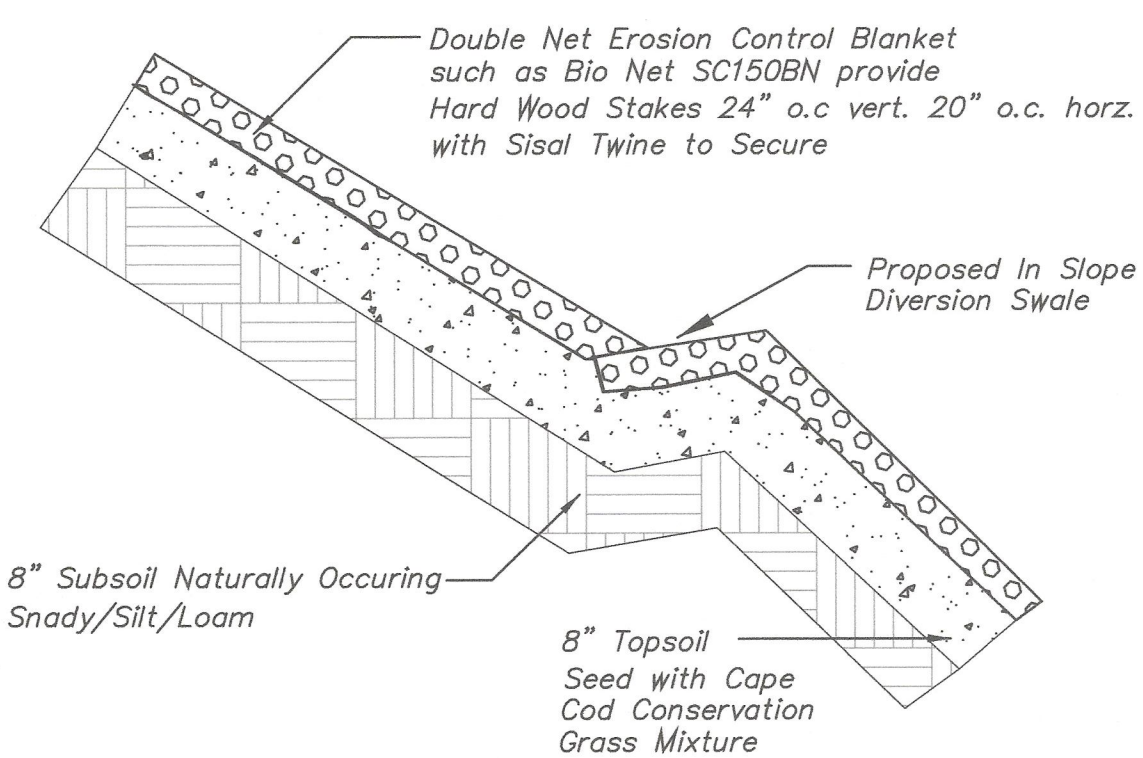
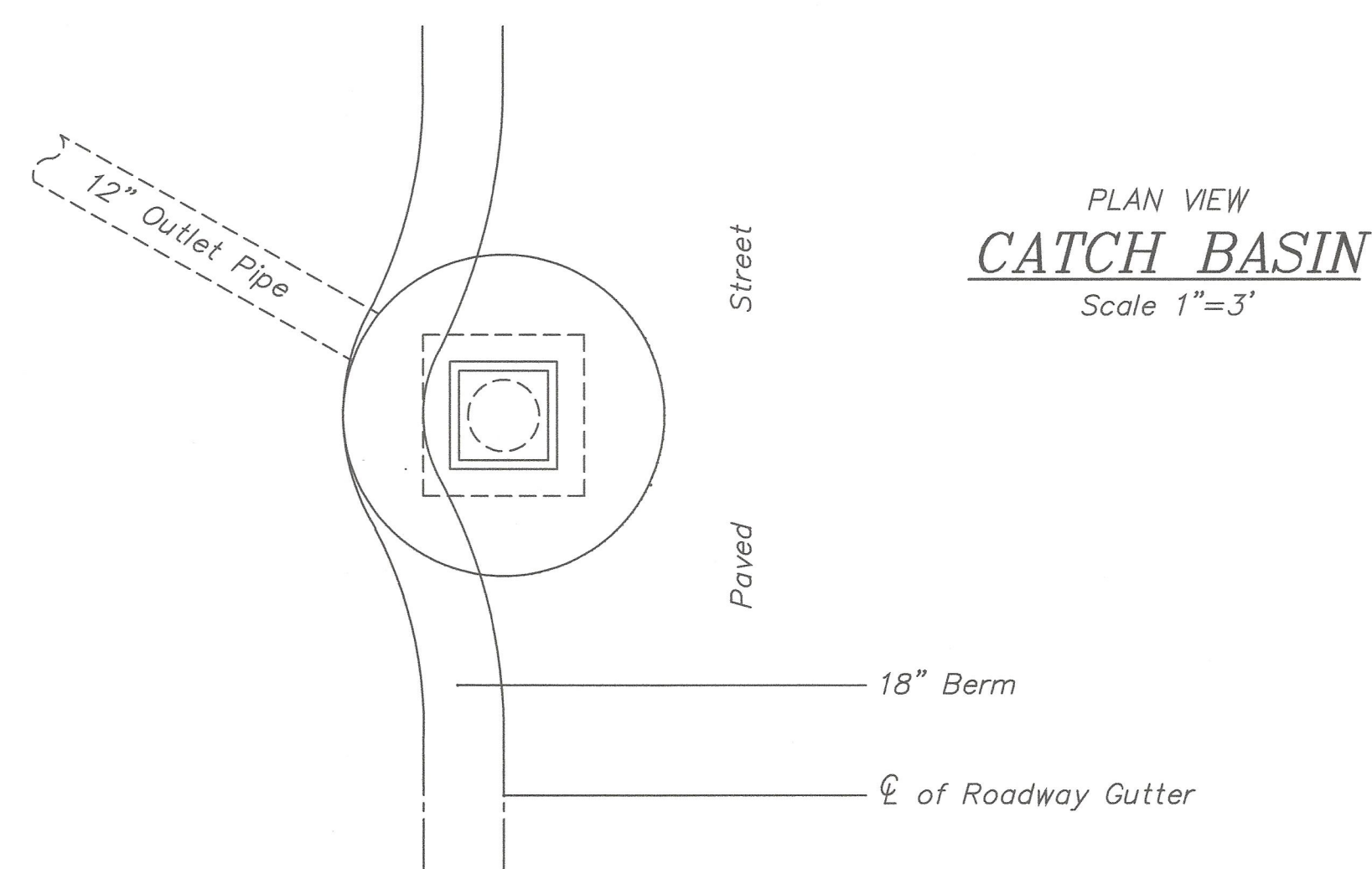
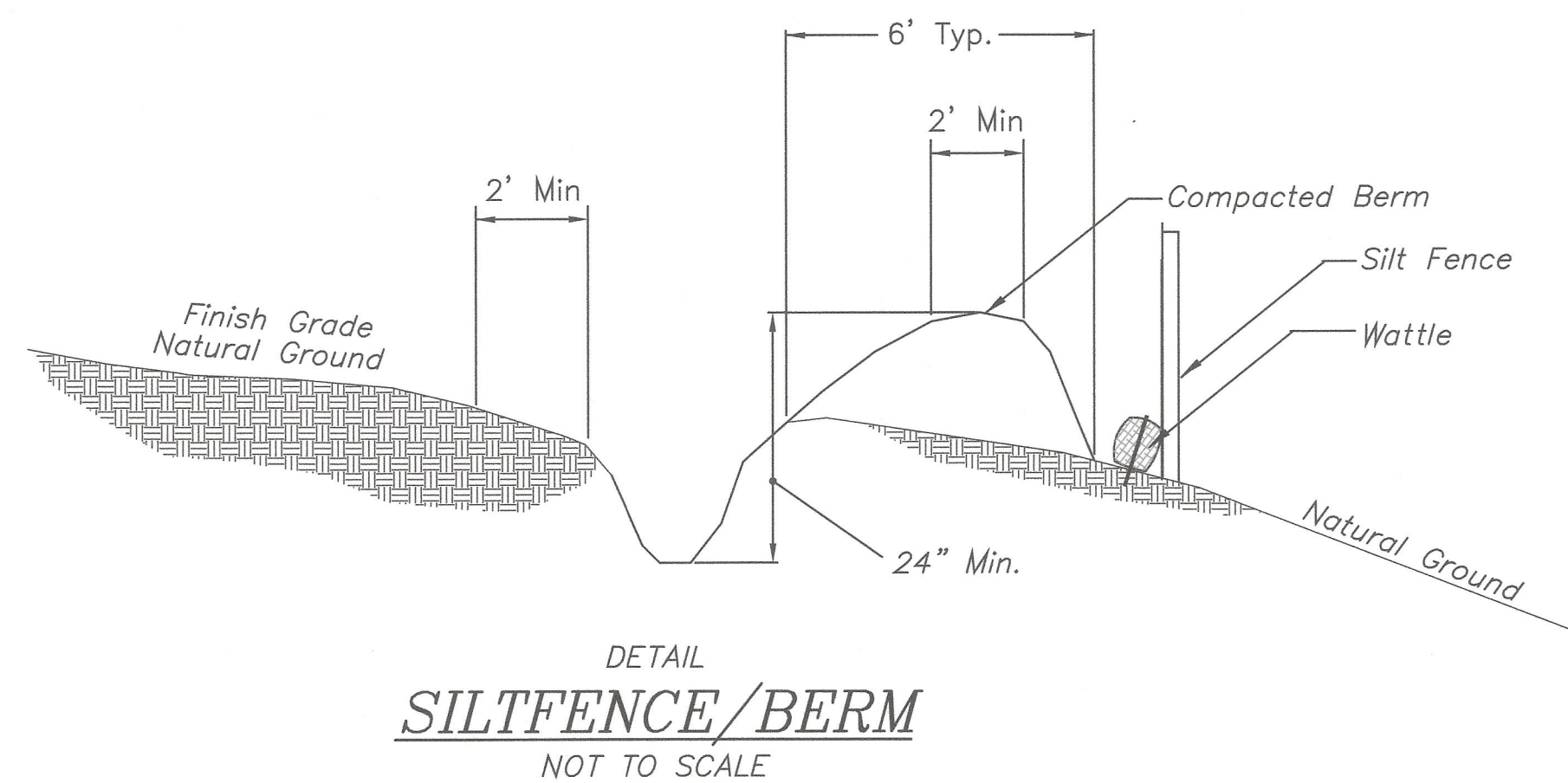
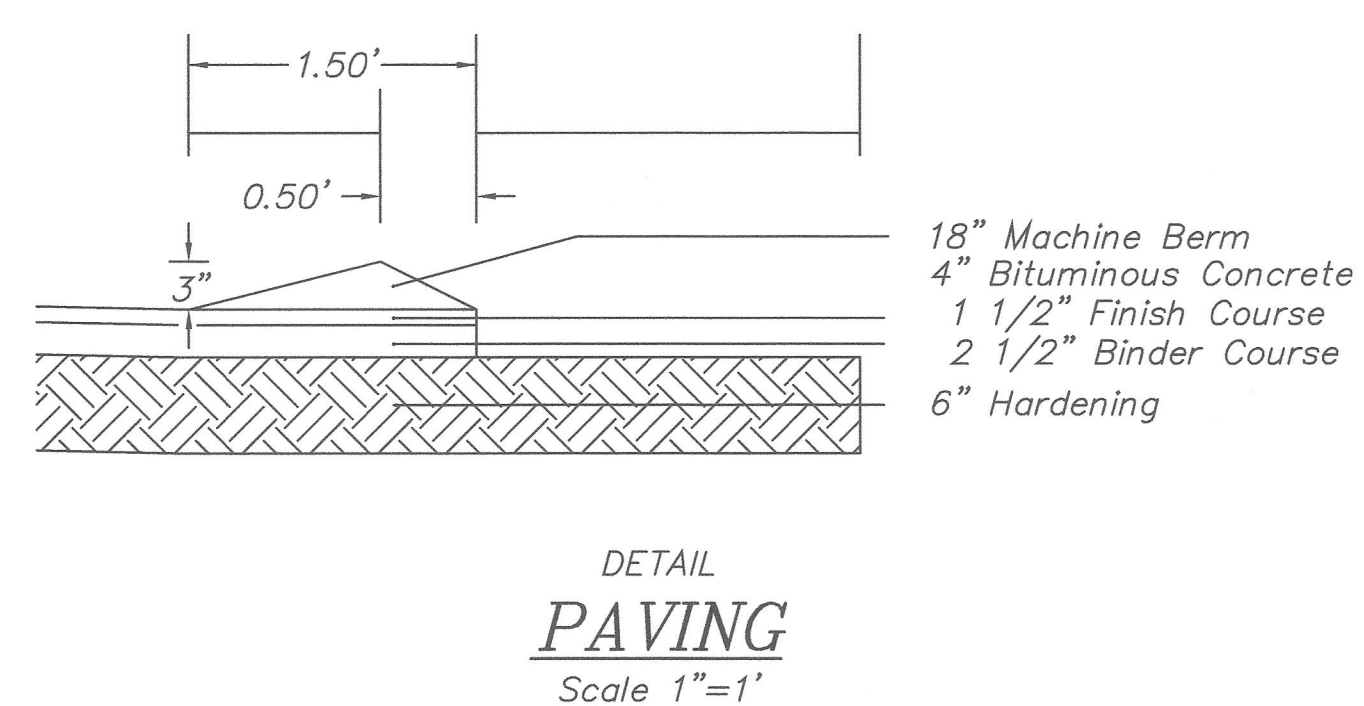
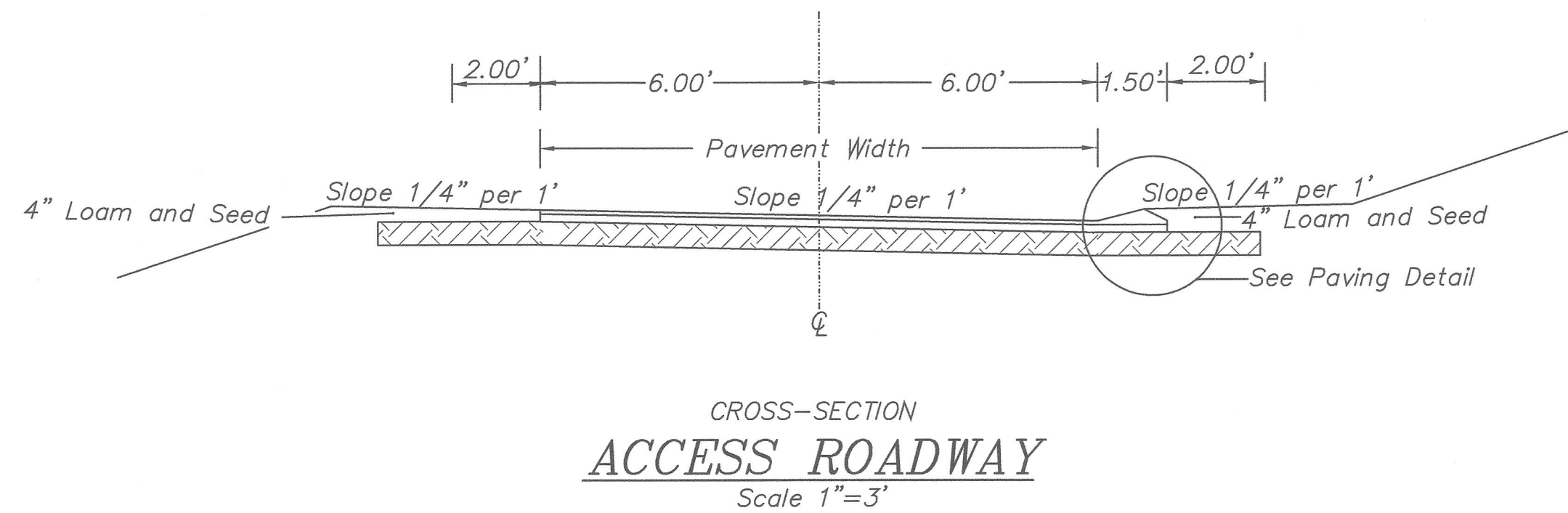
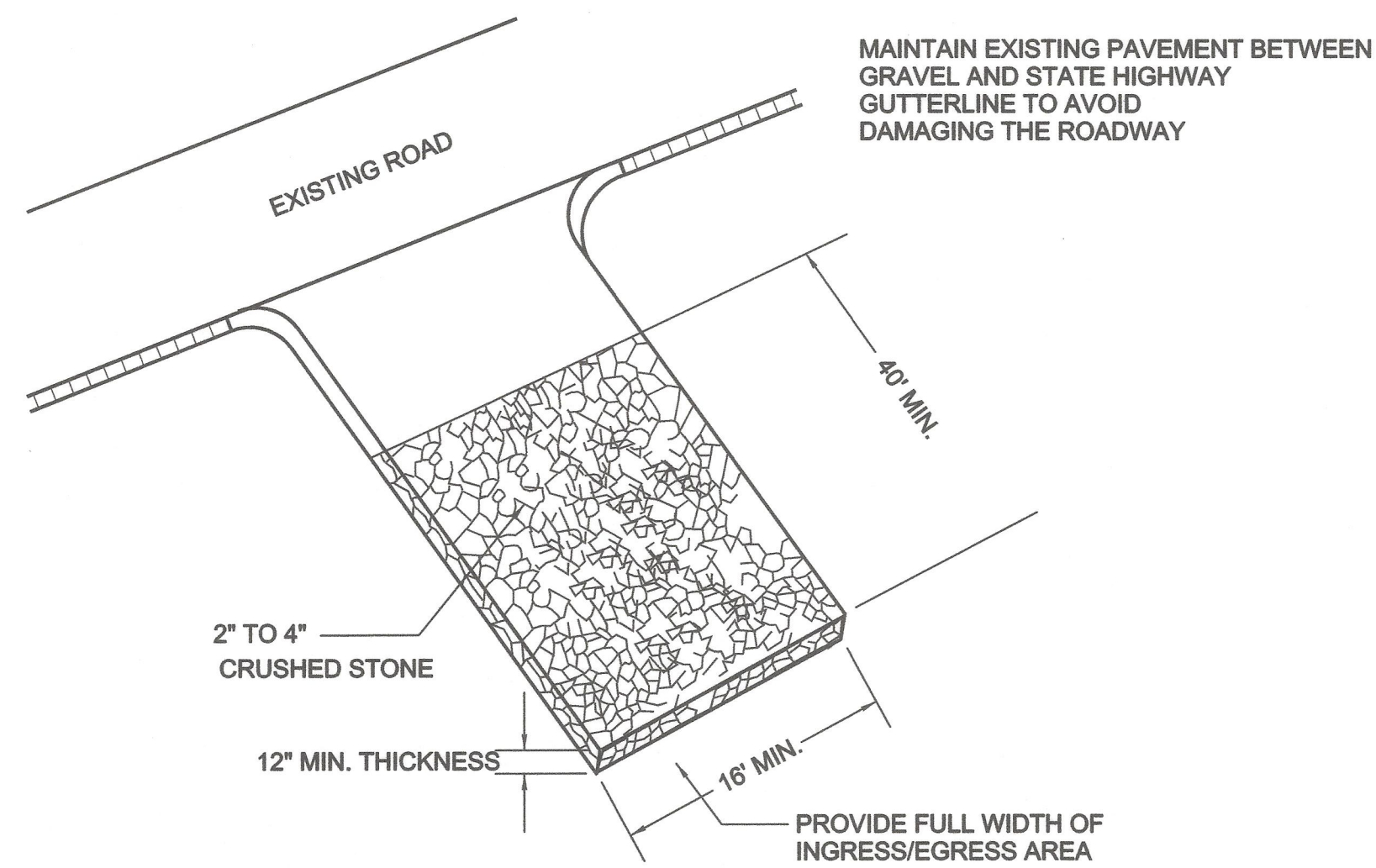
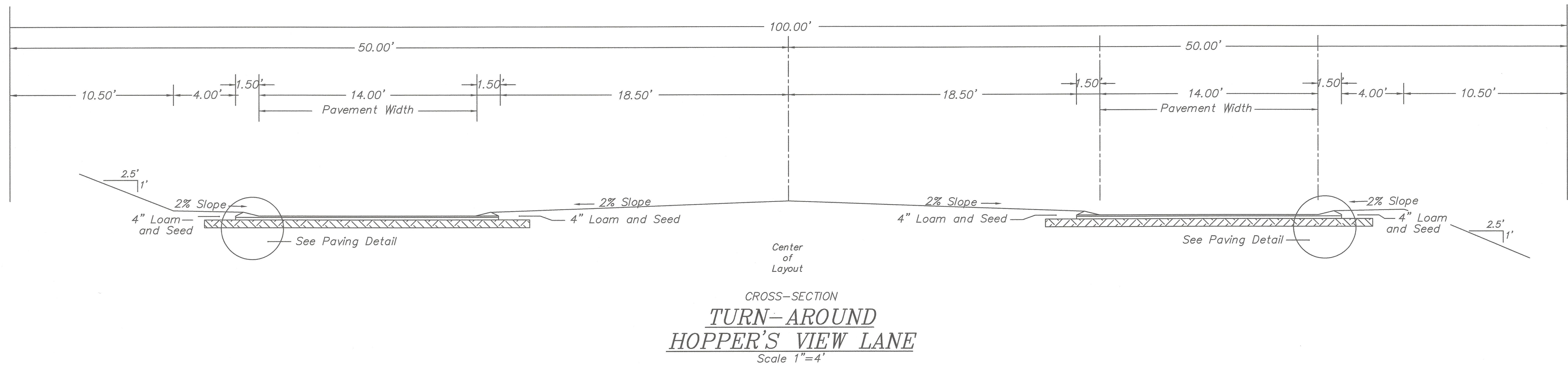
Rev. #	Description of Revision	Date
1	Regraded access driveway to 14%	10-3-23

Date: 07-14-2023 Drawing No.: 0802010D  
Scale: SEE PLAN Sheet No.: 3 of 5









PAVING AND DRAINAGE  
DETAILS  
Prepared For  
**DOCTOR WILLIE J.  
and GLORIA J. CATER**

**CLARK ENGINEERING LLC**  
156 Crowell Road Suite B, Chatham, MA. 02633  
Tel.: (508) 945-5454; Fax.: (508) 945-5458

**OUTERMOST LAND SURVEY, INC.**  
3904 Main Street, Brewster, MA 02631  
Tel.: (508) 255-0477; Fax.: (508) 255-0577

Rev. #	Description of Revision	Date
1	Reduced Road Width to 12 ft.	10-03-23

Date: 07-14-2023 Drawing No.: 0802010G  
Scale: See Plan Sheet No.: 5 of 5





## INVASIVE SPECIES MANAGEMENT/RESTORATION PLAN

April 28, 2014  
HOPPER'S VIEW LANE - ROAD  
CONSTRUCTION AREA  
TRURO, MASSACHUSETTS

### Contents

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Invasive Species Removal/ Vegetation Restoration	6
Planting Schedule	8
Invasive Plant Management	9-11
Three Year Management Time-Line	12-13
Long Term Management	13
References	14

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NHESP Map	5
Restoration Plan	7

## Introduction

This Invasive Species Management / Restoration Plan will address the main issues that specifically pertain to restoring the native vegetation around the proposed roadway at Hopper's View Lane in Truro, Massachusetts.

The main actions to be addressed in this Plan are:

- Management/removal of invasive species located within the project area.
- Restoration of native plant communities including pitch pine/scrub oak, sandplain grassland, sandplain heathland, and maritime shrubland within the limit of work area for roadway construction.

## Goals/Objectives

1. Manage invasive plant species within the project area.
2. Restore invasive species management area with trees, shrubs, grasses and forbs.
3. Restore areas within the limit of work with appropriate native vegetation.

The goals of this plan are to protect the ecological integrity, function, and wildlife habitat value of areas within the proposed limit of work. This will be accomplished through the management of invasive species including shrub honeysuckle, vine honeysuckle, multiflora rose, tree of heaven, white poplar, and black locust, and the restoration of native plant communities within the limit of work, thereby protecting and improving the ecological integrity and wildlife habitat value of this area. Dense vertical layers of vegetation including native tree, shrub, and groundcover species will be re-established within the project area.

## Project Area

The proposed project area is shaded in orange. The proposed road is shown in gray.





## Existing Conditions

The project area is located directly off of Benson Road on Cape Cod Bay in Truro. The proposed roadway area will be located between 7 and 9 Benson Road and runs westward toward Lot 9B. A variety of native and invasive plant species comprise the vegetation within and directly surrounding the proposed roadway area. A sandplain/heathland/grassland plant community consisting of beach plum, bayberry, bearberry, lowbush blueberry, beach heather, reindeer lichen, Pennsylvania sedge, little bluestem, crinkle hairgrass and native forbs is the dominant plant community throughout the area. In addition to these shrub and groundcover species, tree species including pitch pine, scrub oak, black oak and black cherry are clustered throughout the proposed project area. This area (shaded in orange on the map on page 2) is approximately 25,422 square feet. Areas within the proposed limit of work are stable and are currently well-vegetated.

The area directly abutting Benson Road is heavily colonized by invasive vegetation including shrub honeysuckle (*Lonicera morrowii, bella*), vine honeysuckle (*Lonicera japonica*), tree of heaven (*Alianthus altissima*), black locust (*Robinia pseudoacacia*), white poplar (*Populus alba*) and multiflora rose (*Rosa multiflora*). Native vegetation in this heavily invaded area includes one eastern red cedar (*Juniperus virginiana*), black cherry (*Prunus serotina*), pitch pine (*Pinus rigida*), scrub oak (*Quercus ilicifolia*), and wild onion grass (*Allium canadense*). A portion of this area will be disturbed by the proposed road construction.



View from Benson Road looking north at area heavily colonized by invasive vegetation. Shrub honeysuckle borders the road.



View from west looking into area heavily invaded by invasive vegetation.



The densely growing invasive vegetation keeps much native vegetation from growing by Benson Road.



View looking into black cherry and white poplar trees smothered by invasive vines.



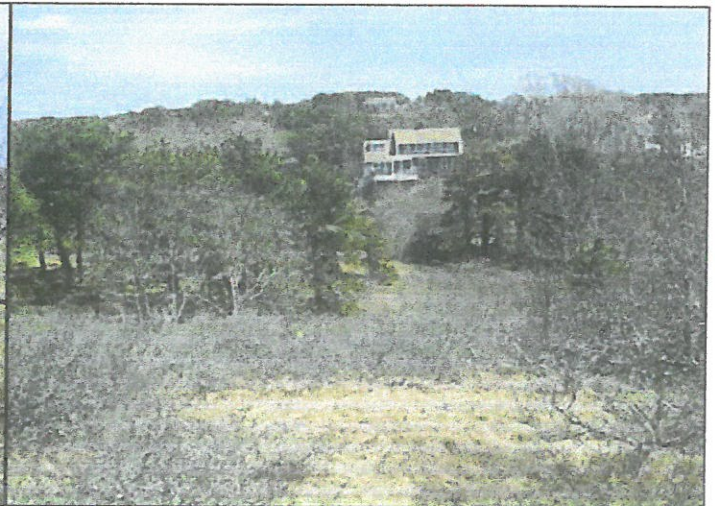
## Existing Conditions (continued)

Directly to the west of the invasive species area, the landscape opens up into a sandplain/grassland plant community with native species including little bluestem (*Schizachyrium scoparium*), Pennsylvania sedge (*Carex pensylvanica*), and crinkle hairgrass (*Deschampsia flexuosa*) dominant. A pitch pine stand abuts this grassland area, and transitions into a sandplain/heathland/grassland - maritime shrubland plant community on the existing slope. Bearberry (*Arctostaphylos uva-ursi*), beach heather (*Hudsonia tomentosa*), reindeer lichen (*Cladonia rangiferina*), aster spp., scrub oak (*Quercus ilicifolia*), pitch pine (*Pinus rigida*), beach plum (*Prunus maritima*), and black oak (*Quercus velutina*) are dominant. This community transitions to sandplain/heathland at the top of the slope and continues to the top of coastal bank. Bearberry (*Arctostaphylos uva-ursi*), beach heather (*Hudsonia tomentosa*), and reindeer lichen (*Cladonia rangiferina*) are the dominant plant species in this area. Slopes are well-vegetated, and there is no evidence of erosion within the limit of work.

The project area lies within Estimated Habitats for Rare Wildlife as defined by the Natural Heritage and Endangered Species Program.



View of scrub oak (foreground), Pennsylvania sedge (groundcover), pitch pine (background).



View looking east toward sandplain heathland and grassland with a dense cover of beach plum (left) and Pennsylvania sedge and crinkle hairgrass(right) as the ground cover. Pitch pine and black oak trees in middle ground. Nine Benson Road is in the background.



Beach heather, little bluestem, and reindeer lichen dominate this area of sandplain heathland.



View of sandplain grassland (foreground) and scrub oaks(background).





Bearberry, scrub oak, and little bluestem growing at western-most area of the project area.



View looking west of well-vegetated slope. Plant community transitions from maritime shrubland (left) to sandplain grassland (middle) to sandplain heathland (right/foreground).

## NHESP Priority/Rare Habitats



- NHESP Natural Communities
- NHESP Extended Habitats of Rare Wildlife
- NHESP Priority Habitats of Rare Wildlife
- Tax Map Overlay
- Designated Features
- Tax Parcels
- Structures

NHESP Benson Road, Truro, MA

[http://maps.massgis.state.ma.us/map\\_ol/oliver.php](http://maps.massgis.state.ma.us/map_ol/oliver.php)

## Invasive Species Removal/Vegetation Restoration

Invasive species management will begin with a selective basal bark/injection herbicide pretreatment of invasive vegetation within the limit of work. This pretreatment will be followed approximately two weeks later (giving time for herbicide to translocate to root systems) by cutting and removing invasive species. It is expected that some root material that has not been destroyed by herbicide pre-treatment will be left behind, and that there is a substantial invasive species seed bank throughout the area. Therefore, follow-up treatments beginning in the fall of 2014 and continuing through winter, late summer and fall for the next three to five growing seasons will be necessary. Please see the Invasive Plant Management/Three Year Management Time-Line in this document for details.

After the initial intensive invasive species management is completed, the project area will be seeded with a custom mix of deep rooted native warm and cool season grasses and forbs including crinkle hairgrass (*Deschampsia flexuosa*), little bluestem (*Schizachyrium scoparium*), poverty grass (*Danthonia spicata*), seaside goldenrod (*Solidago sempervirens*), asters (*aster spp.*), and butterfly weed (*Asclepias tuberosa*). Restoration planting in the project area will begin once the roadway construction is completed. At this time we should have reached greater than 80% control of the invasive species infestation, allowing for successful replanting of native species. Native vegetation proposed for the invasive species management area includes bayberry (*Myrica pensylvanica*), eastern red cedar (*Juniperus virginiana*), scrub oak (*Quercus ilicifolia*), pitch pine (*Pinus rigida*), Pennsylvania sedge (*Carex pensylvanica*), and crinkle hairgrass (*Deschampsia flexuosa*). These plants will restore the appropriate native vegetation, increase biodiversity, provide habitat for wildlife, and improve screening for neighbors on Benson Road.

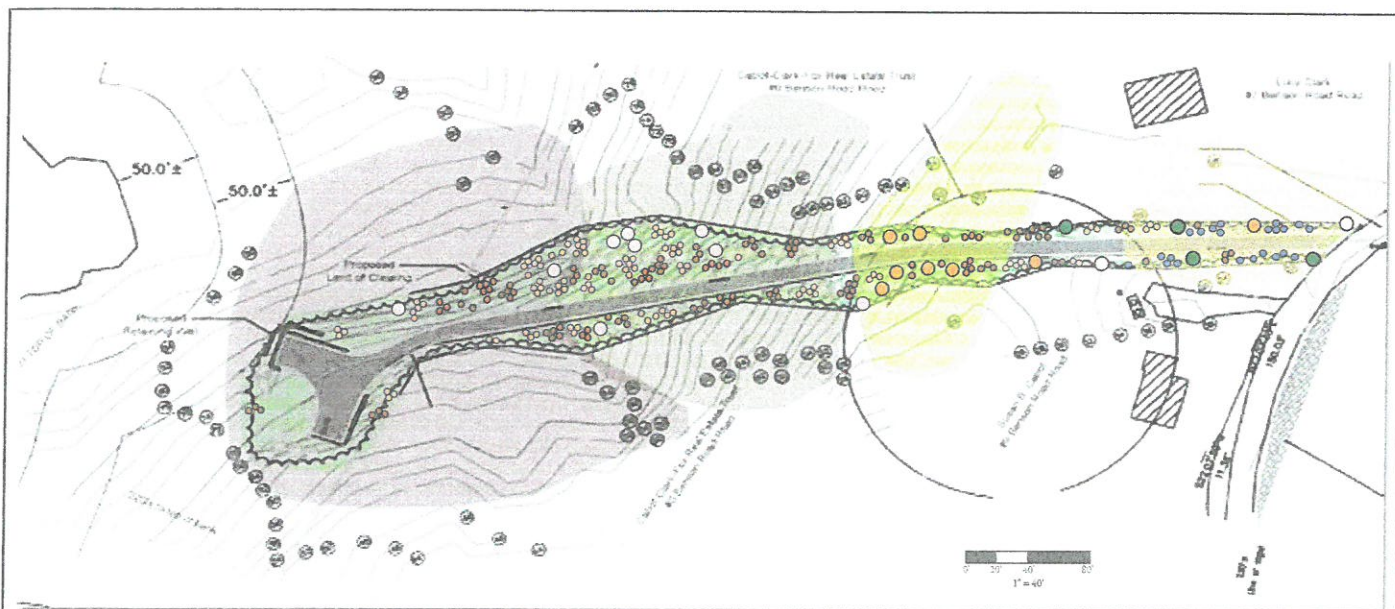
Restoration planting for the remaining areas within the limit of work include vegetation appropriate for the existing natural plant communities on site including maritime shrubland, sandplain grasslands, and sandplain heathlands. Vegetation will include bayberry (*Myrica pensylvanica*), scrub oak (*Quercus ilicifolia*), Pennsylvania sedge (*Carex pensylvanica*), and crinkle hairgrass (*Deschampsia flexuosa*), beach plum (*Prunus maritima*), bearberry (*Arctostaphylos uva-ursi*), little bluestem (*Schizachyrium scoparium*), sickle-leaved golden aster (*Pityopsis falcata*), stiff aster (*Ionactis linarifolia*), and butterfly weed (*Asclepias tuberosa*).

Due to the difficulty of sourcing beach heather (*Hudsonia tomentosa*) and reindeer lichen (*Cladonia rangiferina*), we recommend transplanting some of the existing beach heather and reindeer lichen from within the limit of work. Plants may be stored off-site in order to monitor their health and provide adequate water. Plants will be transplanted back to the project area when restoration planting begins.

Please see the accompanying Planting Plan for detailed information regarding proposed restoration planting including species, quantity, size and spacing.



# Restoration/Planting Plan



## Plan Notes:

- Site Plan provided by Clark Engineering LLC dated July 1, 2013, Revised April 22, 2014.
- The restoration area within the limit of work (shaded in green) is approximately 25,422 square feet.
- The area directly along Emsen Road (shown in yellow-orange) is dominated by invasive plant species including Tree of heaven, black locust, white poplar, shrub honeysuckle and vine honeysuckle. Selective herbicide treatment and mechanical removal will be used to manage invasive species within the project area. Please see Invasive Species Management/Restoration Plan for details.
- Mowing west from Benson Road plant communities within the limit of work will be restored with appropriate native vegetation according to each plant community. The area shown in green above is predominantly pitch pine with crinkle hairgrass and Pennsylvania sedge. Further west, little bluestem and Pennsylvania sedge comprise the dominant sandplain/grassland plant community. This transitions to a heathland/maritime shrub plant community on the steep part of the slope (shown in tan), opening up to sandplain/heathland between the top of the slope and top of coastal bank (shown in red). Colored areas are shown only to illustrate the dominant plant communities within and around the proposed limit of work.
- Beach heather (*Hudsonia tomentosa*) will be removed from the project area within the sandplain/heathland plant community prior to clearing and excavation, and held in a protected area off-site to be restored after construction is completed.
- All disturbed areas will be seeded with a custom mix of native warm season grasses and forbs including Crinkle hairgrass (*Deschampsia flexuosa*), little bluestem (*Schizachyrium scoparium*), poverty grass (*Danthonia spicata*), seaside goldenrod (*Solidago sempervirens*), Aster (*Aster* spp.), and butterfly weed (*Asclepias tuberosa*).
- Temporary irrigation will be required for the first two or three growing seasons. Once plants are established temporary irrigation will be removed.

## Planting Schedule

Latin Name	Common Name	Size	Spacing	Quantity
<b>TREES</b>				
<i>Quercus ilicifolia</i>	Scrub oak	5 Gallon	10' On Center	10
<i>Pinus rigida</i>	Pitch pine	2" cal	10' On Center	17
<i>Juniperus virginiana</i>	Eastern red cedar	5/6 BB	10' On Center	4
<i>Quercus alba</i>	White oak	2" cal	10' On Center	2
<b>SHRUBS</b>				
<i>Myrica pennsylvanica</i>	Northern bayberry	1 Gallon	5' On Center	154
<i>Prunus maritima</i>	Beach plum	1 Gallon	5' On Center	171
<i>Arctostaphylos uva-ursi</i>	Bayberry	4" Pot	18-24" On Center	4000
<i>Vaccinium angustifolium</i>	Lowbush blueberry	1 gallon	4' On Center	50
<i>Viburnum dentatum</i>	Aronwood viburnum	3 Gallon	5' On Center	11
<i>Vaccinium corymbosum</i>	Highbush blueberry	3 Gallon	5' On Center	11
<i>Myrica pennsylvanica</i>	Northern bayberry	3 Gallon	5' On Center	15

- Eastern red cedar
- White oak
- Highbush blueberry
- Aronwood viburnum
- Northern Bayberry
- Beach Plum
- Scrub Oak
- Lowbush blueberry
- Pitch Pine

Restoration area (within the limit of work)

Vegetation dominated by invasive plant species. Tree of heaven, black locust, shrub honeysuckle, vine honeysuckle dominant.

Pitch pine dominated plant community. Crinkle hairgrass/Pennsylvania sedge/Little bluestem groundcover

Heathland/Grassland & Maritime shrub - Beach plum/ bayberry dominant with scrub oak, Pennsylvania sedge and Little bluestem transitions to bayberry dominated groundcover.

Sandplain/Heathland plant community. Bayberry dominant. Beach heather, reindeer lichen, tall aster, side-leaved aster groundcover.

## GRASSES AND WILDFLOWERS

Latin Name	Common Name	Size	Spacing	Quantity
<i>Carex pennsylvanica</i>	Pennsylvania sedge	5" Plug	18-24" On Center	2000
<i>Deschampsia flexuosa</i>	Crinkle hairgrass	5" Plug	18-24" On Center	500
<i>Schizachyrium scoparium</i>	Little bluestem	5" Plug	18-24" On Center	500
<i>Pycnostachya</i>	Sickle-leaved golden aster	5" Plug	18-24" On Center	300
<i>Imaretia linearifolia</i>	Self aster	5" Plug	18-24" On Center	300
<i>Asclepias tuberosa</i>	Butterfly weed	5" Plug	18-24" On Center	300

RESTORATION/PLANTING PLAN | APRIL 22, 2014  
 HOPPER'S VIEW LANE - ROAD CONSTRUCTION AREA, TRURO, MA  
 BLUEFLAX DESIGN | MATTAPOISETT, MA | 774-678-8677 | WWW.BLUEFLAXDESIGN.COM



## Planting Schedule

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<i>Quercus alba</i>	White oak	2" cal	10' On Center	2
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<i>Vaccinium angustifolium</i>	Lowbush blueberry	1 gallon	4' On Center	50
<i>Viburnum dentatum</i>	Arrowwood viburnum	3 Gallon	5' On Center	11
<i>Vaccinium corymbosum</i>	Highbush blueberry	3 Gallon	5' On Center	11
<i>Myrica pensylvanica</i>	Northern bayberry	3 Gallon	5' On Center	15
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<i>Carex pensylvanica</i>	Pennsylvania sedge	5" Plug	18-24" On Center	3000
<i>Deschampsia flexuosa</i>	Crinkle hairgrass	5" Plug	18-24" On Center	500
<i>Schizachyrium scoparium</i>	Little bluestem	5" Plug	18-24" On Center	500
<i>Pityopsis falcata</i>	Sickle-leaved golden aster	5" Plug	18-24" On Center	300
<i>Ionactis linariifolia</i>	Stiff aster	5" Plug	18-24" On Center	300
<i>Asclepias tuberosa</i>	Butterfly weed	5" Plug	18-24" On Center	300



## Invasive Plant Management

Invasive plants, also known as noxious weeds, are plants introduced from other regions that have the ability to reproduce rapidly and displace native species. According to the National Invasive Species Council (NISC) “Invasive species may prey upon, displace or otherwise harm native species. Some invasive species also alter ecosystem processes, transport disease, interfere with crop production, or cause illnesses in animals and humans; affecting both aquatic and terrestrial habitats.” Invasive plants threaten natural communities by reducing habitat and food for native insects, birds, and other wildlife. These invasive plants have a competitive advantage because they are no longer controlled by their natural predators, and can quickly spread out of control. For these reasons, invasive species are of national and global concern. NISC’s five-year *National Invasive Species Management Plan (2008-2012)* focuses on 5 Strategic Goals for managing invasive species nationwide:

- Prevention
- Early Detection and Rapid Response
- Control and Management
- Restoration
- Organizational Collaboration

While we recognize that prevention is the best and most important management strategy, it is often too late to prevent invasive species colonization of our landscapes, including our most sensitive resource areas. Whenever land disturbance occurs, whether for development or simply for planting, we recommend a monitoring program to ensure that invasive vegetation does not expand into these disturbed areas, preparing a plan for Early Detection and Rapid Response.

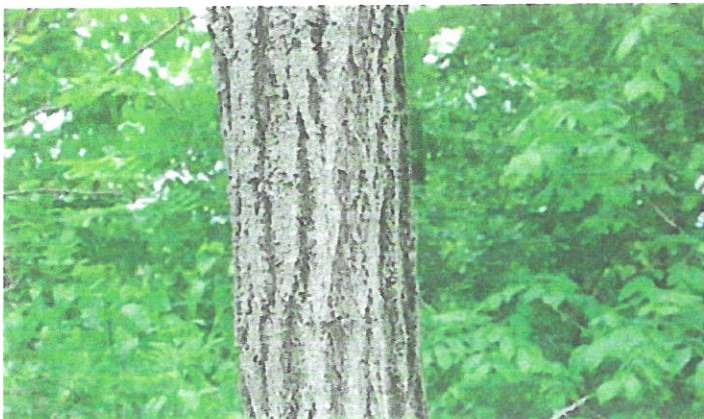
On project sites where invasive species have been identified, BlueFlax Design follows NISC’s guidelines for **Control and Management**; **Restoration**; and **Organizational Collaboration**.

**Control and Management** calls for containing and reducing the spread of invasive populations to minimize their harmful impacts. **Restoration** calls for the restoration of high-value ecosystems to meet resource conservation goals; **Organizational Collaboration** calls for maximizing management effectiveness through collaboration with property owners, experienced land management professionals, and local Conservation Commissions (for project sites within Conservation Jurisdiction).

The following invasive plant species (as listed by the Massachusetts Invasive Plant Advisory Group) have been identified within the proposed project area.

**Black Locust (*Robinia pseudoacacia*)** spreads rapidly by both seed and root suckers. By managing the invasive tree, understory species will respond positively, increasing fruit production and understory canopy development. Additional sunlight will also enhance the herbaceous groundcovers.

Note: Black Locust is known to re-sprout vigorously after removal. Substantial root sucker growth should be expected from the remaining root material within 60 days of the initial removal. Re-sprouting can be minimized with the application of a glyphosate-based herbicide applied directly to the cut stem.



Black locust bark



Black locust leaves



Tree of heaven canopy



Tree of heaven leaves



**Multi-flora rose (*Rosa multiflora*)** Initially introduced from Japan to provide erosion control, this prolific species, which reproduces both by seed and vegetatively, can create impenetrable thickets that out compete native plants species. Multi-flora rose can tolerate a wide range of site conditions, including salt and wind, and can be found throughout coastal areas on Cape Cod.



Multi-flora rose shrub



Multi flora rose flowers and leaves.

**Shrub Honeysuckle (*Lonicera morrowii, bella*)** will invade a wide variety of native habitats, with or without any previous disturbance. Shrub honeysuckle has a broad tolerance to a variety of moisture regimes and habitats, making most natural communities susceptible to invasions. This species is believed to produce allelopathic chemicals that inhibit the growth of other plants, thereby out-competing native vegetation.



Shrub honeysuckle flowering



Shrub honeysuckle leaves and flowers

**Tree of Heaven (*Ailanthus altissima*)** is a fast growing native tree of China that has been defined as an invasive plant by the Massachusetts Invasive Plant Group. Tree-of-heaven displaces native vegetation by forming dense thickets and produces toxins in the soil that inhibit growth of other vegetation. The ability to re-sprout from cut stumps and from roots that are left in the soil as well as it's high seed producing ability help tree-of-heaven to colonize disturbed areas and compete with native vegetation.





**Vine Honeysuckle (*Lonicera japonica*)** is an evergreen to semi-evergreen vine that can be found either trailing or climbing to over 80 ft. (24 m) in length. This species invades a variety of habitats including forest floors, canopies, roadsides, wetlands, and disturbed areas. *Lonicera japonica* can girdle saplings by twining around them, and can form dense mats in the canopies of trees, shading everything below.



Close up of vine honeysuckle flowers and leaves



Vine honeysuckle aggressively climbing a tree

**White Poplar (*Populus alba*)** According to the National Park Services Alien Plant Working Group, white poplar out-competes native tree and shrub species, particularly in forest edges and fields. Due to its ability to thrive in many different soil types and site conditions, and to its ability to spread through large seed crops, root sprouts, and stump sprouts, this plant is considered an ecological threat. Dense stands of white poplar prevent other plants from coexisting by reducing the amount of available sunlight, nutrients, water and space available.



White poplar leaves



Canopy of a white poplar

# Three Year Land Management Time-Line

Using objectives developed by the National Invasive Species Council for **Control and Management, Restoration and Organizational Collaboration** as our guide, BlueFlax Design proposes the following methods and techniques for managing the invasive species listed above from within the proposed project area:

## Control and Management Objectives:

- Identify and evaluate appropriate invasive species control methods; create action plan
- Reduce the spread and harm caused by invasive species using the identified methods of control
- Perform control and management activities according to the outlined action plan. Invasive species management objectives within the project area are as follows:

**Populus alba, Robinia pseudoacacia and Ailanthus altissima**- Reduce these species by 90% in management year one, 95% in management year two and reach and maintain 95%+ reduction in year three and ongoing.

**Lonicera japonica** - Reduce this species by 90% in management year one, 95% in management year two, and reach and maintain 95%+ reduction in management year three and ongoing.

**Lonicera morrowii/bella and Rosa multiflora** - Reduce these species by 90% in management year one, 95% in management year two, and reach and maintain 95+% reduction in management year three and on going.

Objectives will vary based on management outside of the limit of work area. If invasive species are managed throughout the approximately 7000 square foot invaded area, control levels stated above can be successfully reached.

## Restoration Objectives

- Restore high-value areas within the limit of work impacted by invasive species as described in the Restoration Plan dated April 22, 2014

## Organizational Collaboration Objectives

- Provide regular reports covering effectiveness of invasive species management and achieved objectives along with the health of restored native vegetation including dated color photographs of the project area to the Town of Truro and NHESP annually for the three-year duration of the Land Management Plan.

## Summer/Fall 2014

- Pre-treat all invasive species throughout the project area with basal bark treatment (vines) or injection treatment (shrubs).
- Approximately 2 weeks after pre-treatment, cut and remove trees, and mechanically uproot invasive vines, shrub honeysuckle, and multiflora rose. If any root material is left in the ground, apply a 20% concentration of a Glyphosate-based herbicide to shrub honeysuckle by wiping directly onto the cut stump immediately following the cutting treatment.
- Remove all vegetation debris from the site for proper disposal.
- After initial invasive species removal is complete immediately seed areas to stabilize soils.
- Begin removing plant material to be protected from within the proposed project area. Store plants off-site until project is complete and transplanting can commence.

## Winter - 2014

- Continue invasive plant management by using a cut & wipe application of a 20% concentration of a Glyphosate-based herbicide to invasive plants.
- If garlic mustard is present in the project area, hand pull the basal growth, bag the debris and remove from site to be disposed of properly.

## Spring - 2015

- Monitor invasive plant response to previous season's management treatments and calibrate upcoming treatments to correspond with the observed plant response.
- Commence restoration planting of the invasive species management area.
- Once roadway construction project is complete begin restoration planting throughout the limit of work.
- Plan irrigation needs for upcoming growing season.
- Prepare and submit the first monitoring report to the Truro Planning Board.

## Summer - 2015

- Should any previously cut invasive plants re-sprout, selectively remove them by using a cut & wipe application of a 20% concentration of a Glyphosate-based herbicide to all other invasive shrubs after July 15th.
- Adjust temporary irrigation as necessary to ensure proper care of newly installed vegetation while using the least amount of water necessary to support plant establishment.
- Repeat the above treatment in late summer, if necessary.

### **Fall -2015**

- Continue to monitor health of restored native vegetation, adjusting irrigation as necessary until system is turned off for the season.

### **Winter - 2015**

- Continue invasive plant management by using a cut & wipe application of a 20% concentration of a Glyphosate-based herbicide to invasive plants.
- If garlic mustard is present in the project area, hand pull the basal growth, bag the debris and remove from site to be disposed of properly.

### **Spring - 2016**

- Monitor invasive plant response to earlier management treatments and calibrate upcoming treatments to correspond with the observed plant response.
- Assess health of restored vegetation, replace any vegetation that may have succumbed to winter kill.
- Plan irrigation needs for upcoming growing season.
- Prepare and submit the second monitoring report to the Truro Planning Board.

### **Summer - 2016**

- Should any previously cut invasive plants re-sprout, selectively remove them by using a cut & wipe application of a 20% concentration of a Glyphosate-based herbicide to all other invasive shrubs after July 15th.
- Adjust temporary irrigation as necessary to ensure proper care of newly installed vegetation while using the least amount of water necessary to support plant establishment.

### **Fall - 2016**

- Continue to monitor health of restored native vegetation, adjusting irrigation as necessary until system is removed.

### **Winter - 2016**

- Continue invasive plant management by using a cut & wipe application of a 20% concentration of a Glyphosate-based herbicide to invasive plants.
- If garlic mustard is present in the project area, hand pull the basal growth, bag the debris and remove from site to be disposed of properly.

### **Spring- 2017**

- Monitor invasive plant response to earlier management treatments and calibrate upcoming treatments to correspond with the observed plant response.
- Assess health of restored vegetation, replace any vegetation that may have succumbed to winter kill.
- Restored vegetation should be established at this point, and temporary irrigation no longer necessary.
- Prepare and submit the third monitoring report to the Truro Planning Board.

### **Summer - 2017**

- Should any previously cut invasive plants re-sprout, selectively remove them by using a cut & wipe application of a 20% concentration of a Glyphosate-based herbicide to all other invasive shrubs after July 15th.
- Adjust temporary irrigation as necessary to ensure proper care of newly installed vegetation while using the least amount of water necessary to support plant establishment.

### **Fall - 2017**

- Continue to monitor health of restored native vegetation, adjusting irrigation as necessary until system is removed.
- Prepare and submit the Final monitoring report to the Truro Planning Board

### **Ongoing Invasive Species Maintenance**

After Fall 2017, invasive species should be under control. At this juncture invasive plants should be reduced to low enough numbers that an annual hand removal and selective herbicide treatment strategy will suffice to keep them out of the naturalized areas. (This will vary depending on actual carbohydrate stores in the roots and environmental conditions throughout the treatment period.) Invasive plants generally take a minimum of three to five years of active management to reach a level of successful control. Annual monitoring and minimal maintenance for invasive species should be ongoing throughout the restoration area.



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November 3, 2023

**By FedEx**

Truro Planning Board  
Truro Town Hall  
24 Town Hall Road  
P.O. Box 2030  
Truro, Massachusetts 02666  
Attn: Anne Greenbaum, Chair

**Re: 9B Benson Road, Truro, Massachusetts**  
**Application for Preliminary Subdivision Approval**

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Dear Chairwoman Greenbaum:

This office represents Will and Gloria Cater, the Trustees of the Fisher Road Realty Trust (the “Trust”) in connection with the Trust’s application under G.L. c. 41, Section 81S for preliminary subdivision approval of property known and numbered as 9B Benson Road, Truro, Massachusetts (the “Property”). I am writing to you to ask that two of the members of the Truro Planning Board (the “Board”) recuse themselves from consideration of the Trust’s application in accordance with their obligations under G.L. c. 268A, § 23(b). That statute states in relevant part that no current officer or employee of a municipal agency<sup>1</sup> shall knowingly, or with reason to know:

act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that ... he is likely to act or fail to act as a result of kinship, rank, position, or undue influence of any party or person.

(emphasis added). Furthermore under G.L. c. 268, § 19 a municipal employee must not participate in any matter affecting his/her own financial interest (or that of an immediate family member or a business organization in which he is serving as an officer/ director/trustee/ partner/employee). Per a 1987 advisory opinion from the State Ethics Commission (*See* Tab 1<sup>2</sup>), if a planning board member, or his or her family member, is an abutter to a proposed subdivision,

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<sup>1</sup> Under G.L. c. 268A, §1(g) the statute governs any “person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.”

<sup>2</sup> The 1987 advisory opinion has been repurposed as continuing guidance for Planning Board Members on the State Ethics’ Commission’s website.



Chairwoman Anne Greenbaum

November 3, 2023

Page 2

the planning board member must abstain when the issue comes before the board because of the financial interests implicated by the proposal, even if the member of family member did not object to the proposed subdivision.

Accordingly, we believe that given Mr. Riemer's and Mr. Kiernan's prior opposition to an earlier iteration of the current preliminary subdivision plan for the Property, neither gentleman can be fair and objective in considering the Trust's current application and must recuse themselves from related Board proceedings.

Both Mr. Riemer and Mr. Kiernan exercised their rights as private citizens to participate in prior public hearings before this Board in opposition to prior proposals by the Trust to access the Property via the same private easement that will connect to the subdivision road on the Property. In 2014 the Trust applied to the Board for approval of a Definitive Plan pursuant to MGL c.40A, Section 81T and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to the Property (the "2014 Proposal"). At the time the plan submitted by the Trust reflected a single lot subdivision, access to and egress from which will be served by a driveway located over a private easement, certain dimensions of which were established by decision of the Massachusetts Land Court in *Cater v. Bednarek*, Miscellaneous Case No. 98 MISC 250365 (GHP) (the "Action"). At the continued public hearing on April 15, 2014 Mr. Riemer spoke in opposition the 2014 Proposal arguing that it would be unwise for the Board to waive certain dimensional standards for the driveway because of alleged safety concerns and the possibility of thereafter binding the Board to waive these same regulations for future proposals. At the May 6, 2014 continued public hearing, Mr. Riemer speculated about the possibility that the view of a driver on the driveway could be blinded on a bright sunny day, and expressly asked the Board to deny the Trust's application. True and correct copies of the minutes from both meetings are attached to this letter at Tabs 2 and 3.

Mr. Kiernan lives at 10 Benson Road in Truro. Although he is not a direct abutter to the Property his property is located approximately 700 feet from the Property. Most importantly, Mr. Kiernan was a defendant in the Action. The defendants in the Action argued that the Property was not benefitted by any easement rights, including the driveway that will connect to the subdivision road reflected on the current preliminary subdivision plan. Thereafter, Mr. Kiernan participated in the public hearing process before this Board to oppose the Caters' previous proposals. At the March 4, 2014 Mr. Kiernan appeared as an abutter challenging the Caters' characterizations of the holding of the Action and urging the Board to require a safer means of accessing the Caters' proposed development on Property or to deny the plan all together. A true and correct copy of the March 4, 2014 meeting minutes are attached to this letter at Tab 4. Mr. Kiernan wrote a letter of opposition to the Board which was read into the record at the April 15, 2014 continued public hearing to consider the 2014 Proposal. Mr. Kiernan's letter cautioned the Board not to waive certain dimensional requirements related to the driveway and threatened that if the Board did waive those requirements that there could be additional litigation. At the May 6, 2014 continued public hearing, Mr. Kiernan read another statement into the record objecting to the 2014 Proposal.



Chairwoman Anne Greenbaum

November 3, 2023

Page 3

Mr. Riemer and Mr. Kiernan acted well within their rights as private citizens to participate in litigation and the public hearing process and vigorously oppose the 2014 Proposal. However, in light of their prior participation, it is no secret that Mr. Riemer and Mr. Kiernan are opposed to development on the Property. Although the 2014 Proposal was slightly different than the Trust's current proposal, both projects will involve the use of the private easement, which Mr. Riemer and Mr. Kiernan have argued against. A reasonable person considering the objective evidence could only conclude that Mr. Riemer and Mr. Kiernan would act consistent with their previously articulated self-interest and vote against the current proposal. In these circumstances, both men must recuse themselves. *See, e.g., Windsor v. Planning Board of Wayland*, 26 Mass.App.Ct. 650, 652 (1988) (plaintiff, who was a planning board member and abutter to the proposed subdivision participated only as a private citizen in public letter writing campaigns, and court actions challenging the subdivision plan; plaintiff recused himself from the planning board votes); *Winchester Boat Club, Inc. v. Zoning Board of Appeals of Winchester*, 2021 WL 1700846,\*12 (Mass. Land Ct., April 29, 2021) (intervenor, who was also member of the Board, properly recused himself in order to represent his interests as an abutter).

Sincerely,

/s/ Kate Moran Carter

Kate Moran Carter



# TAB 1

# Conflict of interest law explanation for Planning Board members

Information about how the conflict of interest law applies to Planning Board members, including restrictions placed on them while on the job, after hours and after leaving public service

## How does the conflict of interest law apply to Planning Board members?

Planning Board members are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws). All municipal employees, whether elected or appointed, full or part-time, paid or unpaid, must abide by the restrictions of the conflict of interest law.

The purpose of the conflict of interest law is to ensure that your private financial interests and relationships do not conflict with your responsibilities on the Planning Board. The law is written broadly to cover situations which even give the appearance of a conflict.

If your Planning Board position has been designated as a "special" municipal employee position, two sections of the conflict of interest law, sections 17 and 20, apply less restrictively to you. (All other sections of the conflict of interest law which affect municipal employees apply to special municipal employees in the same way.) Most Planning Board member positions may be designated as specials; see the Commission's Explanation of the Law for Special Municipal Employees for information on eligibility and the designation process.

### Accepting Gifts (Section 3 and Section 23(b)(2)(i))

A development company has recently received your planning board's approval for a subdivision plan. To foster goodwill and say thank you, the developer offers each of the board members a gift certificate to a fine restaurant in Boston. May you accept?

- It depends. You may not accept a gift of substantial value (\$50 or more), which is given to you because of actions you have taken, or will take, in your town position or because you hold a town position, even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill. If the gift certificate is worth \$50 or more, you may not accept it.

- If the gift certificate is valued at less than \$50, you may accept it provided it is not intended as a bribe. A bribe, no matter what its value, will violate the law.

The conflict of interest law permits local boards to adopt stricter standards than those in the state law. Many local governments simply have an outright ban on accepting any gifts to avoid any appearance of conflict or favoritism which may be created by accepting gifts.

## **Prohibited Actions Affecting Financial Interests (Section 19)**

You are a site engineer for a development company presently building condominiums in town. May you, as a planning board member, deliberate and vote on your company's proposed subdivision plan if you have not worked on the plan?

- No. You may not participate in any matter that affects the financial interest of your employer (whether or not you worked on the matter for your company). You also may not act on a matter that affects your own financial interest or those of your "immediate" family or of a business for which you serve as officer, director, partner or trustee. You must abstain on matters affecting your competitors.

Immediate family is defined in the law as you and your spouse and both of your children, parents, brothers and sisters. For example, if your sister is an abutter to a proposed subdivision (whether or not she challenges the subdivision), you must abstain when the issue comes before your board. Your sister, as an abutter, has a financial interest in the matter.

There is an exemption to this restriction available for appointed planning board members. If you are appointed, you may act on a matter affecting your own, your immediate family's or your business' financial interest only if you make a written disclosure to, and receive written permission from, your appointing authority, prior to taking any action.

Another exemption allows you to act as a planning board member on any determination of "general policy" which affects a substantial segment of your community's population in the same way. For example, your board is drafting zoning changes which would affect a major portion of the geography of your town. These changes would affect your financial interest because you own a home in the area to be affected, but because they would also affect a large area and a large segment of your town's population, you may participate in drafting the new zoning changes. Not all zoning changes will fall into the category of "general policy." Seek advice from your local town or city counsel or the Ethics Commission if you have specific questions.

## **Appearances of Conflict and Misuse of Official Position (Section 23)**

Your cousin, a lawyer, is representing a client before your board. May you act as a board member in the matter?

- Yes, provided that you publicly disclose your private relationship with your cousin prior to taking any action. If you are an appointed planning board member, your disclosure must be made in writing to your appointing authority (whatever board or person appointed you to your position). If you are elected, your disclosure must be made in writing and filed with the town or city clerk. These disclosures must be kept

available for public inspection. We also suggest that you make a verbal disclosure at a public meeting in which the matter arises. Your written disclosure will dispel, by law, the impression of favoritism created when you act on matters affecting relatives (who are outside the definition of "immediate family") or friends.

- In addition, you must act objectively and not attempt to obtain any special favors for your cousin because of your relationship. Using your planning board position to secure unwarranted privileges for people always violates the law, regardless of whether you disclosed your private relationship.

See the Commission's [Advisory 05-01 - The Standards of Conduct](/advisory/05-01-standards-of-conduct) for more detailed information.

## Restrictions "After Hours" (Section 17)

You are a professional engineer working for a development company. While on the planning board, may you represent the development company before the conservation commission concerning a development located in wetlands?

- If you are a regular municipal employee, no. You may not act as the agent or attorney for any private party, including your own company, before town boards. Representing a private company before a town board is acting as that company's agent; it doesn't matter whether you are paid or not.

If you are a "special" municipal employee, it depends. You may represent private parties before other town boards (not your own) unless it is a matter in which you participated as a planning board member, or a matter which is now, or within the past year, was within your official responsibility as a board member. In this example, if the proposed development already was before the planning board or was about to come before the planning board, you could not represent the development company before the conservation commission, whether or not you are a special municipal employee. To emphasize, it is not enough simply to abstain from action on your own board; if the same matter is before other town boards, you must not act as the representative for a private company before those boards.

## Prohibited Financial Interest in Municipal Contracts & Multiple Jobs (Section 20)

You want to serve as an elected school committee member. If elected, may you hold positions on both the planning board and school committee?

- It depends. If you are elected in both positions, yes. If both positions are unpaid (whether they are elected or appointed), yes. If the planning board position is appointed and unpaid, and the elected school committee position is paid, you may hold both positions.
- If the planning board position is appointed and paid, and the elected school committee position is unpaid, you will need an exemption. You can use the exemption for uncompensated positions by filing a written disclosure with your appointing authority for the board. See 930 CMR 6.02(3).
- However, if the planning board position is appointed and paid and the elected school committee position is paid, you will need an exemption in order to hold both positions.

Talk to your municipal lawyer about the technical requirements you must meet to hold multiple positions or call the Ethics Commission on this one at (617) 371-9500.

## **Restrictions After You Leave Government Service (Section 18)**

You have resigned as a member of the planning board and now work for a developer who has a project pending before the city. May you represent the developer before various city boards and agencies?

- It depends:
  - You may not represent the developer before a city agency concerning a matter in which you participated as a planning board member.
  - For one year after you leave the planning board, you may not appear before city boards on a matter which was under your official responsibility within the two years before you left the board.
  - You may represent the developer before city agencies (including your own) with no "cooling off" period on a matter you never dealt with and which was never under your official responsibility while you were a board member.

## **Advisory Opinion**

This summary presents a brief overview of the conflict of interest law and suggests activities which you, as a Planning Board member, must avoid. It is not a comprehensive review intended to cover every situation. You should consult your municipal lawyer or call the Ethics Commission's Legal Division at (617) 371-9500 for specific advice about how the law applies to your situation.

If you have a question about your own activities, we urge you to request advice prior to engaging in the activity in question.

If you have questions about others' activities in your town or city, urge them to use the opinion process. In addition, complaints may be filed with the Commission's Enforcement Division online by using the website, by phone (at the same number listed above), by letter or in person. The identity of complainants is kept confidential.

\* \* \*

Explanations about the conflict of interest law are prepared and issued by the Public Education and Communications Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict of interest law.

ISSUED: October 1987

UPDATED:

## **Contact**

# TAB 2

## **TRURO PLANNING BOARD**

Meeting Minutes - Tuesday, April 15, 2014

Truro Town Hall, 24 Town Hall Road, Truro, MA at 6:00 pm

**Members Present:** Karen Snow (Chair), Bill Worthington, Leo Childs, Chris Lucy, Lisa Tobia and Bruce Boleyn. **Absent:** John Pendleton

**Others Present:** Charleen Greenhalgh ( ATA/ Planner), Steven Sollog, Donald Poole, Bruce Edmands, Paul Kiernan, Jack Riemer, Ben Zehnder, Eliza Cox, Tom Frisardi, Joan Holt and David Clark

Ms. Snow called the meeting to order at 6:04 pm

### **Winkler Route Six Trust, Michael F. Winkler, Trustee, 1 Noons Heights Road, Site Plan Review**

Representative: Attorney Ben Zehnder

This is a continuation of the public hearing from April 1, 2014. The applicant seeks endorsement of an Application for Site Plan Review pursuant to §70.2 of the Truro Zoning By-law for 1) landscape material stockpiling and processing; 2) Asphalt/Brick/Concrete (ABC) stockpiling; and 3) ABC crushing no more than five times each calendar year for a week's duration each instance. The property is located at 1 Noons Height Road, Atlas Map 39 Parcel 166.

Mr. Zehnder the applicant's representative requested a further continuance of this matter to May 6, 2014. Ms. Tobia moved to continue the Site Plan Public Hearing to May 6, 2014. Seconded by Mr. Boleyn, voted on and approved 6-0-0.

### **2014-001 Willie J. Cater and Gloria J. Cater, 9B Benson Road, Definitive Subdivision**

Representatives: Attorney Bruce Edmands, Don Poole, P.L.S and Dave Clark, P.E.

This is a continuation of a hearing from February 18, and March 4, 2014. The applicants seek for approval of a Definitive Plan pursuant to MGL c.40A, Section 81T and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to their property known and numbered 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53. The Application seeks approval of a single lot subdivision access to and egress from which will be served by a driveway located over a right of way as meeting the specifications set forth in a Judgment entered in the Commonwealth of Massachusetts Land Court.

Mr. Worthington recused himself and moved to the audience.

Mr. Edmands related that at the April 1, 2014 meeting an agreement was reached that the abutters would submit a proposal of compromise using a diagonal route up the hill. The proposal with 42 requirements/issues concerning the road design was received and is not acceptable. The proposal asks that the Caters agree to a road design that is not within the bounds of the Truro Subdivision rules and regulations without the support of those who will be directly affected by it, the only assurance would be that the abutters would remove their opposition to the plan. Mr. Zehnder, representing the abutters stated that the proposed route included many restrictions, but

was intended to begin a discussion. The proposal was not presented in good faith and Mr. Zehnder offered an apology to the Caters. The abutters are seeking the least amount of disturbance to the hillside therefore the proposal before the Board is the easement designated by the Land Court, and is the preferred route for the abutters. If the Planning Board can waive the grade restrictions and also the cul-de-sac the fill will be greatly reduced.

Ms. Tobia asked for clarity of the path of the road. Mr. Zehnder stated that the path is the one laid out by the Land Court referring to plan A. Attorney Cox representing the LaFredo property asked the Board to consider granting of waivers to minimize the damage to the terrain, view and esthetic beauty that is existing at this site and recognize the interference with the existing septic system that will occur if the preferred route A is followed. She asked the Board to keep in mind that the court decreed a right of way through three private properties, if ever there was a situation to grant waivers this is such a case. Attorney Cox identified Bob Perry as the engineer for all three abutters. Thomas Frisardi, attorney representing Lucy Clark, added that grade waivers are a necessity and asked if the Planning Board would take a vote even a straw vote so the Caters would know that they would have a usable lot after this is constructed. Ms. Snow asked if the DPW Director could provide some examples of existing grade conditions on some roads in Truro. Ms. Snow read a letter from Paul Kiernan into the record; the letter asked the Board to proceed with caution as further litigation may follow if the Board acts outside its powers.

Ms. Snow reviewed the requested waivers made by the applicants Ms. Snow stated that it is appropriate to consider these requests for waivers at this time. (Note the numbering is as they were discussed at the meeting, not from the plan numbers.)

1. Minimum Right of Way width Mr. Boleyn stated that implicates safety issues. Ms. Tobia stated she has no problem with reduced Right of Way. Mr. Childs still uncomfortable with reduced Right of Way. Mr. Lucy stated he has no problem with a design of 15' of paved surface and the judge has ordered this width. Mrs. Greenhalgh asked for the plan to be clarified. Mr. Edmands cleared up the description of what the court required for both the Right of Way width and the paved surface. Through consensus the Board and the applicant agreed the Right of Way will be 20'. Ms. Snow asked the Board if they will waive paved surface down to 10' with 2' of shoulder. For a length of 560'. Ms. Tobia asked to do as little harm as possible and is in favor of an 8' surface where possible. The Board discussed the width. Mr. Boleyn preferred a wider paved surface will allow waiving the width down to 10'.
2. Vertical alignment waiver. The Board agreed the minimum intersection angle requirement can be waived for a single lot.
3. Grade requirement waivers. Mr. Lucy stated for reference Sally's way grade is 10%. Long discussion on grades. Ms. Tobia stated that she is willing to waive grade up to 16%. Mr. Childs stated that 200' of 16% grade is passable unless it is covered with ice. Ms. Snow summarized that the Board would waive a road up to a 16% grade for some defined distance.
4. Ms. Snow asked for a re-vegetation plan where a pre-inventory of existing growth was provided in order to replace what was there with the same vegetation. The Board agreed.
5. Ms. Snow addressed the need for turn-outs at points on the road for vehicles to pass each other. The applicant agreed to provide turnouts with hardener not paved.
6. The Board asked for a T turnaround instead of a cul-de-sac.



7. The existing septic system in the path of the road should be dealt with. Through the land court it is the responsibility of Caters to deal with the septic. There is not as yet a determination that the road will interfere with the septic system on the Loffredo property. Attorney Cox disagreed with this determination. The Loffredo's are asking for a condition on the site plan where if the road interferes with the septic system, it is remedied before commencement of the road construction. Mr. Poole stated that the 'as built' card shows a different foot print for the location of the leach pit. Ms. Snow asked for a time constraint. Mrs. Greenhalgh stated that making it a condition of approval then the time constraint is built into the application. Next meeting is May 6 2014. All material needs to be submitted by April 28 for consideration of May 6. Attorney Zehnder stated that these conditions do not represent an approval of the application but rather complete and accurate terms and conditions for proceeding. He stated we should not lose sight of the need for things to be built correctly and will work toward that end with the other attorneys and engineers.
8. Covenant release will be based on construction of the road prior to issuance of a building permit.
8. Road surface should not be pavement wherever possible. Where grade allows use alternative to paving. The attorneys discussed road surfaces producing noise and dust.

Ms. Snow stated that this is the end of the waivers list. Ms. Snow opened the meeting to the public.

Mr. Kiernan asked the Board not to waive 40' easement requirement, the paved width, the radius of the road intersect and the turnaround. A 12' wide easement will not allow him to be eligible for a building permit. Mrs. Holt stated there are 2 different items before the Board. The Board should not combine the two. A one lot subdivision which requires a 40' easement. The other item before the Board is a driveway. Mr. Worthington a member of the Truro Conservation Trust asked why the Board wants to waive the easement when a 40' easement does not change the cut or fill it is delineation on an assessor's map and not much more. Ms. Snow asked if he meant the right of way or the layout. Mr. Poole questioned the appropriateness of Mr. Worthington speaking at the meeting, for not disclosing his seat on the Planning Board and not being a direct abutter. Mr. Riemer spoke on the willingness of the Board to waive the requirements which have been worked on to insure the safety and overall appeal of the Town of Truro, He stated it is not wise to waive these requirements, for future precedents which will have a bearing on future applications that will come before this Board.

Ms. Snow stated subdivision regulations are waive-able. This Board created the rural road alternative purposely to allow less impact on the environment. Ms. Snow stated that the Board routinely waives width grade and intersect angles as well as construction of cul-de-sacs. The Board is waiting for more information. Ms. Snow asked that the plan contain a note stating this subdivision is limited to one residence and no further development is permitted. Mr. Kiernan stated the Board should ask town counsel if the 40' easement, the 20' turn radius and turnaround are waive-able by this Board.

Mr. Boleyn moved to continue this public hearing to May 6, 2014. Seconded by Mr. Lucy, voted on and continued to May 6. 6-0-0

**Assignment of Motions for Zoning Articles for the Annual Town Meeting**

Ms. Snow assigned the articles to members for motion at Town Meeting.

**Continued Discussion and Review of Proposed Changes to the Planning Board Policies and Procedures, including Code of Conduct**

Tabled to next meeting.

**Review and Approval of Meeting Minutes**

Mr. Worthington moved to accept the minutes for March 4, 2014 as amended. Seconded by Mr. Childs, voted on and approved 6-0-0.

Mr. Worthington moved to approve the minutes of March 17 as amended. Seconded by Mr. Childs voted on and approved 6-0-0.

Mr. Childs moved to approve the minutes of March 19 as amended. Seconded by Ms. Tobi, voted on and approved 6-0-0.

Adjourned at 8:00pm

Respectfully Submitted,

Steve Sollog

# TAB 3

## **TRURO PLANNING BOARD**

**Meeting Minutes-Tuesday, May 6, 2014 at 6:00 pm**

**Town Hall, 24 Town Hall Road, Truro, MA**

**Members Present:** Karen Snow (Chair), Bill Worthington, John Pendleton, Leo Childs, Chris Lucy and Bruce Boleyn

**Members Absent:** Lisa Tobia

**Others Present:** Charleen Greenhalgh ATA/ Planner, Steven Sollog, Bruce Edmands, Don Poole Gloria Harris Cater, Dr. Willie Cater, Paul Kiernan, Jack Riemer, Ben Zehnder, Fred Gaechter, Eliza Cox, Christopher Snow, Bob Weinstein, Tom Frisardi, Lucy Clark, Joan Holt, David Clark, Nancy Thornley and John Thornley

Ms. Snow called the meeting to order at 6:00pm

### **2014-001 - Willie J. Cater and Gloria J. Cater Definitive Subdivision, 9B Benson Road**

Representatives: Bruce Edmands, Don Poole and Dave Clark

The applicants have filed an application for approval of a Definitive Plan with the Clerk of the Town of Truro pursuant to Massachusetts c.40A, Section 81T and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to their property known and numbered 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53.

The Application seeks approval of a single lot subdivision access to and egress from which will be served by a driveway located over a right of way as meeting the specifications set forth in a Judgment entered in the Commonwealth of Massachusetts Land Court. This is a continuation from February 18, 2014, March 4, 2014, April 1, 2014 and April 15, 2014. Mr. Pendleton and Mr. Worthington recused themselves.

Mr. Edmands stated that with the benefit of the prior discussion, the Caters have prepared a revised road design. By increasing the grade of the road to 16%, the cut and fill for this road is greatly reduced. The width of the road is not reduced due to potential safety risk. A re-vegetation plan has also been prepared for approval. Mr. Clark described the changes to the plan. The 16% grade is the greatest slope and replacing the cul-de-sac with a T-turn allows the cut and fill on the Truro Conservation Trust land to be eliminated. A turnout is provided along the road. Ms. Snow asked for a description of the guard rail and its location. The placement was explained by Mr. Clark. Ms. Snow asked for explanation of where the hardened surface turns to pavement, the placement of the apron and the specifications for clearance to the turn-around. Mr. Clark explained the temporary apron is a device to mitigate/control tracking of debris from truck tires. The purpose is to knock the material off the wheels of the trucks working at the site. After construction is finished the apron will be removed and the area re-vegetated.

Mr. Boleyn stated he is very uncomfortable and concerned with the safety of the grade. Mr. Edmands stated that there is an unobstructed view from the bottom of the road looking up to the Cater property and vice versa. Mr. Childs agreed that a wider road is a good idea and recommend a hedge fence to protect the properties from wind and noise also questioned whether a catch basin might provide for some contamination to the nearby well. Mr. Clark stated the best option is a

catch basin but he will explore alternate choices. Mr. Lucy stated that a decrease in the grade would increase cut and fill and he asked if it would be possible to run a trench toward Benson Road to carry rain run-off out away from the well on the neighboring property. The road will be pitched to one side because it will allow a narrower road surface and the berm will only be needed on one side.

Ms. Snow asked what the hardened surface choices are and asked if the T-turn and hammer head could be moved on the layout to eliminate any clearing on the Truro Conservation Trust property. Teresa Spray's suggestions are designed to manage/control the invasive species and restore the area with eastern red cedar, scrub oak and plain grassland. Mr. Childs described the particular areas where the height of the re-vegetation should be controlled to allow for low growing ground cover. Discussion continued on re-vegetation.

Ms. Cox attorney representing the Loffredo property stated that her client does not want this access road, but if this is imposed on her client then they are pleased with the grade, which helps preserve the view. Subdivision Control Law requires the Planning Board to conform to the recommendations of the Health agent. Ms. Cox read a response from the Health agent and submitted it for the record. Her client would like to see the road narrowed to 10' total including berm. The plan should respect the natural environment and she stated that many roads are narrower and allow for safe passage. The width will be left up to the Planning Board to determine what is necessary to provide safe access. Ms. Cox stated that through consultation with their engineer, Bob Perry, they ask for the removal of the guard rails as they will obstruct the view. In addition, they want to see a reduction in the driveway apron width and they want a strong restriction on the plan limiting development to one single family dwelling. The Planning Board has that authority. We appreciate Mr. Lucy's suggestion to move run-off to Benson Rd which will disperse storm water over a larger area.

Mr. Zehnder representing Truro Conservation Trust (TCT) stated that it is in the hands of the Planning Board to preserve this land. This looks like a good plan. The TCT would like to see a reduction in the road width to 10' and they asked for several conditions 1) No lighting be permitted on the roadway; 2) Require bonding, it is critical to secure a covenant surety bond; 3) Restoration time period be limited 90 days; 4) No construction during July and August; 5) Require the planting to be maintained forever; and, 6) Compensate for the horizontal disturbance done to the land in the Truro Conservation Trust. Mr. Lucy engaged in a discussion about the width of the road. Mr. Zehnder asked to allow the narrowest width possible.

Mr. Frisardi attorney for Lucy Clark stated emphatic objection to any approval of this plan. The applicant does not have the requisite frontage. The Land Court did not confer a frontage right to the Right of Way. The conditions suggested are worth consideration. Cash bond is essential and include a time limit. The court advised information and therefore the decision is not binding. Mr. Frisardi used some examples of Court decisions to make his point, finally stating that a 40' right of Way is the requirement to the subdivision control law so the application must be denied.

Mr. Kiernan asked for a point of order concerning the change in the Planning Board membership in the very near future, leading to the possibility for a conditional approval of the plan. If that were to happen then which plan would be conditionally approved? Ms. Snow stated that it is her intention to have a vote on this subdivision this night. The Board worked on specifics of the plans. Ms. Snow reviewed the plan specifics with the abutters and the rest of the Board.

- A ten foot width for the road way. A one and a half foot berm and two-foot shoulder with hardened surface. A total of ten foot hardened surface for the unpaved section of the road.
- No lighting on the roadway other than on the Cater property.
- A discussion on the bond ensued. Mrs. Greenhalgh read the Massachusetts General Law on securing a bond. The Board worked out the wording of a requirement of bond.
- Mr. Edmands stated that his clients are willing to delay construction until September.
- Maintaining the road will be in the statement of conditions which runs with the property.
- Set aside an equal area of property as that which is disturbed on the TCT property, dedicated to open space. Mr. Edmands accepted the condition, setting aside the area.
- In the matter of the septic location the Caters understand their responsibility and obligation to rectify any disturbance. It would require the Caters to adhere to whatever is required by the Board of Health.
- As stated in the letter the unpaved section of roadway should be 10' wide inclusive of the shoulders hardened surface.
- One Single family home on the lot condition.
- Move catch basin away from the leach pits.
- Name of proposed road Hopper Lane.

Mr. Lucy discussed the pitch of the road with Mr. Boleyn who feels the grade is a major safety issue. Mrs. Greenhalgh stated that the application must be approved by National Heritage and the waivers must be on the plans. The Board reviewed the waivers to be included on the plan.

Mr. Frisardi asked that the monument restoration be included as a condition on the plan, including the waivers as requested by the applicant.

Ms. Snow opened the meeting to public comment at 8:56pm.

Mrs. Holt an abutter stated the Board is ignoring the subdivision by-laws. The 40' right of way is not waive-able in design standards and a building permit will not be issued. Ms. Snow responded regarding subdivision after speaking with Town Counsel and the Town Planner both advised this is a plan which has merit and similar subdivisions have been approved in the past. This driveway is not a road and the Planning Board is weighing in on how it should be built. The judge did not guarantee a building permit in fact if the building commissioner decides that this road does not confer frontage then other boards will review the case. Mr. Kiernan agreed with what the chair stated, but questioned using §2.5.2.16 where the abutters can build a fence, where is the limit of the right of way.

Mr. Edmands stated that the Judge did not specify the exact dimensions of the right of way. The judge intended that the Caters would have a right of way which would provide access to the Cater property, which would satisfy the zoning requirements.



Mr. Kiernan read a statement objecting to approval of this plan. The Court mandated approval of a subdivision but there should be no misunderstanding that this roadway will not confer frontage. Mr. Riemer asked the Board to address safety issues any bright sunny day could cause the blinding of a driver's view, and asked the Board to deny the application. Ms. Snow closed the public hearing.

After further Board discussion, on a motion from Leo Childs, seconded by Christopher Lucy, the Board voted to approve the Definitive Subdivision of Land prepared for Doctor Willie J. and Gloria J. Cater as submitted and to approve the method of construction for access from Benson Road to the subject property, pursuant to MGL c.41, §81-T and §81U and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land, located at 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53, with the following conditions:

1. The paved portion of the road shall have a width of 10' paved, with a 1½' berm on one side, with 2' of hardened shoulders on either side. This is exclusive of the T-turnaround in the cul-de-sac.
2. The unpaved portion of the road shall have a width of 10', with 2' of hardened shoulders loamed and seeded.
3. The unpaved portion of the road shall be constructed with a dense graded base with a natural surface. A detail of the construction shall be provided.
4. No work related to the roadway shall commence until the septic system serving 9 Benson Road has been designed, permitted, and relocated in accordance with the requirements of Title 5 (310 CMR 15.000 et seq) and the Truro Board of Health Regulations, and the new system has been put into operation. This shall be so noted on the plan and within the Planning Board Covenant.
5. The guard rail shall begin approximately at Station 2+75 rather than at Station 2+00.
6. The proposed limit of clear for the T-turnaround shall be restricted to within the confines of the cul-de-sac area.
7. There shall be no lighting of the roadway on the Truro Conservation Trust, Loffredo or Clark properties.
8. The applicant shall deposit with the Town a cash or other approved bond in the amount of \$25,000, in addition to a Planning Board Covenant. The bond shall be remitted to the applicant upon completion of all construction and restoration in accordance with the approved plans, and verification by the Planning Board that vegetation has stabilized and is reasonably expected to survive and grow normally. No Certificate of Occupancy shall issue for the property until the bond has been deposited with the Town.
9. There shall be no construction of the roadway during the months of July and August in any year.
10. The applicant shall set aside as open space through a plan notation and covenant, or through a conservation restriction, an area of land on the Cater property at least equal in square footage to the area of Trust land disturbed for the project.
11. A Statement of Condition will be executed and shall include the provision that the roadway shall not be constructed except in connection with the construction of a single family dwelling on the Cater property.

12. The applicant shall count all trees measuring 6" DBH (for example Pitch Pine, Oak, Cherry), but not including invasive species, which are to be removed from the Loffredo property (9 Benson Road) within the limit of work area, and for every such tree removed, one shall be planted on the Loffredo property in a location acceptable to the Loffredos.
13. The leach pits located at Station 2+00 shall be relocated outside the 100 feet radius to the well on the Loffrado property.
14. The subdivision road shall be known as "Hopper Lane".
15. The temporary apron, to be used during construction, shall be reduced to 10' on the Construction Plan. Following construction of the road the temporary apron shall be removed and shall be reconstructed in conformity with the remainder of the unpaved road. Any disturbed areas shall be revegetated.
16. The Eastern Red Cedar shown on the BlueFax Restoration/Planting Plan within the 100' radius of the Loffrado well, shall be relocated to outside the "white" area as shown on the plan.
17. Any monuments disturbed during construction shall be replaced.
18. No construction of the way shall commence until Natural Heritage's Massachusetts Endangered Species Act (MESA) has acted and/or signed-off.
19. All waivers, in item 20, shall be noted on the definitive plan prior to endorsement.
20. The Board approved the following waivers from the Town of Truro Rules and Regulations Governing the Subdivision of Land, Appendix 2, Table 1, Recommended Geometric Design Standards for Subdivisions:

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Waiver Requested</b>
<b>Roadway Layout</b>			
Minimum right of way width	40 feet	12 feet	28 feet
Minimum roadway width	14 feet	12 feet	2 feet
Shoulder width	4 feet	2 feet	2 feet
<b>Grade</b>			
Maximum grade	8% or 10% For 100 feet	16% For 200+/- feet	8% or 6% 100+/- feet
<b>Intersection Standards</b>			
Minimum intersection angle	60 deg.	32 deg.	28 deg.
Minimum curb radius	20 feet	0 feet	20 feet
<b>Dead-end Street</b>			
Minimum radius of circular turnaround, to curb or to edge of pavement	40 feet	T- Turnaround	T-Turnaround

The Board's vote was three (3) in favor (Messer's Childs and Lucy and Karen Snow) and one (1) vote against (Bruce Boleyn). As a simple majority of the Planning Board is required for approval and the Truro Planning Board is a seven (7) member Board, the approval was not received.

**Winkler Route Six Trust, Michael F. Winkler, 1 Noons Heights Road, Site Plan Review**

Representative: Benjamin Zehnder

This is a continuation of a Public Hearing from April 1, 2014 and April 15, 2014. The applicant seeks endorsement of an Application for Site Plan Review pursuant to §70.2 of the Truro Zoning By-law for 1) landscape material stockpiling and processing; 2) Asphalt/Brick/Concrete (ABC) stockpiling; and 3) ABC crushing no more than five times each calendar year for a week's duration each instance. The property is located at 1 Noons Height Road, Atlas Map 39 Parcel 166.

Mr. Zehnder stated that two members will be off the board with the coming election, leaving only four present members to act on the request, he therefore asked to withdraw the application without prejudice and resubmit when the new Board is formed following the May 13 Town Election. Mr. Snow, attorney for abutters, asked to hear the matter as there have been multiple delays in this application. He reviewed the two iterations of the site plan, the failure of the applicant to comply with Town cease and desist orders. A revised plan was filed that was insufficient. The application has been pending and asks that Board act to deny the application.

Mr. Pendleton stated that the application is still inadequate and has been presented 3 times and does not propose to address the potential of protecting the groundwater or the surrounding area. On a motion from Mr. Pendleton, seconded by Mr. Boleyn, the Board found that approval for the application in the form submitted for **Winkler Route Six Trust, Michael F. Winkler, Trustee**, pursuant to §70.3 of the Truro Zoning By-law approved by the Truro Annual Town Meeting on April 29, 2014 (previously §70.2) for 1) landscape material stockpiling and processing; 2) Asphalt/Brick/Concrete (ABC) stockpiling; and 3) ABC crushing no more than five times each calendar year for a week's duration each instance; cannot be given based on the finding that the application as submitted:

(a) is incomplete.

(b) and with the imposition of reasonable conditions will not ensure that the project will conform to the standards and criteria described herein.

(c) and with the project as proposed, does not comply with the requirements of the Zoning By-law.

The Board's vote was four in favor (Pendleton, Childs, Boleyn and Snow) and two opposed (Worthington and Lucy.)

The Board thanked Ms. Snow for her dedication to the Planning Board and also thanked Mr. Pendleton for his service.

Adjourned at 9:52 pm

Respectfully submitted

Steven Sollog

# TAB 4



**Truro Planning Board  
Meeting Minutes- March 4, 2014  
Truro Town Hall- 6:00 pm**

**Members Present:** Karen Snow (Chair), Bill Worthington, Leo Childs, John Pendleton, Lisa Tobia, Chris Lucy and Bruce Boleyn

**Others Present:** Charleen Greenhalgh ATA/ Planner, Steven Sollog, Bruce Edmands Atty., Don Poole, Dave Clark, Jamie Veara Town Counsel, Lucy Clark, Nancy F. Callander, Fred Gaechter, Paul Keirnan, Linda Noons, Ben Zehnder, John Hopkins, Jennifer Morris, Steve DiGiovanni and Tom Roda

Ms. Snow called the meeting to order at 6:00pm

**2014-001 - Willie J. Cater and Gloria J. Cater Definitive Subdivision – 9B Benson Road**  
Representatives Attorney Bruce Edmands; Surveyor Donald Poole; and Engineer Dave Clark

Continuation of the public hearing from February 4, 2014. The applicants seek approval of a Definitive Plan with the Clerk of the Town of Truro pursuant to MGL c.40A, Section 81T and Section 2.5 of the Town of Truro Rules and Regulations Governing the Subdivision of Land with respect to their property known and numbered 9B Benson Road, Truro and shown as Parcel 50 on Truro Assessor's Map, Sheet 53. The Application seeks approval of a single lot subdivision access to and egress from which will be served by a driveway located over a right-of-way as meeting the specifications set forth in a Judgment entered in the Commonwealth of Massachusetts Land Court. Mr. Worthington and Mr. Pendleton recused themselves from this hearing.

Messrs. Worthington and Pendleton recused themselves. Mr. Edmands summarized the plan stating that in 1979 Dr. Cater and his wife purchased the lot as stated from Howard B. French with the hope of one day building a residence on the property. In the mid 1990's plans were drawn up and the abutters were notified that when the property was created in 1899 it was benefitted by a right-of-way at the time the property was deeded by Charles W. Cobb to Lorenzo Baker. The right-of-way is defined as "over my land on the East and the road now established", beyond that the location of the right-of-way was never fixed on the ground nor was there ever any structure built on the top of the hill. The Caters notified the abutters of the unfixed right-of-way and went about to fix a location of right-of-way. (As a matter of law, where a right-of-way is not specifically defined in a deed, the property owners, who have the benefit of the right-of-way along with the property owners whose land is burdened by the right-of-way, have the opportunity to reach an agreement where to locate it).

When an agreement was not found, the only recourse for the Caters was to turn to the Judicial System. On behalf of the Caters, Mr. Edmands filed an action in the Land Court seeking a declaratory judgment concerning, 1. The existence and vitality of the 1899 right-of-way, and; 2. Its location. That action precipitated 15 years of litigation over whether or not the right-of-way was validly granted in the first place, whether or not the right-of-way continued in existence or had been extinguished abandoned or otherwise relinquished in some fashion and ultimately where the right-of-way should be located. After two separate trials, first over the validity of

right-of-way and second over the location of the right-of-way, the land court declined to define the right-of-way absolutely using instead the rural road alternative found in the Truro regulations. This judgment fixed the decision of determining the road width and grade with the Planning Board allowing that the Planning Board has the legal authority to waive the 14' right-of-way requirement providing that all applicable rules and regulations are followed. This led to an appeal and more judgments. The Supreme Judicial Court took the case and demanded that the Land Court reconcile the conflict in the decision concerning the twelve foot width. This resulted in an amended judgment where the road is to be built no wider than what is decided to be necessary for the use. There is expert testimony in the record stating that twelve feet is adequate. If this adequately protects the esthetics and adequately protects the environment (the rural nature of the area) the Caters must now go before the Planning Board and make a request that they approve a right-of-way limited to the specifications set forth in the courts decision. In the past fifteen years every complaint has been addressed by the court, the applicants have reached out to every conflicting consideration and now ask the Planning Board to please recognize what the court has done in seeking to balance all these competing interests. The Cater's recognize there are environmental considerations still to be met but the Planning Board is asked to help the Caters to move forward.

Ms. Snow stated that the missing items from the application need to be provided. The Engineer showed the cul-de-sac on the plan and the gross area is noted. A notation regarding permanent bounds for the lot corners is missing. Mr. Lucy stated that pipes are as sufficient legally as concrete bounds. The Board agreed. Ms. Snow continued stating the Waivers are not listed on the definitive plan. The engineer stated that the missing items will be taken care of. Mrs. Greenhalgh stated that a covenant needs to be provided and the site needs to be staked. Ms. Snow read several letters in opposition to the definitive subdivision: John and Nancy Thornley; Steven Lafredo and Ellen Hirschbach; Eliza Cox; Lucy Clark; and Nancy F. Callander. Mr. Edmands stated that all these issues were addressed by the land court.

The Fire Commissioner entered the room and demanded a head count. Mrs. Greenhalgh asked parties present for the next part of the meeting to exit and wait outside the meeting room, which they did.

Mr. Edmands continued, asking if the board is disinclined to support a roadway that is less than the required width. Ms. Snow discussed with the Board the possibility of a longer less deleterious route. Mr. Edmands explained that the longer route was proposed and rejected the applicant would consider going back to that plan if there would be a way to do it quickly. Mr. Gaechter, President of Truro Conservation Trust ("TCT"), stated that the Board needs to define access and minimize the damage to the land's profile. The TCT requests either a denial of the application or provide a staked roadway with boundary and an indication of elevation and continue the application so that all the abutters can negotiate a more reasonable approach. The Board should consider a condition prohibiting the construction of the road until there is a building permit issued for a dwelling. Mr. Lucy reviewed the time frame of this legal dispute and asked why everyone has waited so long. Mr. Gaechter stated that in the Court the impact to the land was not considered, negotiating a least invasive route in two more months is not overbearing in a sixteen year struggle. Mrs. Greenhalgh stated that May 30, 2014 is the deadline for a decision; there are reasons to continue the hearing, but she suggested that the Board should

make a decision before the personnel of the Board changes as a result of the May election. Ms. Tobia stated if the Board follows the recommendations of the Land Court the grade will be steep and the road will not be wide enough, possibly a public hearing is needed to come up with a more acceptable width and a re-vegetation plan. Mr. Boleyn recommended that the Board take a little more time and supported that a building permit must be issued before the roadway is constructed. Mr. Lucy raised the issue of what to call this right-of-way, a driveway which the Board does not determine width and grade or a street which the Board does rule over width and grade. Mr. Edmands stated the request before the board is to address the issue of frontage, the cul-de-sac is the frontage. Mr. Veara stated that the Board is determining a roadway which will confer frontage to allow the Caters to build a home. The terminology of the 2007 and 2010 judgments interchanged the words (driveway and street), the judge determined that the adequate width for this roadway is 12' and that the Board can waive the regulations to allow a 12' road width. Ms. Tobia stated that if there were other plans that the abutters found less offensive those plans should be in this packet so a choice for can be made by the applicant and abutters. Mr. Edmands stated that there were a number of plans submitted by all the parties, none of which could be agreed on by all the parties. The plan before the Board tonight is the 2003 plan. The court chose the 2003 plan exhibit 37 by Coastal Engineering. A less deleterious plan has been drawn.

Ms. Snow stated that her concern is the cut and fill and asked the applicant to stake the center line and edge of limit of work so that the board can visit the site and determine the lay of the road plan. The Board will schedule a visit on Thursday March 13 at 3pm. Ms. Snow and board agreed to this site visit. Ms. Snow then asked the applicants to provide an alternate route for the road, recognizing the need for cooperation of the Truro Conservation Trust and the abutters.

Mr. Gaechter, acting as coordinator for the TCT agreed to get the Board of the TCT to decide on a best approach. Ms. Snow stated that without an adequate alternate proposal the Board can only make a decision on what is presented before the Board. Ms. Snow asked for traditional staking and a representative present to explain the grading. The representatives agreed.

Ms. Snow opened the hearing to the public. Mr. Keirnan, an abutter stated that the plan was given to Dr. Cater by the land court, there was no road, there was no frontage therefore the road must be 150' feet long before it will convey frontage. He asks the Board to make sure they provide a safe plan or not approve it at all. Mrs. Holt, an abutter asked that no work on the road begin until there is a building permit. There will need to be an environmental review, the Massachusetts Historical Commission has an archeological site at the base of the hill and that will trigger an archeological review and she reiterated the 50' of road will not confer frontage because there was no road prior to February 16, 1960. Lucy Clark an abutter read the deed from Charles Cobb to Lorenzo Baker which included a description of the right-of-way. She added that the purchaser knew that the property was land locked and was fully aware there would be problems gaining access to the property. The owner bears some responsibility and the offered design as shown is mean spirited.

Ms. Snow reminded the Board of the site visit and asked for a motion of continuance. Mr. Childs moved to continue the application to April 1<sup>st</sup>. Seconded by Mr. Lucy, voted on and continued to April 1, 2014. 5-0-2 (John Pendleton and Bill Worthington)

### **Zoning Amendment Public Hearing**

Ms. Snow opened the public hearing at 7:45 pm by reading the legal notice into the record.

**Article \_\_\_\_:** To see if the Town will vote to amend the Truro Zoning Bylaw, Section 10.4 by adding new definitions for the following terms in alphabetical order: “Heavy Industry”; “Light Industry”; “Retail Business Service”; “Retail Sales”; and, “Wholesale Trade”.

And further by amending 30.2 – Use Table, by making the following changes:

- 1) under the Principal Use “Commercial” category: delete “Barber Shop” from the Use Table; change “Retail or wholesale business service” to “Retail business service” and change the “N” to “P” in the NT6A and TC districts; delete “(3)” after “Retail Sales”; add “Wholesale Trade” and make it “N” in the R, BP and S districts, “SP” in the NT6A and TC districts and “P” in the NTC and Rt6 districts; and,
- 2) under the Principal Use “Industrial” category change “Industrial or manufacturing use (5)” to “Light Industry (5)” and change the “N” to “SP” in the NT6A and TC districts; and add “Heavy Industry” and make it “N” in all districts; and,
- 3) delete Note 3 and leave it as “Reserved” and within Note 7, delete “, barbers shops, nursery schools”.

Ms. Snow reviewed the history of this article stating that none of these terms were defined, yet they appear in the use table; the Board proposes to make changes by defining the uses and expanding the uses in the use table. Ms. Snow read a letter in favor of the changes from the Truro non-resident taxpayer association. Ms. Snow opened the meeting up to the public.

Ms. Noons spoke against the proposed article and stated that the confusion has caused her great concern. The Noons Business has existed since before zoning and an explanation is needed for any changes to be made. Ms. Snow explained that there is a complete text of the proposed changes and added the proposals are going to expand the uses as they now exist. Heavy industry would be defined and would not be permitted in any district it is only permitted now in two districts by special permit.

Mrs. Greenhalgh explained that those uses that are lawfully pre-existing, non-conforming, may continue as grandfathered uses. Ms. Snow read the grandfather provision in the by-law §30.7 a. Mrs. Greenhalgh stated if the use is consistent with the current use on the property then that is OK. Any change of use requires a review from the Building Commissioner to determine consistency of use. Mr. Zehnder stated if there is a non-conforming use that is permitted now it can’t evolve with the times. Some of the changes are good but prohibiting heavy industry would only pose a burden on every industry present and prohibit future growth. He suggested identifying those uses that the town wants to eliminate, do not limit the uses without an outlet. The Board would be pushing these activities out of Town, without knowing what you may be losing. Mr. Hopkins, a property owner in the commercial district spoke against the proposed definitions.

Mrs. Greenhalgh read the existing regulations defining home business/occupation as an allowable use throughout the town. This definition has been in the zoning bylaw for many years.



She also indicated that any resident can make a motion on Town Meeting floor to make these articles less restrictive. In doing so, there would need to be demonstration as to why a use should be allowed. She further stated that these (the Light Industry and Heavy Industry) are definitions that are in use in nearby communities. The restriction on heavy industry is meant for large operations like a concrete manufacturer. The determination of whether an industry is heavy is something that would be decided by the Zoning Board of Appeals.

Mrs. Morris of GFM Enterprises, who rents space in Truro, stated opposition to the proposed article. She asked why there was not a list of allowable uses within the definition. Mrs. Greenhalgh explained the listing of uses would only be more restrictive, the individual needs to demonstrate that what is being done is light industry. Mr. Zehnder stated his opposition to the proposed article adding Mrs. Greenhalgh is right that current law requires a special permit but this Board should make it possible to have these businesses in Truro. The critical needs of the people in his room need to be taken into account.

Ms. Snow rebutted that the board has expanded the uses. Mr. Zehnder stated that the Board should hear the concerns of these citizens and provide a way to allow some of these uses before there is a town meeting. Mr. Brown suggested placing SP (Special Permit) in the use table for heavy industry on Rt. 6. Mr. Woodrow spoke against the proposed article. Ms. Snow described light industry with examples. A discussion followed outside the strict order of the meeting.

Ms. Snow stated the interpretation that all industry will fall into heavy industry if they make some noise or dust is wrong. Mr. DiGiovanni stated his opposition to the proposed article adding a list is what is needed. Mr. Roda stated his opposition to the proposed article because the interpretation of heavy industry is making people nervous. Mr. Hopkins restated his opposition to these definitions. Ms. Noons restated how her business needs to be able to be adaptable to any needs which will keep them in business and there's no clarity in the proposed article. Mrs. Greenhalgh recommended the Board move forward with the proposed articles, but to remove the proposed changes relative to "industrial." Mr. Pendleton moved to amend the articles. Seconded by Mr. Worthington voted on and approved 7-0-0. Mr. Pendleton moved to recommend the amended article to Town Meeting. Seconded by Mr. Childs voted on and approved 7-0-0. Ms. Snow closed the Public Hearing.

#### **Review and development of "Comments" for Zoning Articles**

Ms. Snow discussed the need for the comments for the changes to the use table and Site plan review. Mrs. Greenhalgh stated the deadline for the comments is March 11.

#### **Review and Approval of Meeting Minutes:**

Mr. Worthington moved to approve the minutes for January 27, 2014 as amended. Seconded by Mr. Childs voted on and approved 6-0-1 (Lisa Tobia)

Mr. Childs moved to approve the minutes of February 4, 2014 as amended. Seconded by Mr. Boleyn voted and approved 5-0-2. (Lisa Tobia and Chris Lucy)

Mr. Pendleton moved to approve the minutes for February 18, 2014 as amended. Seconded by Mr. Boleyn, voted on and approved 5-0-2 (Lisa Tobia and Chris Lucy)

Ms. Snow stated that the email was an inappropriate mode to achieve the confrontation before the sitting Board. A Board member owes it to the Board to share their concerns with the Board first. If you have a concern then let the Board address those concerns before any other action. It is disrespectful of the time the Board members spend working for the Town of Truro. Mr. Lucy responded that he was not disrespectful and the Board should kiss his ass. Mr. Lucy dismissed himself from the meeting. Ms. Snow continued that different opinions are important on a Board but it was unethical, self-serving and underhanded to blindside the Board with the distribution of the email, and found it very distasteful. Mr. Pendleton expressed his dismay with the action against the team (Board).

Adjourned 9:04pm

Respectfully Submitted

Steven Sollog

To: Truro Planning Board c/o Liz Sturdy [esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov) (by email) for the Public Record  
cc.: Barbara Carboni, Truro Town Planner and Land Use Counsel  
Re: Comments on Preliminary Subdivision Plan Application of Fisher Road Realty Trust  
From: John Marksbury and Chuck Steinman, North Truro  
Date: November 9, 2023  
Page 1

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The Applicant's thorny proposal to the Planning Board seeking relief from the town's standards for roadways poses several serious issues and should not be approved, even with conditions.

First is your decision on the Applicant's request that its Court approved 12 ft. roadway width be excused from the town's bylaws and regulations that require greater road widths. Those standards were put in place for a reason: safety and access for emergency vehicles. Truro is full of narrow roads put down many years ago before the adoption of modern zoning and subdivision regulations. These roads can be charming but also pose a safety hazard. Excusing this Applicant for whatever reason would establish an exception that will create bad precedent in the future. An illegal road does not provide frontage, even with a cul-de-sac that may appear to do so. The Planning Board should stand firm with the voters of Truro who approved the roadway widths and standards as a protection of our fragile landscape and natural resources.

Second, the Planning Board needs to assign highest priority to the Zoning Bylaw admonition that the proposed development be not detrimental to the neighborhood. At a previous hearing several years ago, it was pointed out that the steep pitch of the road was unsafe, and nothing proposed has significantly changed except to widen the swath of damage to the Truro Conservation Trust's "Hopper Landscape" from the extensive cut and fill, targeting property purchased with funds contributed for the purpose of conserving land in perpetuity of scenic and wildlife value. Such a violent assault on an area recognized by the State for its ecological, scenic, and cultural significance cannot be mitigated with a planting plan. The Land Court's Amended Judgment dated February 4, 2013, would indicate there is no compelling reason for the Town to grant waivers from their safety standards and design regulations, as Cater can go back to the Court to seek approval of a roadway layout that meets Truro's bylaws and regulations:

Nothing in this Judgment shall prohibit the owners of the dominant estate, should they be unable, despite reasonable best efforts, to secure waivers, permits, and other approvals as to (i) the width of the surface of the driveway or roadway or (j) the finished grade of the driveway or roadway, from seeking to modify this Judgment, so that it would allow them to lay out and construct the driveway or roadway consistently with applicable law, rules, and regulations and with those waivers, permits, and other approvals the owners of the dominant estate have with reasonable best efforts been able to secure.

Third, the proposed donation of a portion of the Applicant's land to the Truro Conservation Trust through the proposed subdivision should be viewed as skeptically as a Trojan Horse. It gives very little benefit to the Trust nor to the public but a great deal to the Applicant, namely

To: Truro Planning Board c/o Liz Sturdy [esturdy@truro-ma.gov](mailto:esturdy@truro-ma.gov) (by email) for the Public Record  
cc.: Barbara Carboni, Truro Town Planner and Land Use Counsel  
Re: Comments on Preliminary Subdivision Plan Application of Fisher Road Realty Trust  
From: John Marksbury and Chuck Steinman, North Truro  
Date: November 9, 2023  
Page 2

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very significant tax benefits: they would not have to pay Truro property tax on one-half of their property and at the same time would receive a federal gift tax credit based on the fair market value of the land. Perhaps, more cynically, it would give the Applicant a public relations coup by aligning themselves with the highly regarded Trust. The Trust may claim a benefit for protection of habitat for endangered plants and wildlife but that is likely to happen regardless, as the Applicant cannot occupy all the land, so by default the habitat will be preserved. But worse for the Trust, the hoped-for benefit of a trail giving public access to its land and thus the "Hopper Landscape" could go up in smoke if the abutters who oppose the Applicant's roadway design don't allow public access to the court-imposed limited easement leading to the Applicant's property. A public access easement is not a gift at the Applicant's disposal. It might be of greater benefit for the Trust to work with the abutters.

Finally, this memorandum is prepared by a former chair of the Truro Conservation Trust and a former chair of the Truro Historical Commission for the benefit of some on the Planning Board not conversant with the history involved. This case dates back over 30 years and involves a notorious standoff between the current Applicant and the neighboring community over the speculative development of this land-locked property that lies at the heart of the "Hopper Landscape." Such land-locked property can be obtained at a bargain price if one is willing to accept the risk of whether or not it can be developed. But this is no ordinary piece of land even accounting for its prize views. It forms the focal point in the open stretch of heathland that gave the famed painter Edward Hopper inspiration for his Truro paintings as he looked out across it from the large studio window. Attached is a letter from the Massachusetts Historical Commission dated September 4, 2007, stating that the Hopper House and Landscape is eligible for listing in the National Register of Historic Places as a potential National Register Historic District (also see attached MHC TRU.J Form H). Preservation of this landscape for its cultural, historic, and ecological significance has been a long-standing endeavor of the Truro Conservation Trust working with the help of neighbors, the Cape Cod Commission, and others to protect the expanse of land known locally as the "Hopper Landscape." The proposal before the Planning Board will irreparably impact and mar this famed landscape forever. The goal of public access to the "Hopper Landscape" can and must happen without causing the unmitigable damage that is currently on the table. The Planning Board must do its duty by denying development of a property that so blatantly violates both the word and spirit of our Zoning Bylaws and Subdivision Regulations.





## **The Commonwealth of Massachusetts**

William Francis Galvin, Secretary of the Commonwealth  
Massachusetts Historical Commission

September 4, 2007

Chuck Steinman  
Chairperson  
Truro Historical Commission  
Truro Town hall  
Post Office Box 2030  
Truro, MA 02666

RE: Edward Hopper House and Landscape, Truro

Dear Mr. Steinman:

Staff of the Massachusetts Historical Commission have evaluated the Edward Hopper House and its surrounding landscape in response to a request of the Truro Historical Commission. It is the opinion of the MHC staff that Hopper House and Landscape is eligible for listing in the National Register of Historic Places as a potential National Register historic district. The Hopper House and Landscape retain integrity of location, design, setting, materials, workmanship, feeling, and association, and fulfill National Register Criteria A, B, and C on the local, state, and national levels.

Located between Stephens Way and Benson Road on the southwestern side of Truro, overlooking Cape Cod Bay, the district of approximately 35 acres is associated with nationally known realist painter Edward Hopper and his wife Josephine, who erected a modest, 1 ½-story Cape-style cottage in 1934 for use as a house and studio. The Hoppers resided here 6 months annually until his death in 1967, and hers several years later. They came to Cape Cod, and Truro, along with other artists and writers drawn to the area as a place of inspiration, tranquility, and natural beauty, and Hopper became the most prominent painter to work here. The house, a five-bay Cape-style dwelling, sits on a 60-foot-high hill facing west across Cape Cod Bay. At the northern end of the building, Hopper placed his studio, lit by a double-height window designed to take advantage of the best light for painting. While here, inspired by his surroundings, Hopper painted a number of his best-known works, including "Cape Cod Afternoon," "Cape Cod Evening," "Hills of South Truro," and "Jenness House Looking North."

The house sits within a landscape of grassy heath, wetlands, and dunes, amongst which are winding paths and several historic houses. All became subject matter for Hopper during the more than 30 years that he summered in Truro. This landscape is essential to an understanding of the association between the artist and his work. One nearby historic house, an early 19<sup>th</sup> century ¾ Cape-style house, was built by mariner Andrew Collins

Cobb in 1816 and later owned by the Jenness family. The house is sited in a dell, oriented facing south, as was typical of the period; and is two rooms deep with an off-center interior brick chimney; a single-story lateral wing was added ca. 1837. Other historic Cape-style residences in the vicinity include the Elisha Cobb House, a full Cape built ca. 1835 for another mariner member of the Cobb family.

Together, these buildings and the landscape in which they sit comprise a potential National Register district of exceptional significance associated with one of the most important American painters of the 20<sup>th</sup> century.

Sincerely,



Brona Simon  
State Historic Preservation Officer  
Executive Director  
Massachusetts Historical Commission

xc: Holly Johnson, MEPA Unit (EOEEA #14067)  
Sarah Korjeff, CCC  
Division of Fisheries and Wildlife, Conservation and Management Permits  
Duane Landreth, Stephen's Way Nominee Trust  
Brian O. Butler, Oxbow Associates, Inc.  
Truro Board of Selectmen  
Association to Preserve Cape Cod  
The Compact of Cape Cod Conservation Trusts

# Massachusetts Cultural Resource Information System

## Scanned Record Cover Page

<b>Inventory No:</b>	TRU.J
<b>Historic Name:</b>	Hopper, Edward House and Landscape
<b>Common Name:</b>	
<b>City/Town:</b>	Truro
<b>Village/Neighborhood:</b>	South Truro; Truro;
<b>Local No:</b>	53-50; 53-56; 53-70; 53-73; 53-76; 53-78; 53-97; 54-105;
<b>Year Constructed:</b>	
<b>Use(s):</b>	Other Cultural; Other Recreational; Residential District;
<b>Significance:</b>	Architecture; Art; Conservation; Recreation;
<b>Designation(s):</b>	
<b>Building Materials:</b>	
<b>Demolished</b>	No



The Massachusetts Historical Commission (MHC) has converted this paper record to digital format as part of ongoing projects to scan records of the Inventory of Historic Assets of the Commonwealth and National Register of Historic Places nominations for Massachusetts. Efforts are ongoing and not all inventory or National Register records related to this resource may be available in digital format at this time.

The MACRIS database and scanned files are highly dynamic; new information is added daily and both database records and related scanned files may be updated as new information is incorporated into MHC files. Users should note that there may be a considerable lag time between the receipt of new or updated records by MHC and the appearance of related information in MACRIS. Users should also note that not all source materials for the MACRIS database are made available as scanned images. Users may consult the records, files and maps available in MHC's public research area at its offices at the State Archives Building, 220 Morrissey Boulevard, Boston, open M-F, 9-5.

Users of this digital material acknowledge that they have read and understood the MACRIS Information and Disclaimer (<http://mhc-macris.net/macrisdisclaimer.htm>)

Data available via the MACRIS web interface, and associated scanned files are for information purposes only. THE ACT OF CHECKING THIS DATABASE AND ASSOCIATED SCANNED FILES DOES NOT SUBSTITUTE FOR COMPLIANCE WITH APPLICABLE LOCAL, STATE OR FEDERAL LAWS AND REGULATIONS. IF YOU ARE REPRESENTING A DEVELOPER AND/OR A PROPOSED PROJECT THAT WILL REQUIRE A PERMIT, LICENSE OR FUNDING FROM ANY STATE OR FEDERAL AGENCY YOU MUST SUBMIT A PROJECT NOTIFICATION FORM TO MHC FOR MHC'S REVIEW AND COMMENT. You can obtain a copy of a PNF through the MHC web site ([www.sec.state.ma.us/mhc](http://www.sec.state.ma.us/mhc)) under the subject heading "MHC Forms."

Commonwealth of Massachusetts  
Massachusetts Historical Commission  
220 Morrissey Boulevard, Boston, Massachusetts 02125  
[www.sec.state.ma.us/mhc](http://www.sec.state.ma.us/mhc)

This file was accessed on: Thursday, November 9, 2023 at 6:43 AM

FO

MA  
Off

Form numbers in this area

Area no.

120-127,806-7,  
908

J P

1. Town Truro

Name of area (if any) (Hogs Back/Fisher  
Old County Rd, Fisher Rd

3. General date or period 1750-1840

4. Is area uniform (explain):

in style? Cape Cod Colonial and  
Federal

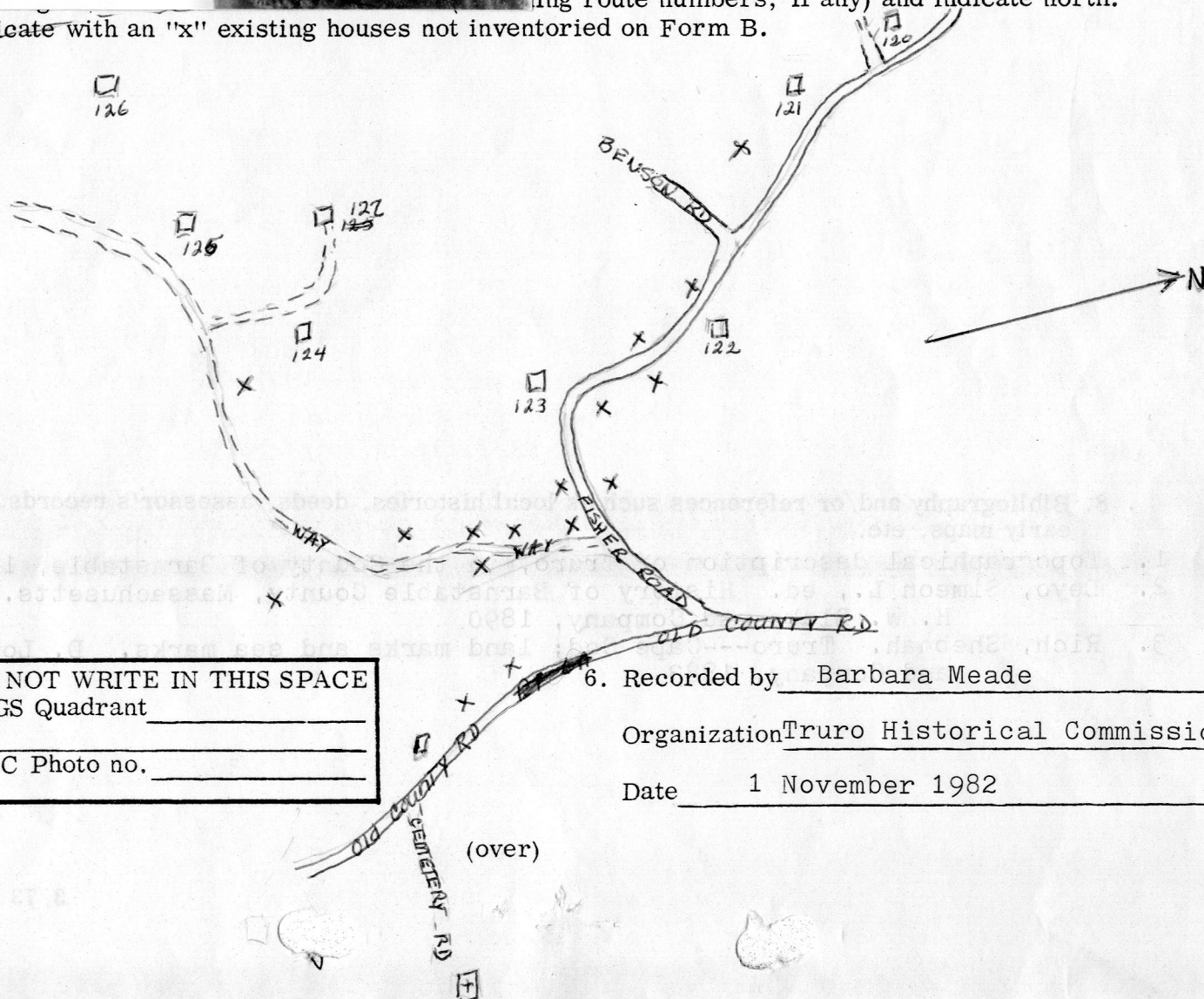
in condition? Most houses are maintained,  
but some are abandoned

in type of ownership? all private

in use? all residential (some seasonal)

of the area involved. Indicate any historic  
completed on Forms B thru F, using corres-  
ponding route numbers, if any) and indicate north.

*Cape Cod Bay* Indicate with an "x" existing houses not inventoried on Form B.



DO NOT WRITE IN THIS SPACE  
USGS Quadrant \_\_\_\_\_

MHC Photo no. \_\_\_\_\_

6. Recorded by Barbara Meade

Organization Truro Historical Commission

Date 1 November 1982



7. Historical data. Explain the historical/architectural importance of this area.

Deyo reports that in 1703 "a division of lands near Hogs Back was made, which reveals the fact that this knoll had been previously named and was a well known landmark." The area is described in 1794 as follows: "The part of the township south of Pamet river, adjoining the bay, is called Hog's Back. The houses, thirty-five in number, are built in valleys between the hills; but there is no collection of them which is entitled to the name of a village." And so it is today. It was informally a part of South Truro when the train station and post office were there, but continues as a number of old houses with newer ones interspersed with no real affinity for one another. This area has been likened in its terrain to the Scottish highlands. Traditionally the name is supposed to have been given to the land by British sailors. Shebna Rich goes on to say "There is a peculiarly shaped hill in that part of the town near the shore, which was then covered with a ridge of pine-trees. The real or fancied resemblance of these trees along the crest of the hill, suggested the contour and bristling equipage of the equine in question. So the Britishers said Hog's Back.....There is no doubt it was named from this local resemblance, probably by the English fishermen at an early day, and as the record indicates, was first used in its strict local sense, but for nearly a hundred years it has embraced the whole south part of town. There was a time when the term 'Hogsbacker' was resented, but the thrift enterprise and independence of the people at a later date, made them proud of the distinction."

8. Bibliography and/or references such as local histories, deeds, assessor's records, early maps, etc.

1. Topographical description of Truro, in the County of Barnstable, 1794.
2. Deyo, Simeon L., ed. History of Barnstable County, Massachusetts.  
H. W. Blake and Company, 1890
3. Rich, Shebna. Truro---Cape Cod; land marks and sea marks. D. Lothrop and Company, 1883

# FORM H – PARKS AND LANDSCAPES

MASSACHUSETTS HISTORICAL COMMISSION  
MASSACHUSETTS ARCHIVES BUILDING  
220 MORRISSEY BOULEVARD  
BOSTON, MASSACHUSETTS 02125

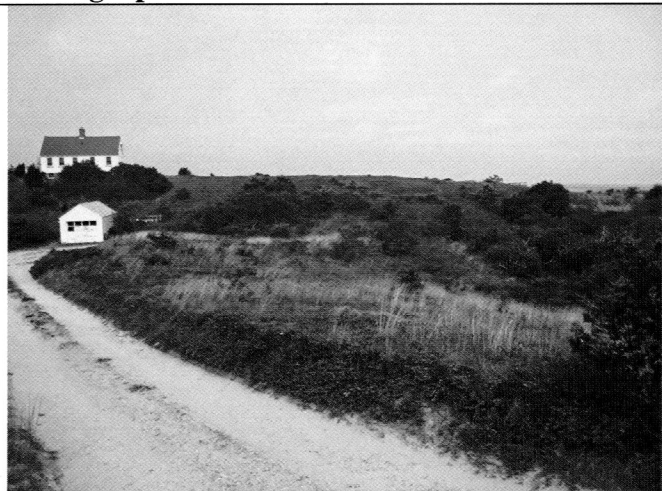
Assessor's Number USGS Quad Area(s) Form Number

53-76,78,73,70,97,  
56,50 and 54-105

J

MHC 125 &  
MHC 126

## Photograph



## Topographic or Assessor's Map

*Insert here or on a Continuation Sheet a map clearly showing the location of the property including the name of the nearest road or street and at least one other intersecting road or feature.*

*Assessor's maps are preferred, but other forms of detailed plans such as an excerpt from a USGS topographic map or an aerial or satellite photo clearly marked are also acceptable. See MHC's Guidelines for Inventory Form Locational Information.*

**Town** Truro

**Place** (*neighborhood or village*) South Truro

**Address or Location** 22-30 Stephens Way and 9 Benson Road,  
both roads off Fisher Road, South Truro

**Name** Hopper House Landscape

**Ownership** \_\_\_\_\_ *Public* \_\_\_\_\_ ☒ *Private*

**Type of Landscape** (*check one*)

\_\_\_\_\_ *park* \_\_\_\_\_ *farm land*  
\_\_\_\_\_ *green/common* \_\_\_\_\_ *mine/quarry*  
\_\_\_\_\_ *garden* \_\_\_\_\_ *training field*

☒ *other (specify)* Edward Hopper House & Adjacent  
Viewshed Landscape

**Date or Period** 1930's including one house dating c1816.

**Source** Truro Historical Commission

**Landscape Architect** NA

**Location of Plans** Truro Town Hall

**Alterations/Intrusions** (*with dates*) No major intrusions within landscape; Hopper studio window recently replaced (within the last four years) and security shutter added. El added to Andrew C. Cobb/Jenness house in 1837, dormer and porch added in 1990's, and aluminum siding replaced with wood clapboard.

**Condition** Natural and excellent, with portions owned or restricted by a local not-for-profit land trust.

**Acreage** 36.5 acres (16.14 acres are owned or restricted by the Truro Conservation Trust, a private not-for-profit land trust)

**Setting** Located in rural and hilly South Truro and along Cape Cod Bay, the Hopper House and Landscape are less than one-half mile from the Cape Cod National Seashore Park and include environmentally significant habitats and species classified as rare and endangered by the Massachusetts Natural Heritage Program.

**Recorded by** C. Steinman

**Organization** Truro Historical Commission

**Date** (*month / year*) August 2007

RECEIVED

AUG 28 2007

MASS. HIST. COMM

TRU J

## PARKS AND LANDSCAPES FORM

### VISIAL / DESIGN ASSESSMENT \_\_\_\_ see continuation sheet

*Describe topography and layout. Note structures such as bandstands, gazebos, sheds, stone walls, monuments, and fountains. Note landscaping features such as formal plantings, agricultural plantings, and bodies of water. If possible, compare current appearance with original.*

Known locally as the Hopper Landscape, this stretch of coastal heathland, totaling nearly one-half mile of sandy beach on Cape Cod Bay and some 30 acres of upland, still preserves a place of silent, isolated beauty with the subtle shapes and colors that Edward Hopper evoked in paintings like the *Hills of South Truro* (see continuation sheets), which was how the area looked when he and his wife Josephine arrived in 1930. The Hopper's house, built in 1933-1934, stands commanding the view of the landscape nearly exactly as when the Hoppers left it after Edward's death in 1967 and Josephine's death in 1968.

According to the Kathleen Kelly Broomer study for the Trust of Public Land, February 1992, the entire Hopper Landscape is classified as "Noteworthy" by the Massachusetts Department of Environmental Management in its 1981 "Statewide Scenic Landscape Inventory," part of only five percent of the Commonwealth's landmass so classified. Coastal heathland is identified as a "Conservation Target for protecting rare plants and animals in Massachusetts" by Natural Heritage. In its 1998 report on state biodiversity, Natural Heritage stated that "North Atlantic sandplain grasslands and heathlands are considered globally imperiled natural communities" and that 90% of this habitat has been lost since the mid-19<sup>th</sup> century. The colony of broom crowberry, which grows in abundance here, may be considered a "type site" for this rare plant species, a place exhibiting one of the best examples of its occurrence in the world.

### HISTORICAL NARRATIVE \_\_\_\_ see continuation sheet

*Discuss history of use. Evaluate the historical associations of the landscape/park with the community.*

Edward Hopper, a major American painter, first came to Cape Cod in 1930 where he rented a cottage from A. B. Cobb. Hopper was one of a group of artists and writers who converged on the Outer Cape beginning in the early decades of the 20<sup>th</sup> century, forming a large and active artists' colony in Provincetown and Truro. In 1933 he designed and built his small house and studio with enough space to paint indoors. He spent 6 months a year painting there until his health declined in the 1960s. From his large window on the north end of his studio, Hopper drew inspiration from the panoramic views and subtle shapes and colors of the moors, beach and bay. His paintings are now hung in major galleries around the world, notably a large collection at the Whitney Museum in New York City. His Truro paintings include *Hills of South Truro* (attached), *Cobb's Barns*, *South Truro*, *The Camel's Hump*, *Corn Hill*, *Cape Cod Afternoon*, *Rooms by the Sea*, and *Cape Cod Evening*. Over the years, hundreds of professional and amateur painters and photographers have sketched, painted and photographed the Hopper House and the spectacular dune-scape northward. (Please see the 1960 photograph of Edward and Josephine Hopper by Arnold Newman.) The Hopper Landscape has significant state and national cultural importance as part of Hopper's legacy. This property is listed in the Truro and MHC inventory as MHCN #126, and meets National Register criteria by its association with a notable and important person.

The adjacent lands are largely undeveloped and as Hopper painted them, and include the Andrew C. Cobb house listed in the Truro and MHC inventory as MHCN #125. The Andrew C. Cobb house is a 3/4 Georgian Cape built on property purchased from John Cobb in 1808 and from John Cobb Jr. in 1816, with an ell added in approximately 1837. Andrew Collins Cobb was born August 8, 1785, the son of John and Marsrey Cobb. Married to Patty Rich in 1807, their son Collins Cobb was born in 1808. Andrew Collins Cobb, a mariner as were many of the Cobb family, died the year his house was built, on November 4, 1816 in St. Peters, Guadeloupe, in the West Indies. The Cobb and Rich families have long associations with early Truro History and the property is located in what is still referred to as Cobb's Farm. The house itself was painted and sketched by Edward Hopper when owned by the Jenness family during the time Hopper lived in Truro. (See the Hopper Painting *Jenness House Looking North*, as attached.)

### BIBLIOGRAPHY and/or REFERENCES \_\_\_\_ see continuation sheet

1. *Hopper's Places*, Gail Levin, Second Edition, 1998, University of California Press, Berkeley and Los Angeles, California
2. *Mansion may obscure what Hopper painted*, Keith O'Brien, The Boston Globe, August 15, 2007
3. *Our Irreplaceable Heritage: Protecting Biodiversity in Massachusetts*, MNESP, 1998
4. *Hopper Rural Historic Landscape, Truro, Massachusetts, Description of Property and Statement of Cultural Significance*, Kathleen Kelly Broomer, 1992 for The Hopper Landscape Preservation Project, Truro Cape Cod, Massachusetts, A Partnership between the Truro Conservation Trust and the Trust for Public Land

  X   Recommended for listing in the National Register of Historic Places. *If checked, you must attach a completed National Register Criteria Statement form.*



# INVENTORY FORM CONTINUATION SHEET

[TRURO ]

[Stephens Way and Benson Road]

MASSACHUSETTS HISTORICAL COMMISSION

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

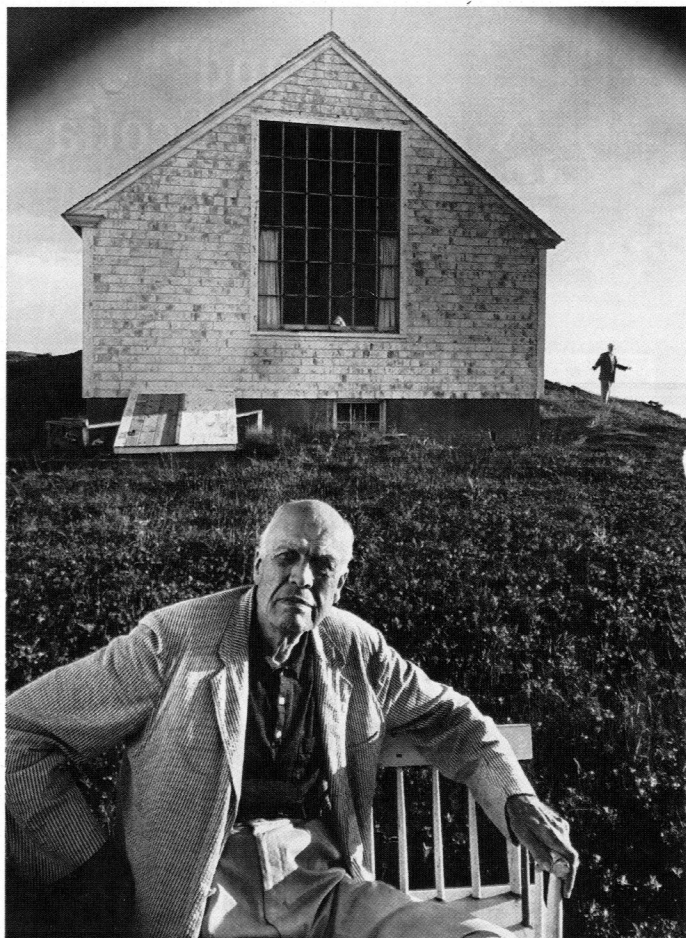
Area(s) Form No.

J

125 & 126

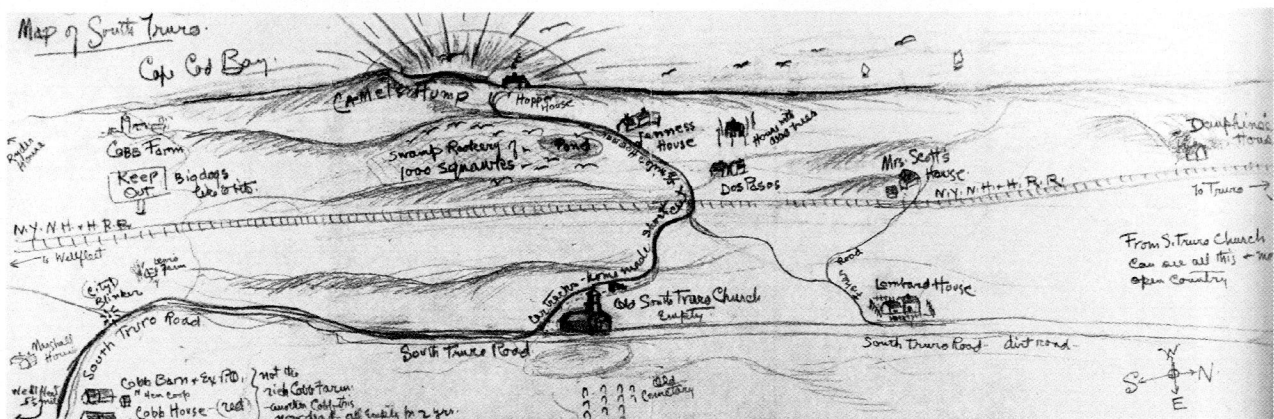
## Attachments:

1. Arnold Newman Photograph: Edward and Josephine Hopper at Studio Window, 1960
2. Boston Globe Photograph of Edward Hopper Landscape and House, August 15, 2007
3. Provincetown Banner Photograph of Hopper Landscape from Hopper House Deck, August 16, 2007
4. Location of Edward Hopper House and Landscape, USGS Map
5. Location of Edward Hopper House and Landscape, Town of Truro Assessor Atlas Sheets 53 and 54
6. Aerial Photograph of Edward Hopper House and Landscape, Truro Historical Commission and Compact of Cape Cod Conservation Trusts
7. Josephine Hopper Sketch Map of South Truro, 1934
8. Edward Hopper Painting: *Jenness House Looking North*, 1934
9. Edward Hopper Painting: *Hills of South Truro*, 1930
10. Joel Meyerowitz, Photograph of Edward Hopper's Studio Window
11. Series of Current Photographs taken by the Truro Historical Commission, August 2007.

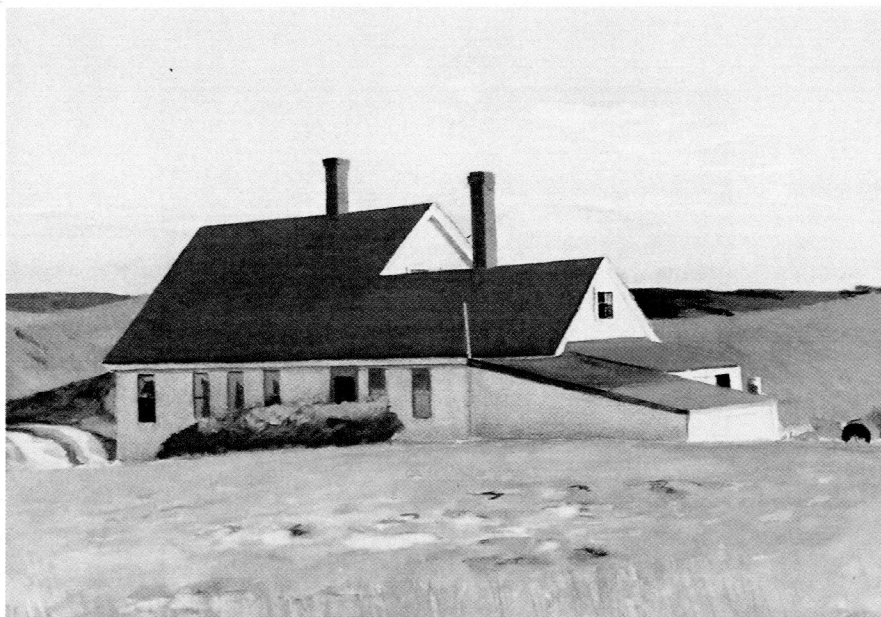


Arnold Newman Photograph: Edward and Josephine Hopper at Studio Window, 1960





Josephine Hopper Sketch Map of South Truro, 1934



Edward Hopper Painting: *Jenness House Looking North*, 1934

TRU J



Boston Globe Photograph of Hopper Landscape and House, August 15, 2007



Provincetown Banner Photograph of Hopper Landscape from Hopper House Deck, August 16, 2007

# INVENTORY FORM CONTINUATION SHEET

[TRURO ]

[Stephens Way and Benson Road]

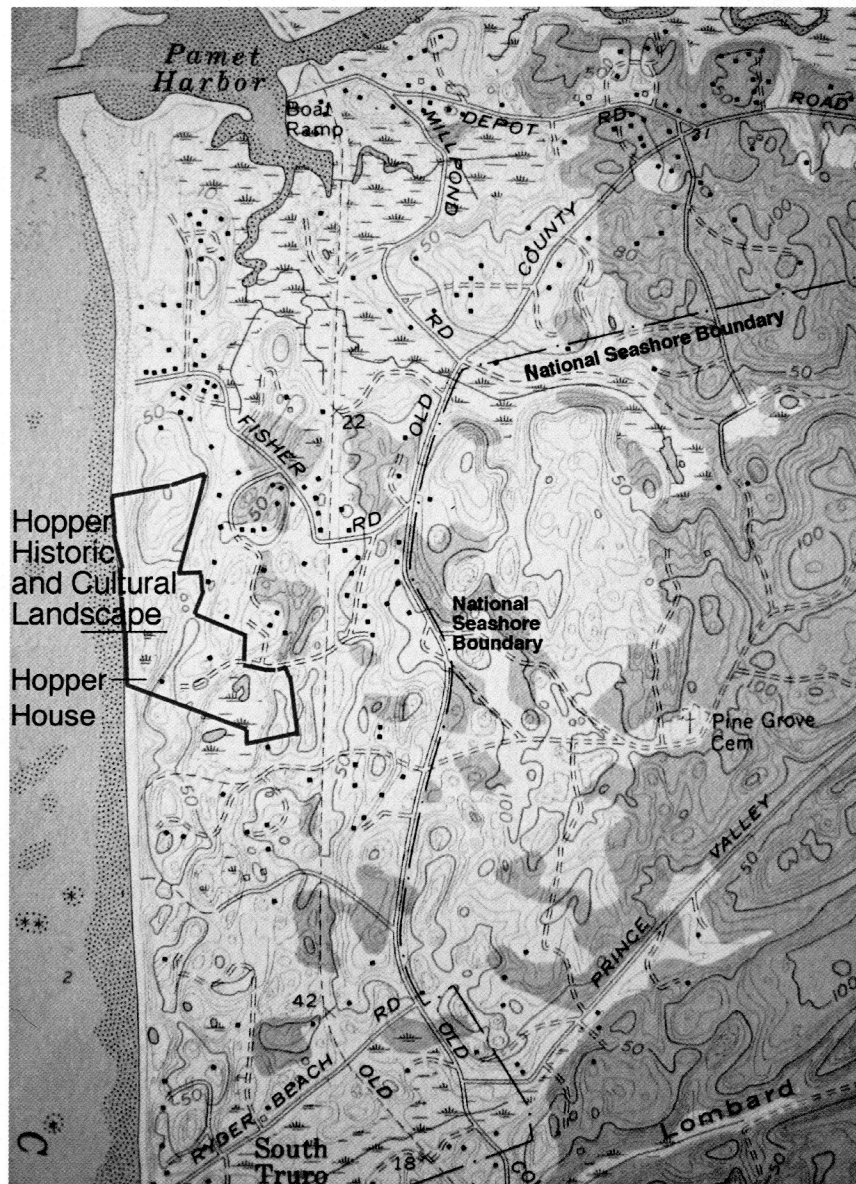
MASSACHUSETTS HISTORICAL COMMISSION

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

J

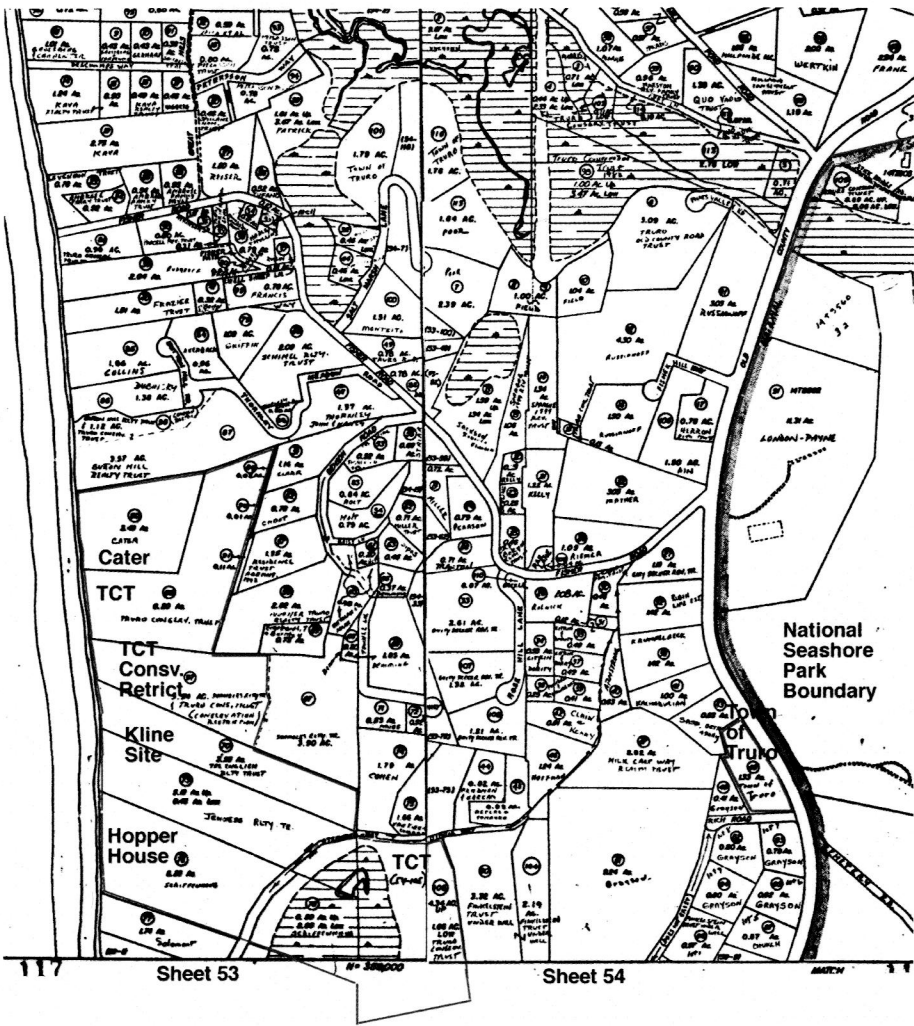
125 & 126



Hopper Historic and Cultural Landscape Location  
USGS Map, 8-18-07

Location of Edward Hopper House and Landscape, USGS Map

TRUV J



Hopper  
Historic  
and Cultural  
Landscape

Town of Truro  
Assessors' Atlas  
Sheets 53 and 54  
FY 2007

Location of Edward Hopper House and Landscape, Town of Truro Assessor Atlas Sheets 53 and 54



# INVENTORY FORM CONTINUATION SHEET

[TRURO ]

[Stephens Way and Benson Road]

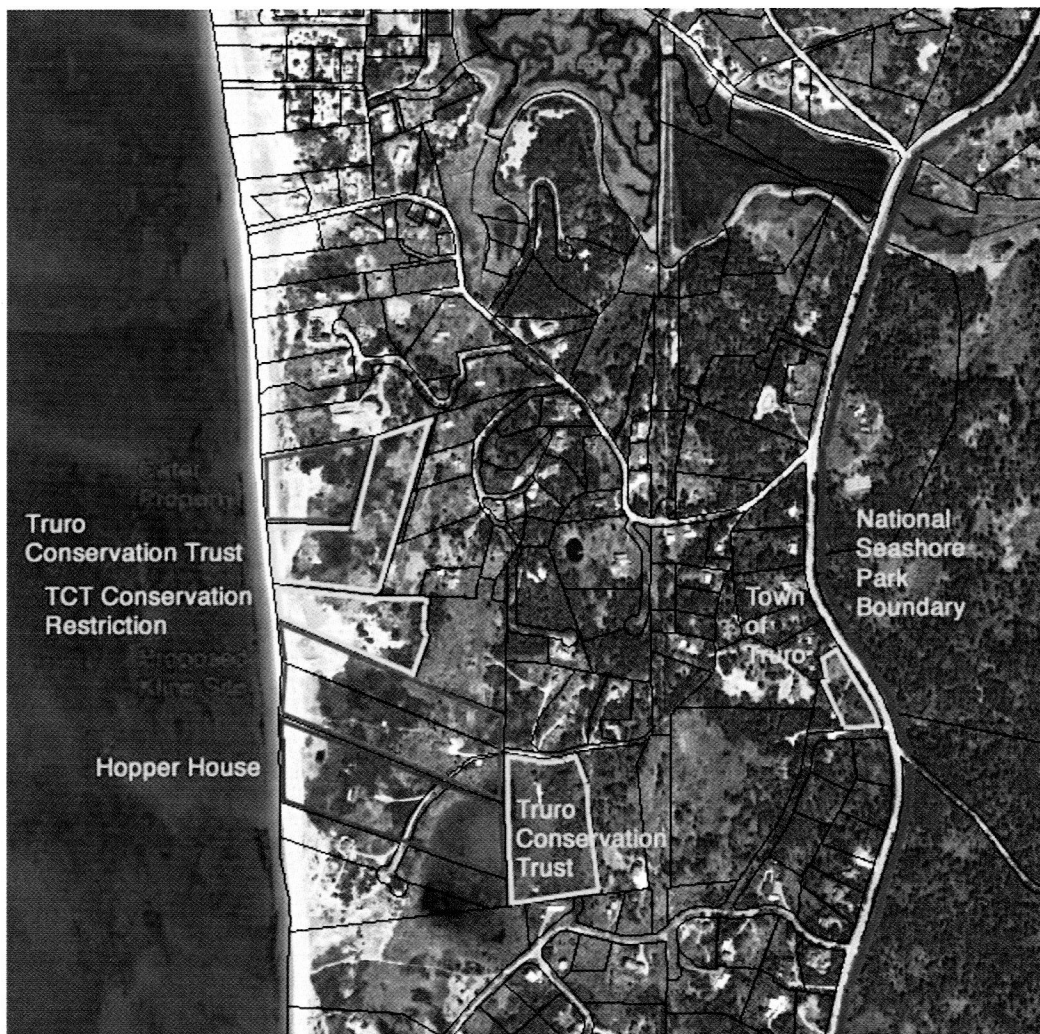
MASSACHUSETTS HISTORICAL COMMISSION

Area(s) Form No.

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

J

125 & 126



**Aerial Photograph of Hopper Landscape Properties**

**Source of Photograph: Compact of Cape Cod Conservation Trusts**

Aerial Photograph of Edward Hopper House and Landscape, Truro Historical Commission and Compact of Cape Cod Conservation Trusts

# INVENTORY FORM CONTINUATION SHEET

[TRURO ]

[Stephens Way and Benson Road]

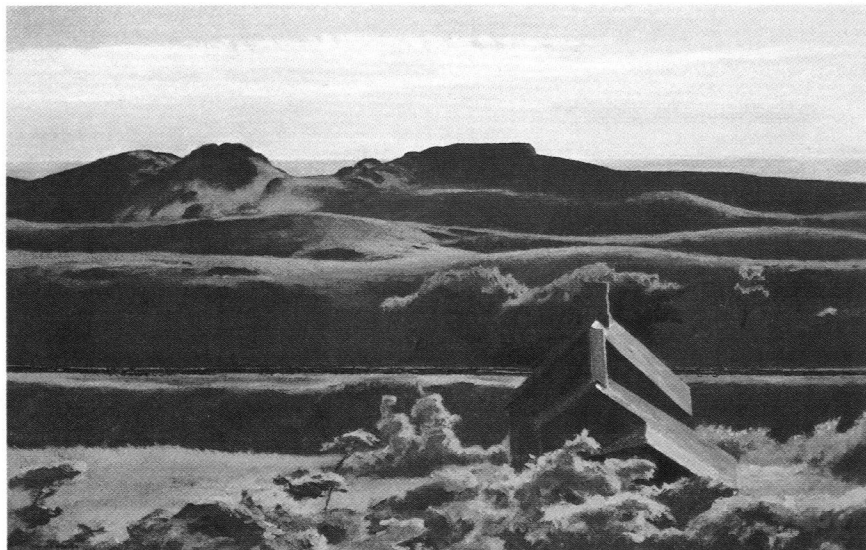
MASSACHUSETTS HISTORICAL COMMISSION

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

J

125 & 126



Pl. 407. *Hills, South Truro*, 1930. Oil on canvas, 27 $\frac{3}{8}$  x 43 $\frac{1}{8}$  inches. The Cleveland Museum of Art; Hinman B. Hurlbut Collection.

Edward Hopper Painting: *Hills of South Truro*, 1930



Joel Meyerowitz, Photograph of Edward Hopper's Studio

TRU J



Edward Hopper House and Landscape, Truro Historical Commission, August 2007



Edward Hopper House North Facing Studio Window, Truro Historical Commission, August 2007

**INVENTORY FORM CONTINUATION SHEET**

[TRURO ]

[Stephens Way and Benson Road]

MASSACHUSETTS HISTORICAL COMMISSION

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

J

125 & 126



Edward Hopper House North and East Elevations, Truro Historical Commission, August 2007



Edward Hopper House South Elevation, Truro Historical Commission, August 2007



TRUJ



Edward Hopper House West Elevation, Truro Historical Commission, August 2007



Edward Hopper House View from Deck, Truro Historical Commission, August 2007

INVENTORY FORM CONTINUATION SHEET

[TRURO ]

[Stephens Way and Benson Road]

MASSACHUSETTS HISTORICAL COMMISSION

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

J

125 & 126



Edward Hopper Landscape View from House, Truro Historical Commission, August 2007



Edward Hopper House Interior View, Truro Historical Commission, August 2007



Edward Hopper House Studio Window View, Truro Historical Commission, August 2007

INVENTORY FORM CONTINUATION SHEET

[TRURO ]

[Stephens Way and Benson Road]

MASSACHUSETTS HISTORICAL COMMISSION

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

J

125 & 126



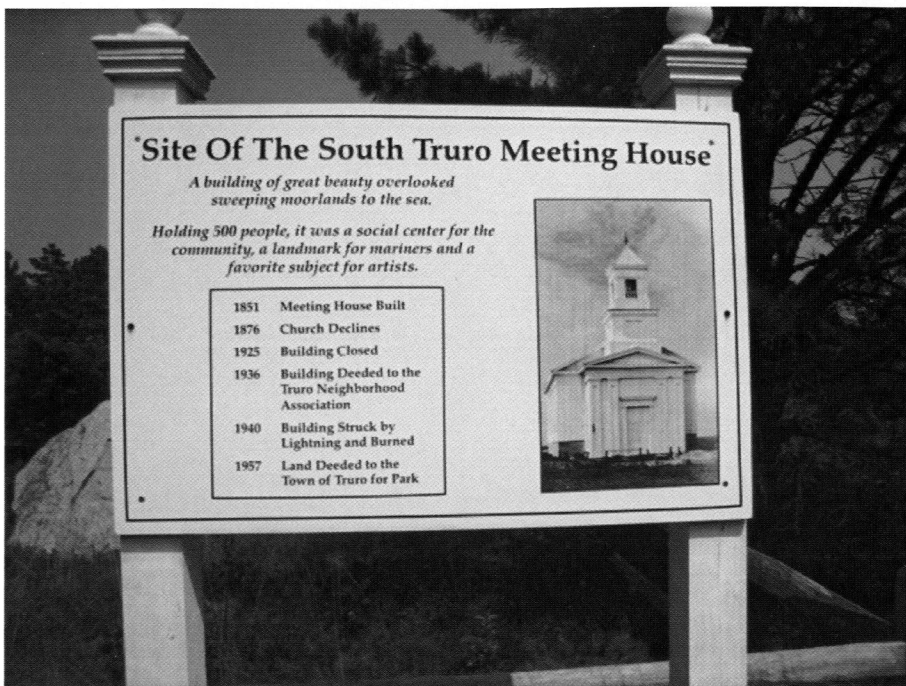
Edward Hopper House and Garage, Truro Historical Commission, August 2007



Andrew C. Cobb/Jenness House, Truro Historical Commission, August 2007



TRU 5

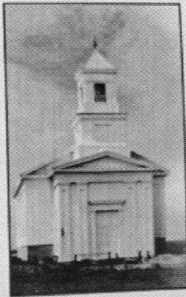


### \*Site Of The South Truro Meeting House\*

*A building of great beauty overlooked  
sweeping moorlands to the sea.*

*Holding 500 people, it was a social center for the  
community, a landmark for mariners and a  
favorite subject for artists.*

- |      |   |
|------|---|
| 1851 | Meeting House Built   |
| 1876 | Church Declines   |
| 1925 | Building Closed   |
| 1936 | Building Deeded to the<br>Truro Neighborhood<br>Association |
| 1940 | Building Struck by<br>Lightning and Burned                  |
| 1957 | Land Deeded to the<br>Town of Truro for Park                |



Town of Truro Park at Site of South Truro Meeting House, Truro Historical Commission, August 2007



1851      SITE OF      1940  
THE SOUTH TRURO  
MEETING HOUSE

DESTROYED BY FIRE MARCH 28, 1940

ERECTED BY  
THE TRURO NEIGHBORHOOD ASSOCIATION  
1946

Town of Truro Park at Site of South Truro Meeting House, Truro Historical Commission, August 2007

MASSACHUSETTS HISTORICAL COMMISSION  
MASSACHUSETTS ARCHIVES BUILDING  
220 MORRISSEY BOULEVARD  
BOSTON, MASSACHUSETTS 02125

Town Property Address  
Truro Stephens Way & Benson Road

Area(s) Form No.  
J 125 & 126

NATIONAL REGISTER OF HISTORIC PLACES  
Criteria Statement Form



Check all that apply:

- ☒ Individually eligible ☐ Eligible *only* in a historic district  
☒ Contributing to a potential historic district ☒ Potential historic district

Criteria: ☐ A ☒ B ☐ C ☐ D

Criteria Considerations: ☐ A ☐ B ☐ C ☐ D ☐ E ☐ F ☐ G

Statement of Significance by C. Steinman, Truro Historical Commission

*The criteria that are checked in the above sections must be justified here.*

The properties meet the National Register Criteria by their association with a notable and important person. Edward Hopper, a major American painter, first came to Cape Cod in 1930 where he rented a cottage from A. B. Cobb. Hopper was one of a group of artists and writers who converged on the Outer Cape beginning in the early decades of the 20th century, forming a large and active artists' colony in Provincetown and Truro. In 1933 he designed and built his small house and studio with enough space to paint indoors. He spent 6 months a year painting there until his health declined in the 1960s. From his large window on the north end of his studio, Hopper drew inspiration from the panoramic views and subtle shapes and colors of the moors, beach and bay. His paintings, many of which were painted in his South Truro studio, are now hung in major galleries around the world, notably a large collection at the Whitney Museum in New York City. Well-known Truro paintings include Hills of South Truro, Cobb's Barns, South Truro, The Camel's Hump, Corn Hill, Cape Cod Afternoon, Rooms by the Sea, and Cape Cod Evening.

Over the years, hundreds of professional and amateur painters and photographers have sketched, painted and photographed the Hopper House and the spectacular dune-scape northward. The Hopper Landscape has significant state and national cultural importance as part of Hopper's legacy. The Hopper Landscape is now an open landscape of dunes and natural habitat, portions of which have been preserved by the Truro Conservation Trust with the generous support of neighbors so that the view and "Hopper Landscape" as seen from the Hopper Studio window would remain as when Hopper lived and painted in the Studio. The current owners of the Hopper House, whose family inherited it from Edward Hopper's wife Josephine, have faithfully preserved it as Hopper lived and worked there, even keeping his easel by the studio window.

Original yellow form: Eligibility file  
Copies: Inventory form  
Town file(w/corresp.)  
Macris  
NR director \_\_\_\_\_

Community: Truro

**MHC OPINION: ELIGIBILITY FOR NATIONAL REGISTER**

Date Received: 8/28/07

Date Due:

Date Reviewed: 9/4/07

Type:    Individual

  X   District (Attach map indicating boundaries)

Name: Edward Hopper House and Landscape

Inventory Form: Area J

Address: Stephens Way and Benson Road, Truro

Requested by: Chuck Steinman, Truro Historical Commission

Action:    Honor

   ITC

   Grant

   R & C

Other: Planning

Agency:

Staff in charge of Review: AL/BF

**INDIVIDUAL PROPERTIES**

   Eligible

   Eligible, also in district

   Eligible only in district

   Ineligible

   More information needed

**DISTRICTS**

  X   Eligible

   Ineligible

   More information needed

**CRITERIA:**

  X   A

  X   B

  X   C

   D

**LEVEL:**

  X   Local

  X   State

  X   National

**STATEMENT OF SIGNIFICANCE** by Betsy Friedberg

The Hopper House and Landscape retain integrity of location, design, setting, materials, workmanship, feeling, and association, and fulfill National Register Criteria A, B, and C on the local, state, and national levels.

Located between Stephens Way and Benson Road on the southwestern side of Truro, overlooking Cape Cod Bay, the district of approximately 35 acres is associated with nationally known realist painter Edward Hopper and his wife Josephine, who erected a modest, 1 ½-story Cape-style cottage in 1934 for use as a house and studio. The Hoppers resided here 6 months annually until his death in 1967, and hers several years later. They came to Cape Cod, and Truro, along with other artists and writers drawn to the area as a place of inspiration, tranquility, and natural beauty, and Hopper became the most prominent painter to work here. The house, a five-bay Cape-style dwelling, sits on a 60-foot-high hill facing west across Cape Cod Bay. At the northern end of the building, Hopper placed his studio, lit by a double-height window designed to take advantage of the best light for painting. While here, inspired by his surroundings, Hopper painted a number of

his best-known works, including "Cape Cod Afternoon," "Cape Cod Evening," "Hills of South Truro," and "Jenness House Looking North."

The house sits within a landscape of grassy heath, wetlands, and dunes, amongst which are winding paths and several historic houses. All became subject matter for Hopper during the more than 30 years that he summered in Truro. This landscape is essential to an understanding of the association between the artist and his work. One nearby historic house, an early 19<sup>th</sup> century  $\frac{3}{4}$  Cape-style house, was built by mariner Andrew Collins Cobb in 1816 and later owned by the Jenness family. The house is sited in a dell, oriented facing south, as was typical of the period, and is two rooms deep with an off-center interior brick chimney; a single-story lateral wing was added ca. 1837. Other historic Cape-style residences in the vicinity include the Elisha Cobb House, a full Cape built ca. 1835 for another mariner member of the Cobb family.

Together, these buildings and the landscape in which they sit comprise a potential National Register district of exceptional significance associated with one of the most important American painters of the 20<sup>th</sup> century.



# Memo

To: Barbra Carboni, Town planner, Town Land Use Council

CC. Rich Stevens, Building Commissioner

From: Jarrod J. Cabral, Public Works Director

Date: October 26, 2023

Re: South Highland Road Data

- 35 Homes directly abut South Highland Road between the Route 6 intersection at South Highland Road and Dew line Road.
- 9 private road curb cuts directly abut South Highland Road between the Route 6 intersection at South Highland Road and Dew Line Road. These private road curb cuts serve smaller neighborhood homes in the South Highland Road area.
- The east portion of South Hollow Road serves 3 residential structures, 1 commercial structure, and accesses South Highland Road 600' south of Dew Line Road.
- South Highland Road provides access to Coast Guard Beach, Highland Links Golf Course, Highland Museum, Payomet Performing Arts Center, Horton's Campground, and the National Park Service.

Due to the housing density and 9 private road curb cuts between the Route 6 and South Highland Road intersection and Dew Line Road I recommend moving any signage related to the commercial facilities on South Highland Road farther north directing vehicle traffic onto South Hollow Rd.

Sincerely,  
Jarrod J. Cabral  
Director  
Department of public works

<b><u>MEETING DATE(S)</u></b>	<b><u>PLANNING BOARD – 2023 TEMPORARY SIGN PERMIT APPLICATIONS</u></b>
4/12/2023	<b><u>Francie Randolph/Jackie Opitz – Sustainable CAPE</u></b> , Truro Educational Farmers Market (at Pamet Park), requesting four (4) 36" x 72" banners (three on Route 6 and one at Veteran's Memorial Field). The banners will be installed on Friday afternoons and removed Monday afternoons beginning June 2nd and ending September 25th.
5/10/2023	<b><u>Genevieve Morin – Truro Yoga</u></b> , requesting one (1) sign, 3' x 2', to be located next to Snow's Park from May 30th through September 27th. The signs will be installed on Fridays and removed on Sundays.
5/24/2023	<b><u>Marisa Picariello – Payomet Performing Arts Center</u></b> , for two (2) signs, 48" x 36", to be located on South Highland exit off Route 6E and on Shore Road exit off Route 6W for events June through October. The signs will be for four (4) months: installed June 1st and removed October 1st.
6/7/2023	<b><u>Marian Averback – The Truro Group, Art Show at the Library</u></b> , requesting two (2) signs, 2' x 8', to be located: (1) below highway sign at Route 6 and Standish Way, and (2) below highway sign at intersection of Route 6 and 6A. The signs will be installed on July 5th and removed July 28th.
6/7/2023	<b><u>Timothy Hickey – Truro Concert Committee</u></b> , requesting four (4) signs, 36" x 24", to be located at: (1) Corner Route 6 and Standish Way; (2) Shore Road (in front of Truro Beach Office); (3) Truro Center Road bus stop across from of Post Office; and (4) Route 6 on island across from Pamet Package Store/on Pamet Road exit). The signs and banner will be installed on July 1st and removed August 31st. Requesting 501(c)(3) Charitable Organization exemption.
6/7/2023	<b><u>Jim Summers – Historical Society, Highland House Museum</u></b> , requesting one (1) sign, 36" x 48", to be located at the intersection of Route 6 and South Highland Road. The sign will be installed on June 1st and removed September 30th.
7/5/2023	<b><u>Chuck Steinman – Friends of the Truro Meeting House</u></b> , requesting one (1) sign, 3' x 10', to be located at 3 First Parish Lane and Town Hall Road. The sign will be installed on July 6th and removed August 30th.
8/9/2023	<b><u>Jennifer Pierce – Truro Chamber of Commerce/Truro Treasures</u></b> , requesting one (1) sign, 3' x 8', to be located at the intersection of 6 and 6A. The sign will be installed on September 1st and removed September 18th.
11/15/2023	<b><u>Marisa Picariello – Payomet Performing Arts Center</u></b> for two (2) signs, 48" x 36", to be located on South Highland exit off Route 6E and on Shore Road exit off Route 6W for events October, November, and December.