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**Attorney at Law**

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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

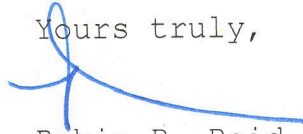
Re: 9B Benson Road  
page 2 of 2

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- 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.

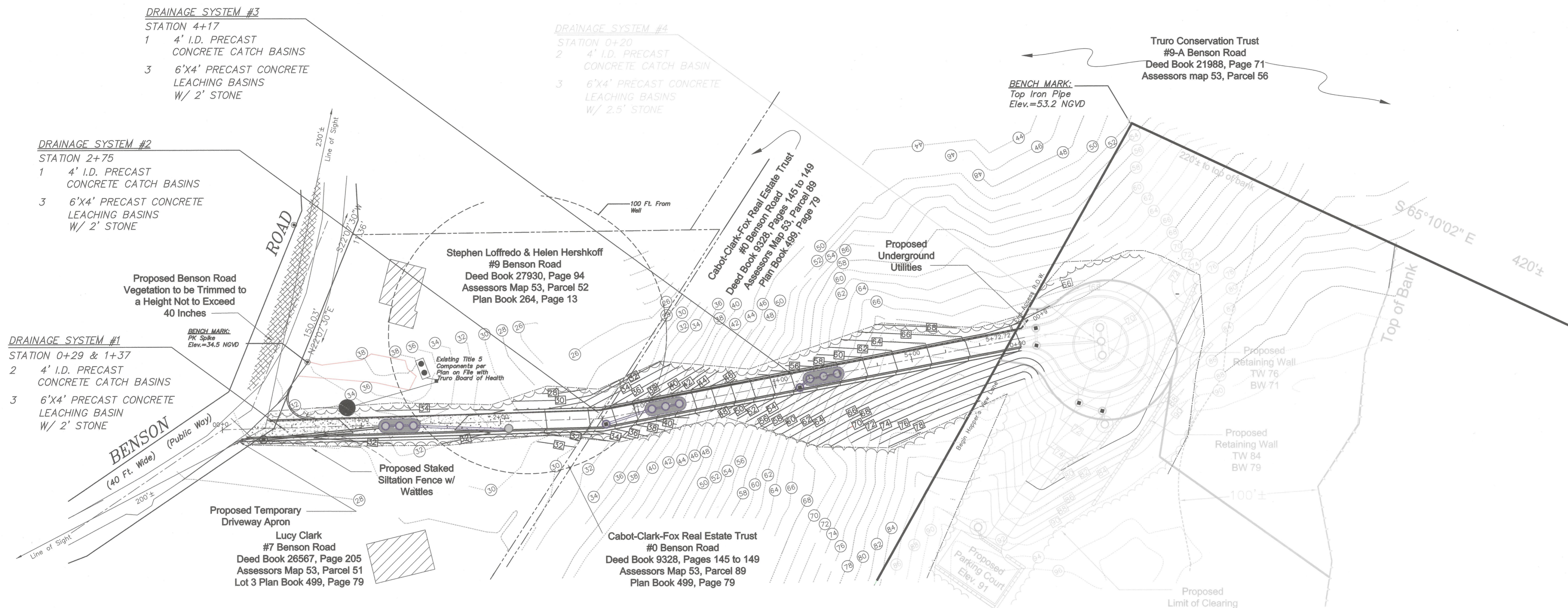
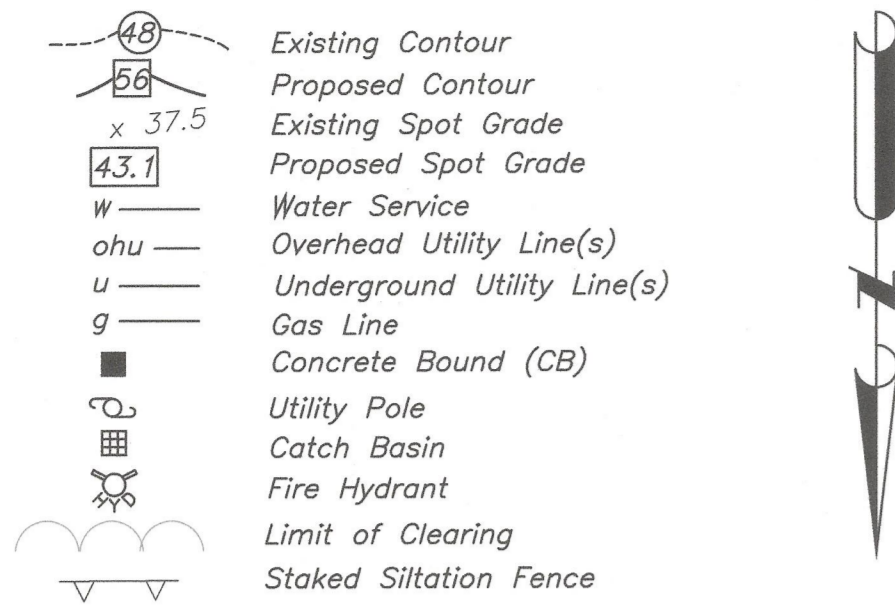
Lot 2 is intended as a gift to the Truro Conservation Trust. Lot 2 abuts an existing TCT parcel.

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.

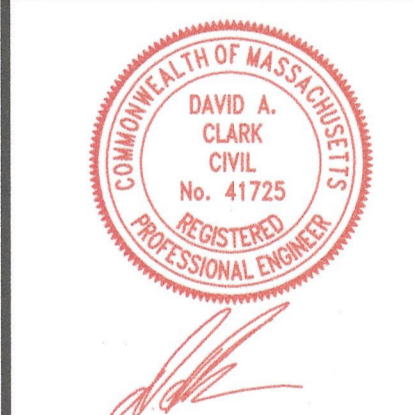
The Supreme Judicial Court, has affirmed the existence and validity of the access right of way to serve 9B Benson Road. And the Land Court has fixed the location of the access right of way.

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**



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

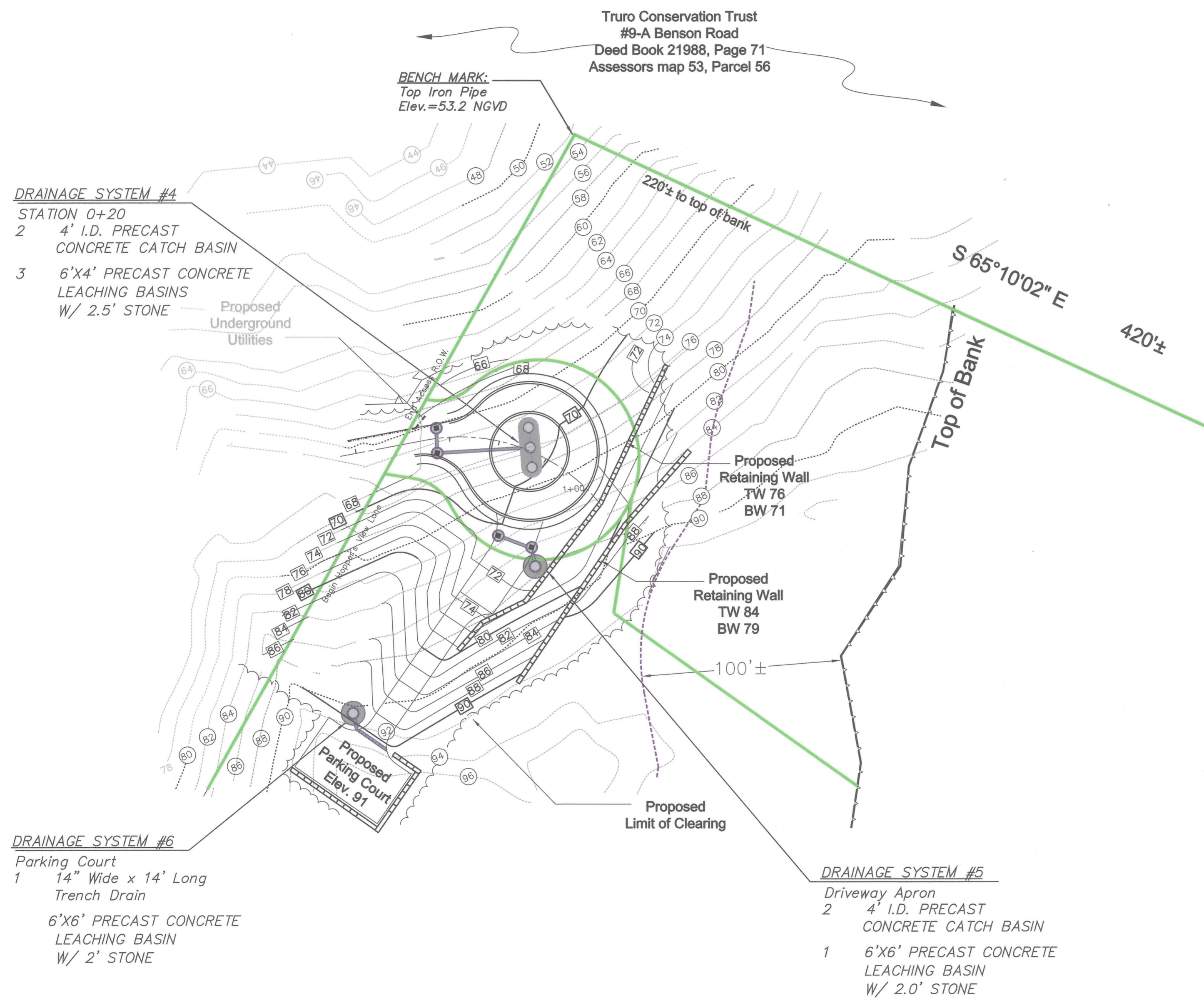
**CLARK ENGINEERING LLC**  
 156 Crowell Road Suite B, Chatham, MA. 02633  
 Tel.: (508) 945-5454; Fax.: (508) 945-5458

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

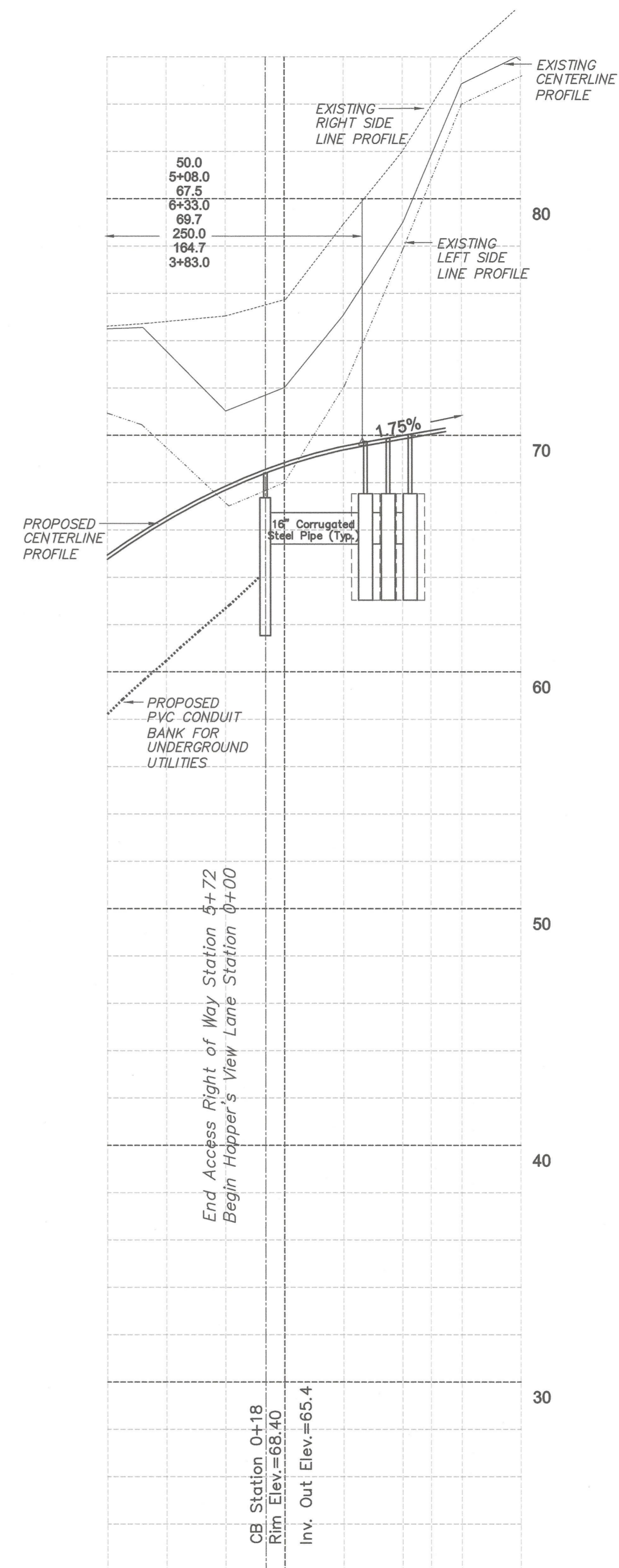
Date: 07-14-2023 Drawing No.: 0802010D  
 Scale: SEE PLAN Sheet No.: 2 of 5

**LEGEND**

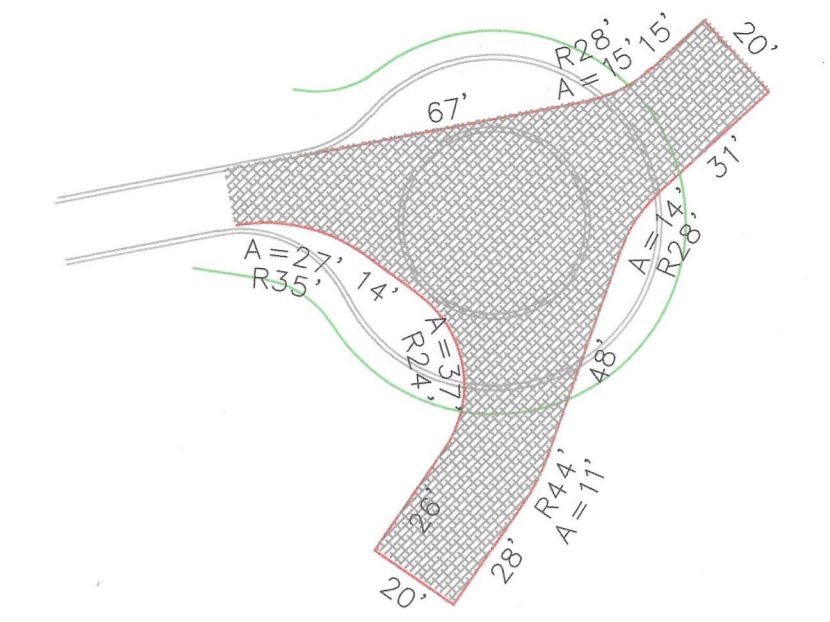
- Existing Contour
- Proposed Contour
- Existing Spot Grade
- Proposed Spot Grade
- Water Service
- Overhead Utility Line(s)
- Underground Utility Line(s)
- Gas Line
- Concrete Bound (CB)
- Utility Pole
- Catch Basin
- Fire Hydrant
- Limit of Clearing
- Staked Siltation Fence



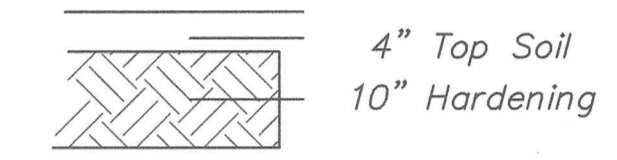
PLAN VIEW  
**HOPPER'S VIEW LANE**  
SCALE: HORIZONTAL 1"=40'



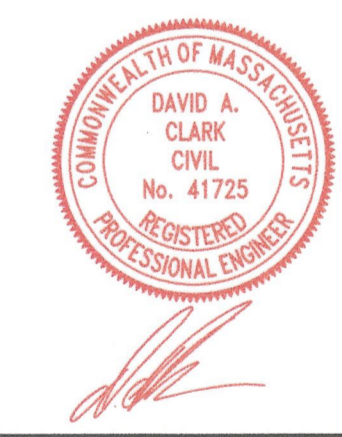
PROFILE VIEW  
**HOPPER'S VIEW LANE**  
SCALE: HORIZONTAL 1"=40'  
VERTICAL 1"=4'



PLAN VIEW  
**FIRE ACCESS ROUTE**  
SCALE: HORIZONTAL 1"=40'



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



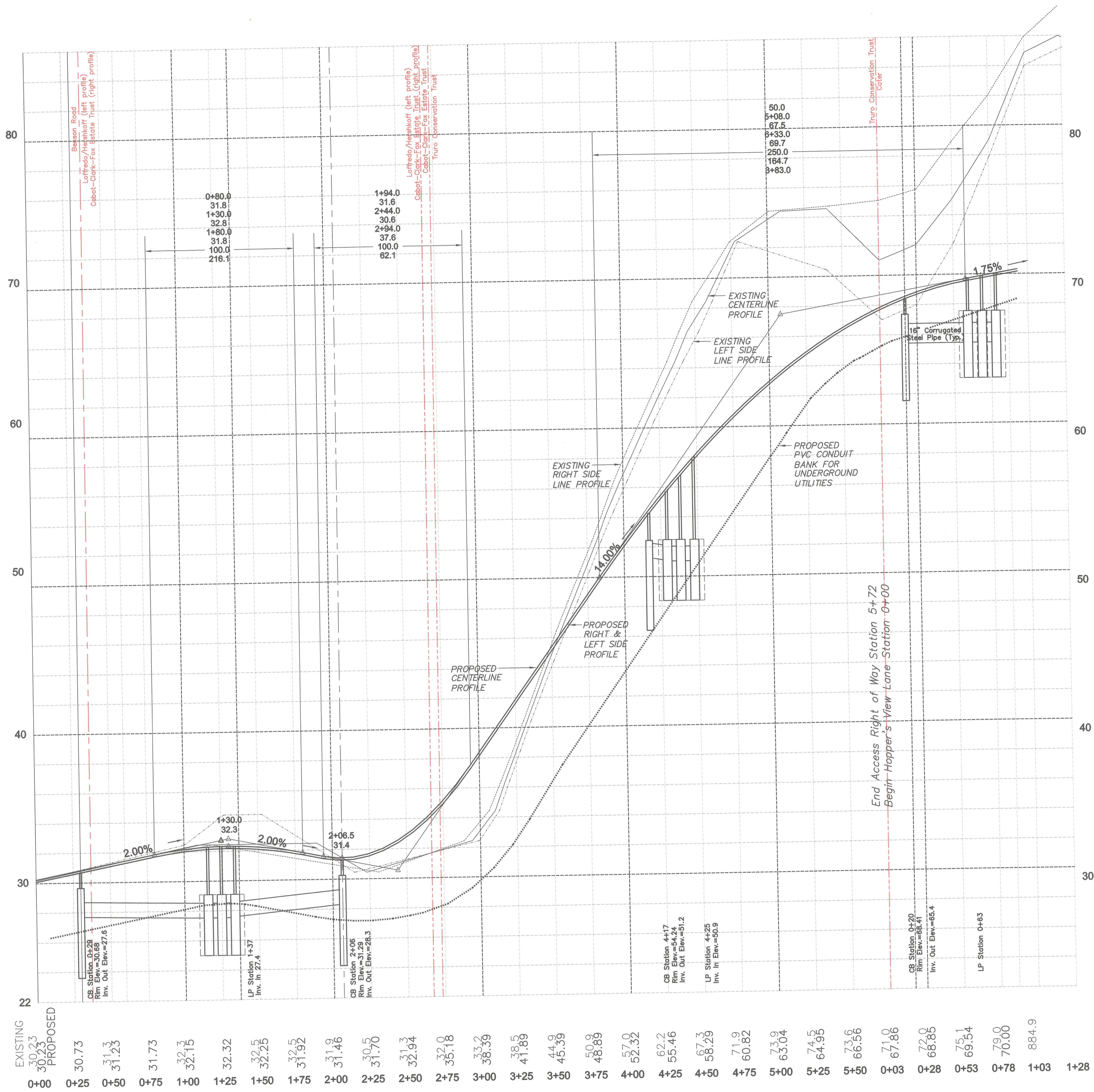
**HOPPER'S VIEW LANE  
PLAN AND PROFILE**  
Prepared For  
**DOCTOR WILLIE J.  
and GLORIA J. CATER**

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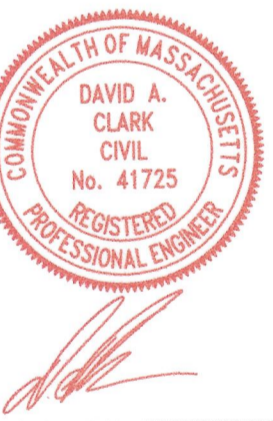
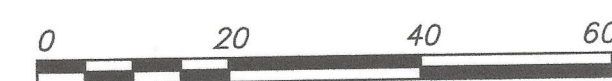
| Rev. # | Description of Revision         | Date    |
|--------|---------------------------------|---------|
| 1      | Regraded access driveway to 14% | 10-3-23 |
|        |                                 |         |
|        |                                 |         |
|        |               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

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



**HOPPER'S VIEW LANE**

SCALE: HORIZONTAL 1"=40'  
VERTICAL 1"=4'



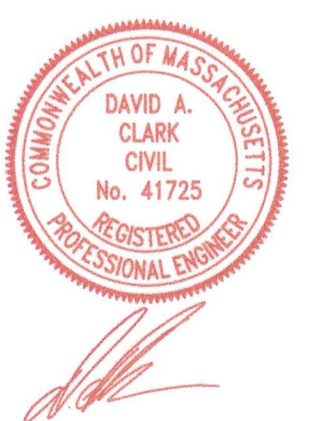
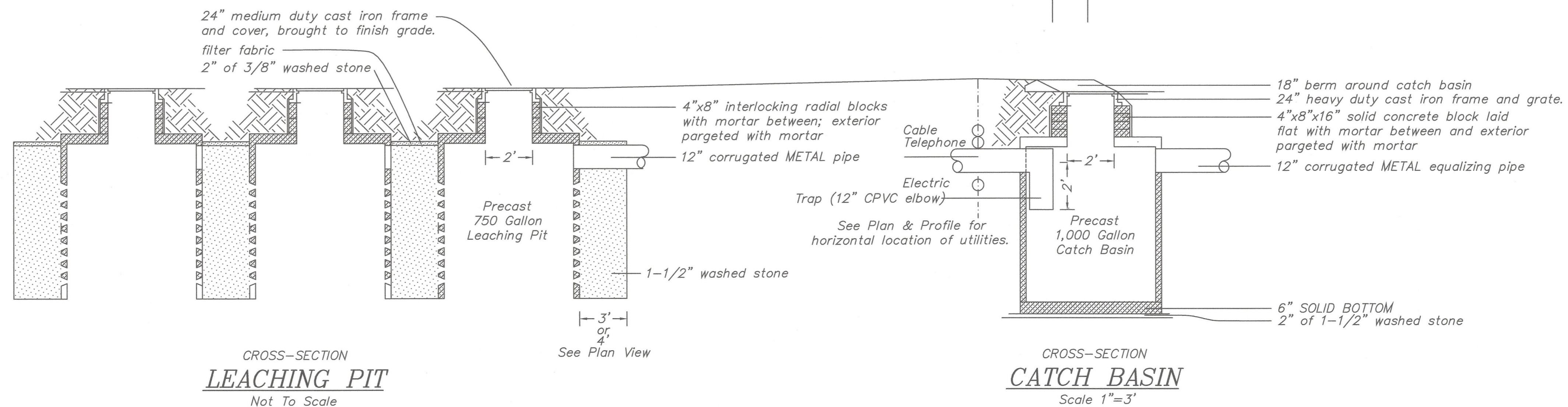
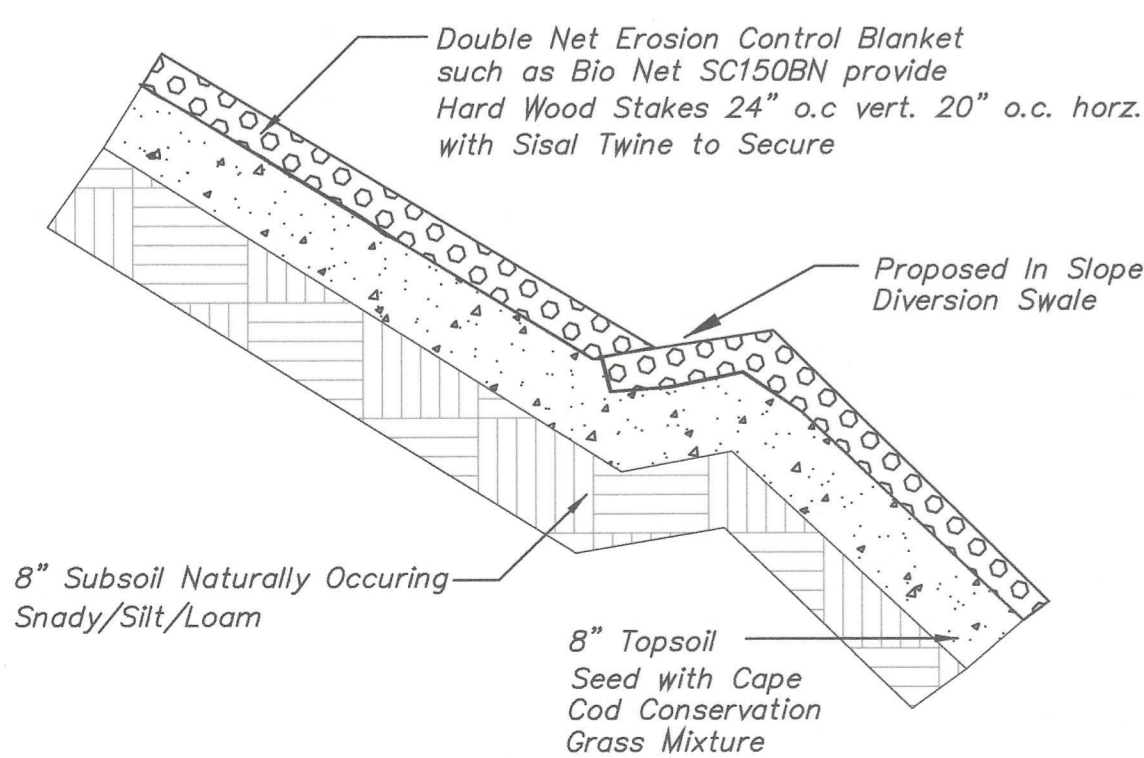
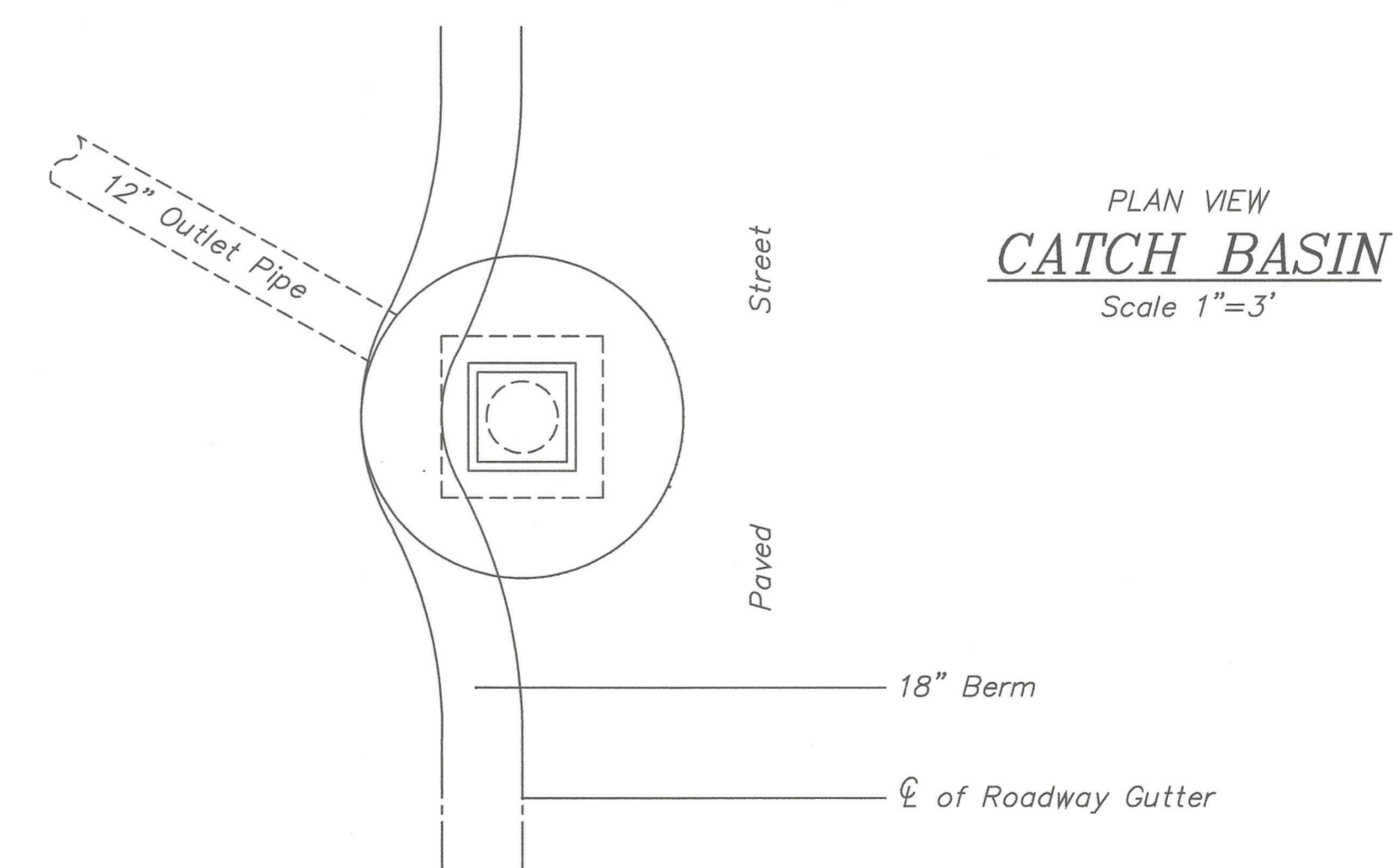
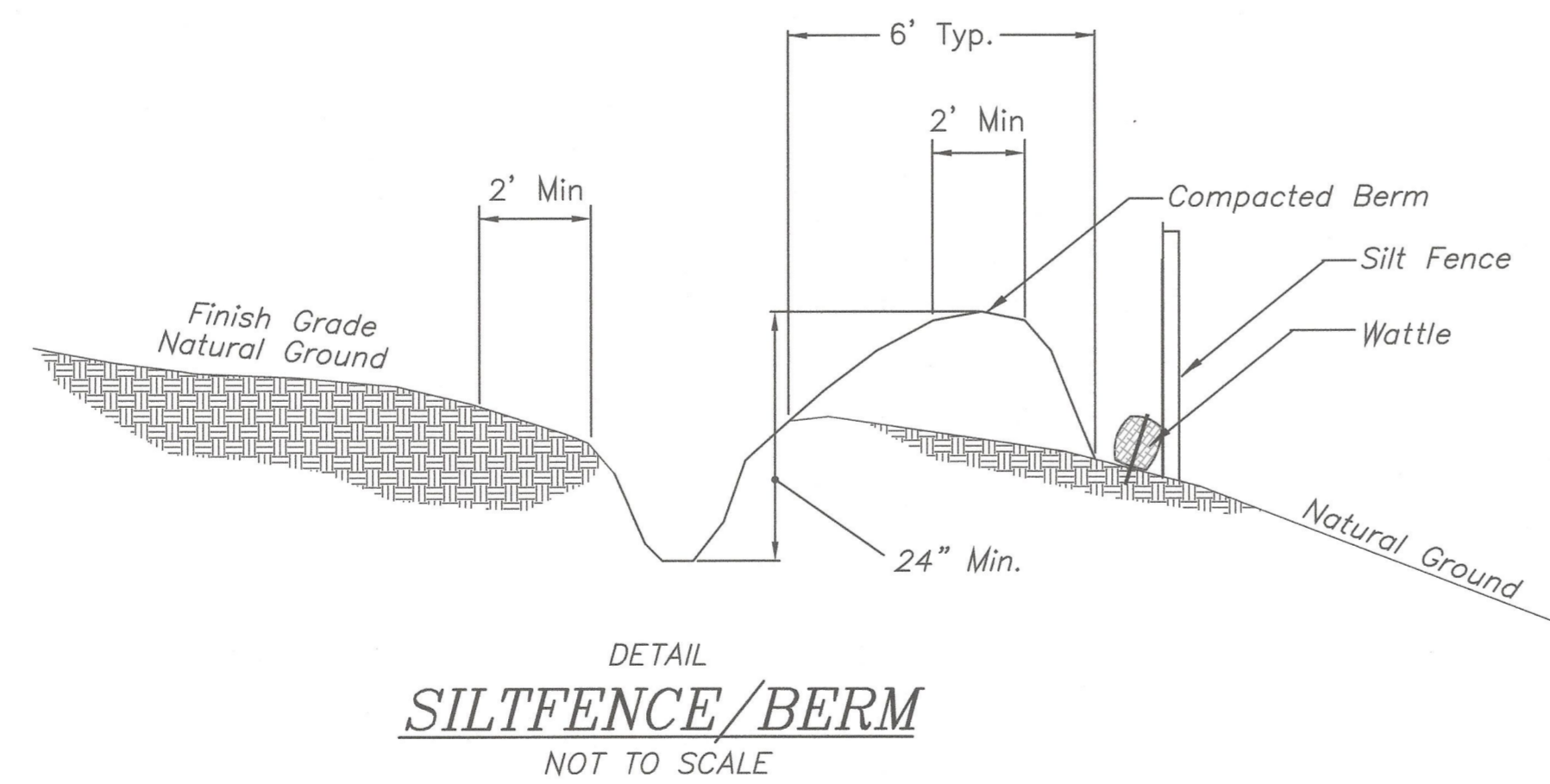
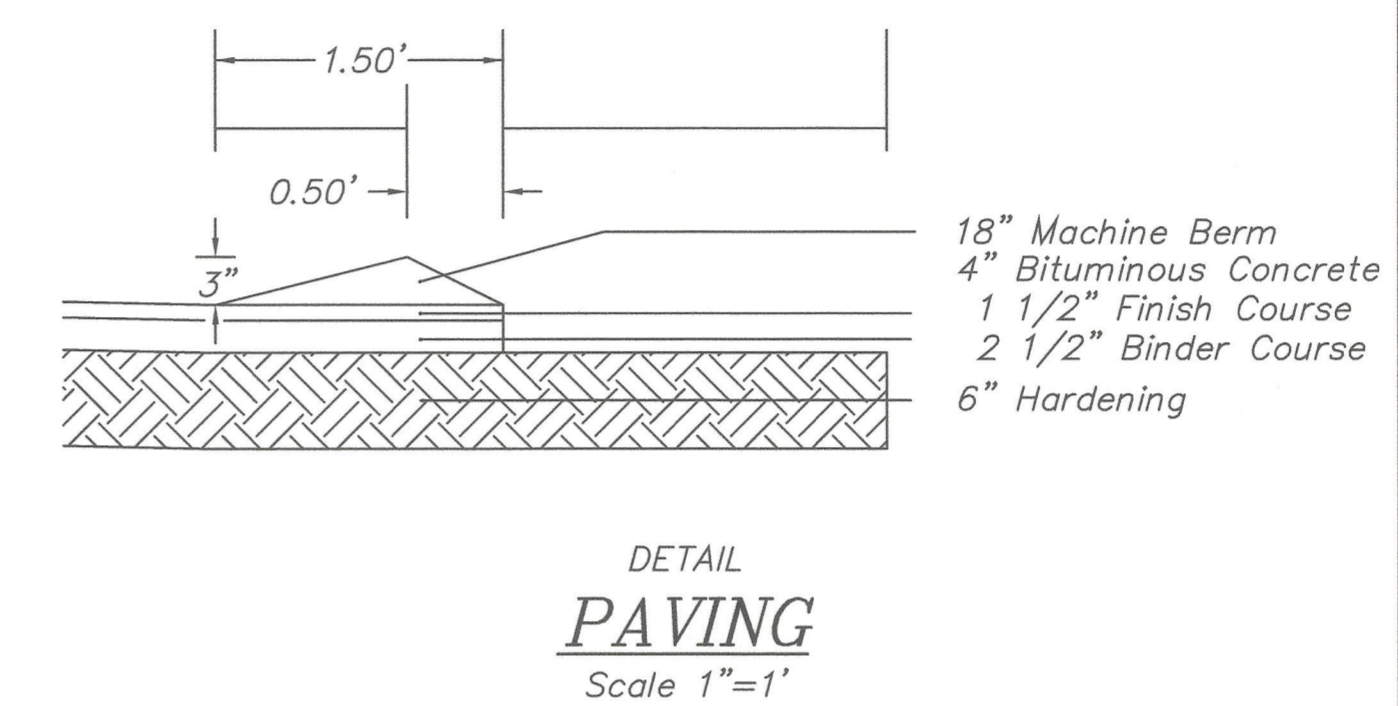
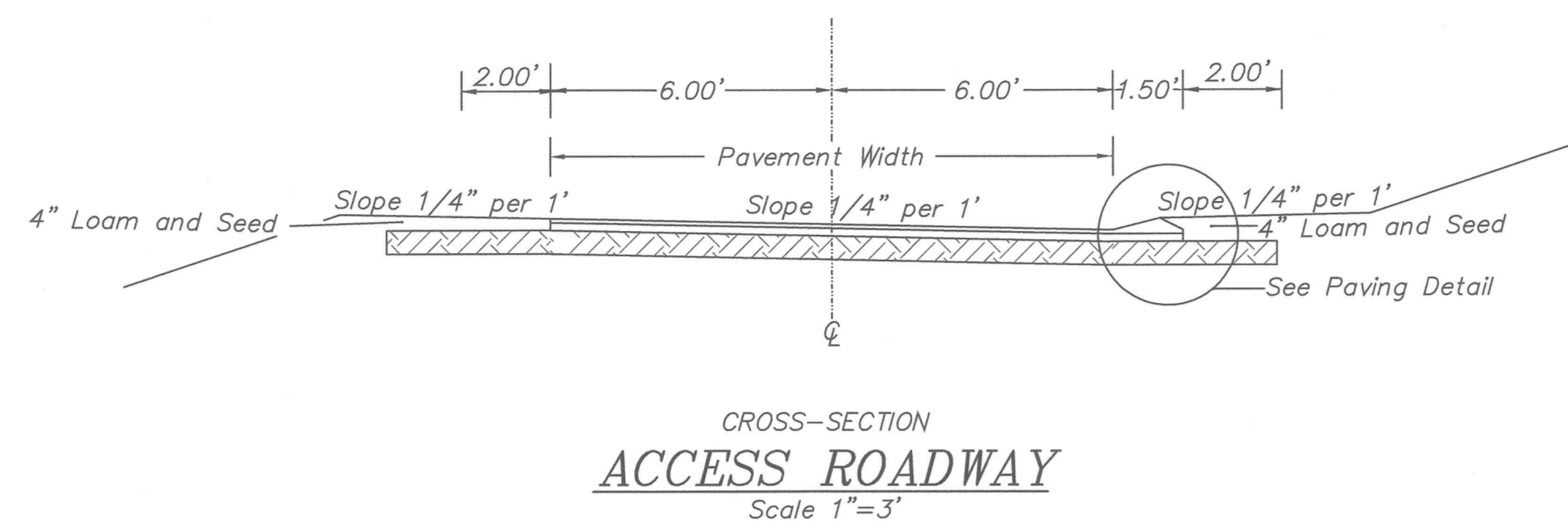
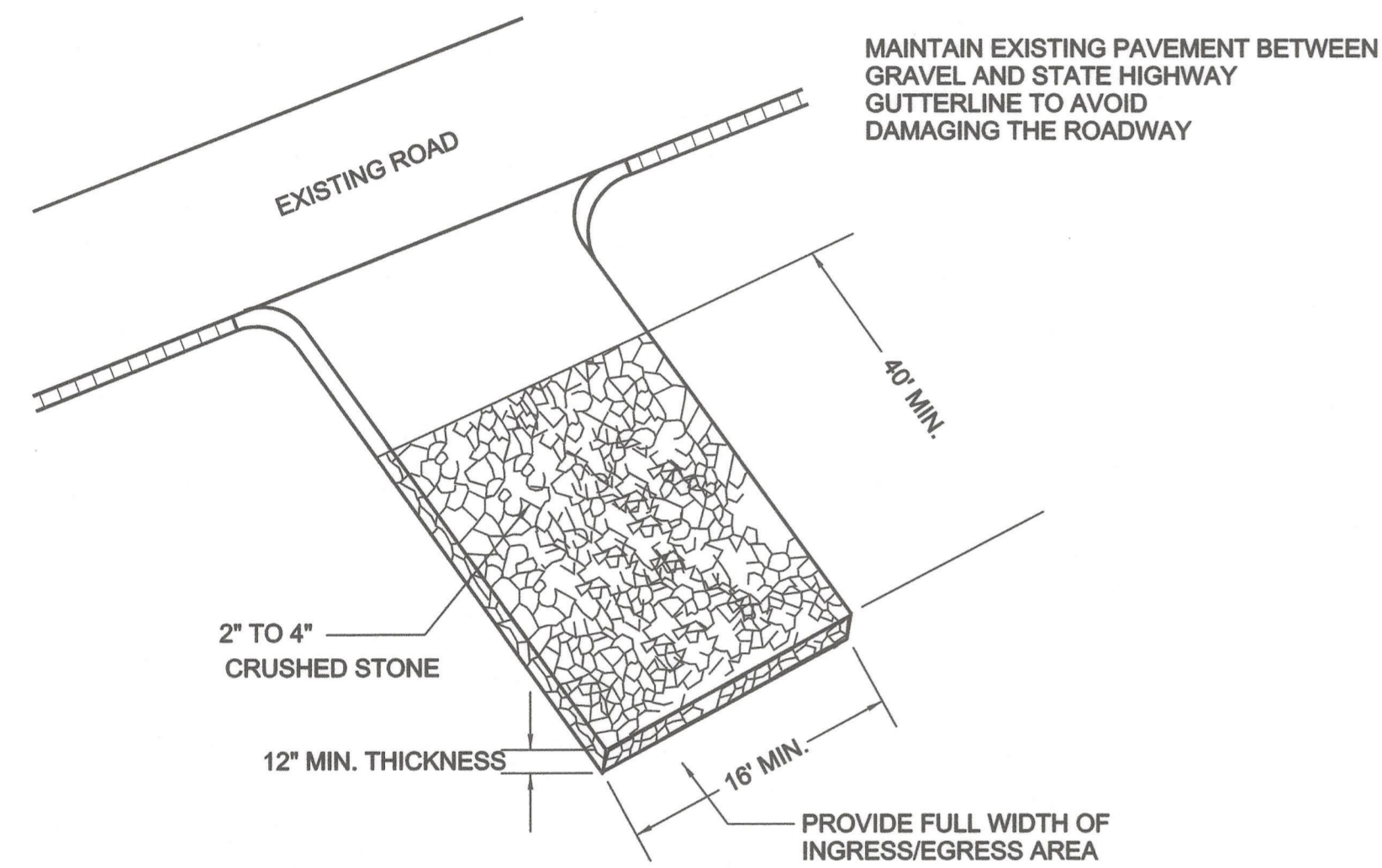
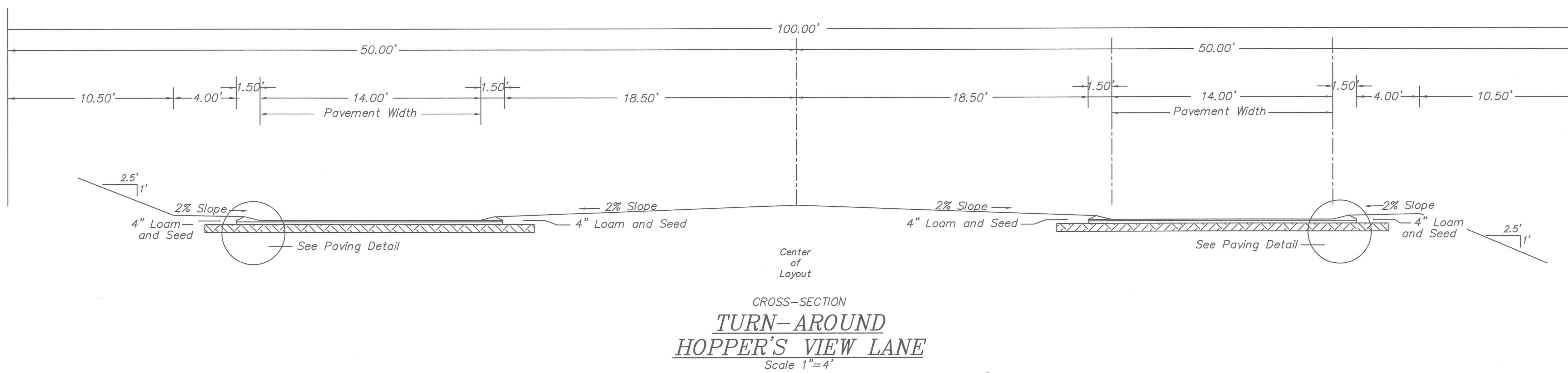
**ACCESS RIGHT OF WAY  
PROFILE  
PLAN**  
Prepared For  
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Date: 07-14-2023  
Scale: SEE PLAN  
Drawing No.: 0802010D  
Sheet No.: 4 of 5



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

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| 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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## 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 (*Ailanthus 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.

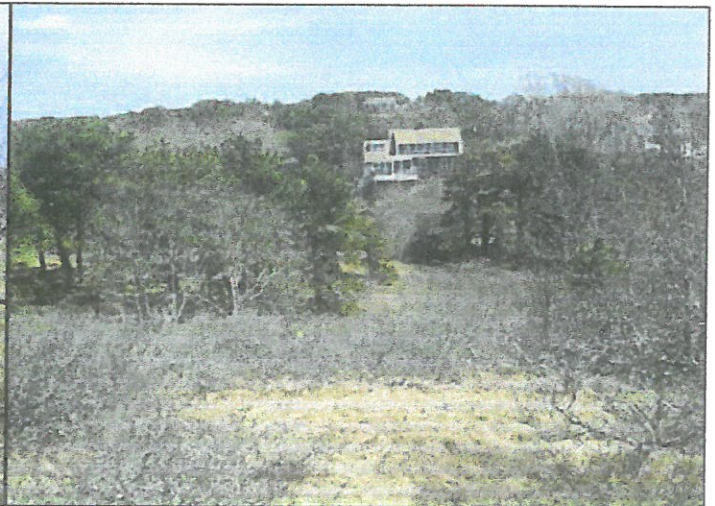
## Existing Conditions (continued)

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).

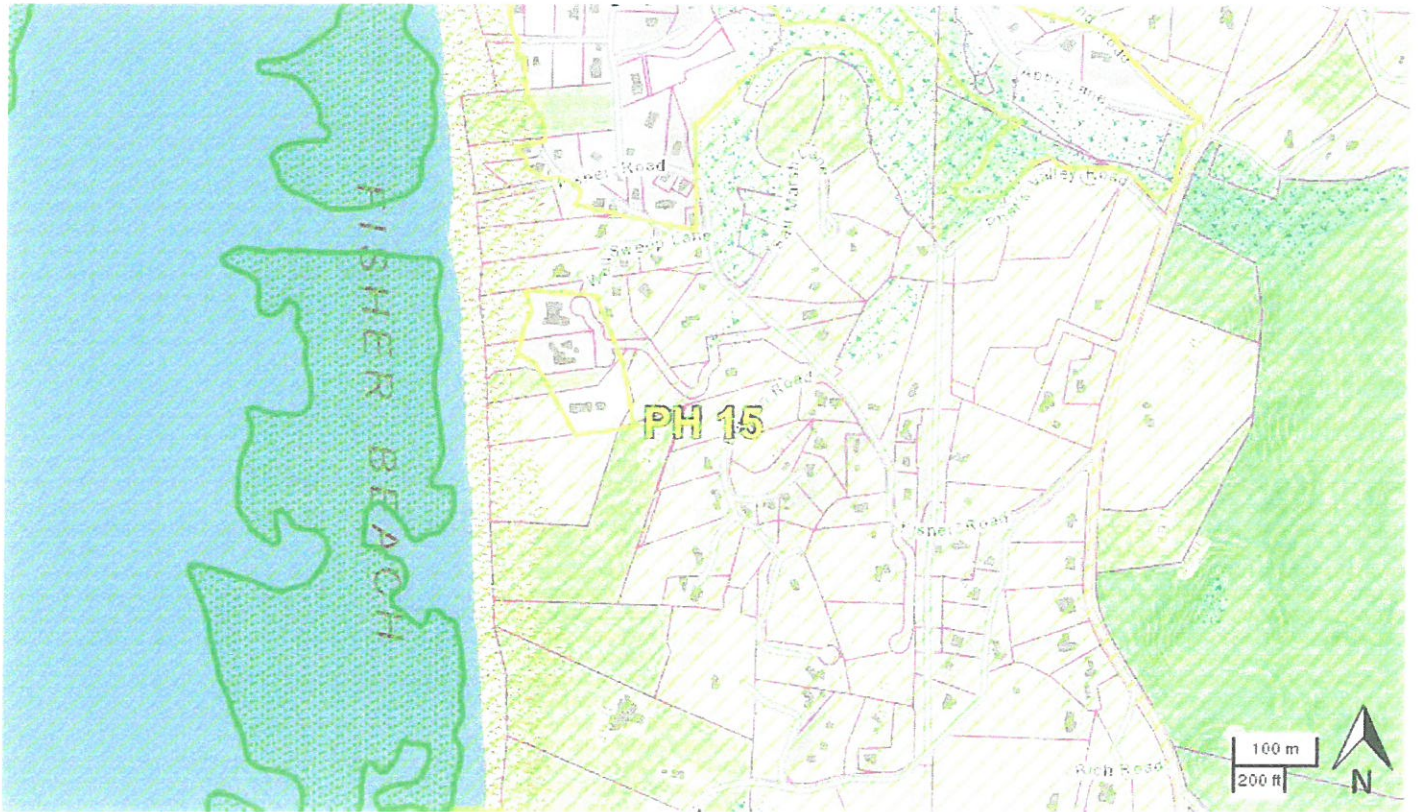


Bearberry, scrub oak, and little bluestem growing at western-most area of the project area.



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 Species
- Tax Map Overlay
- Delisted Parcels
- Tax Parcels
- Structure

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.

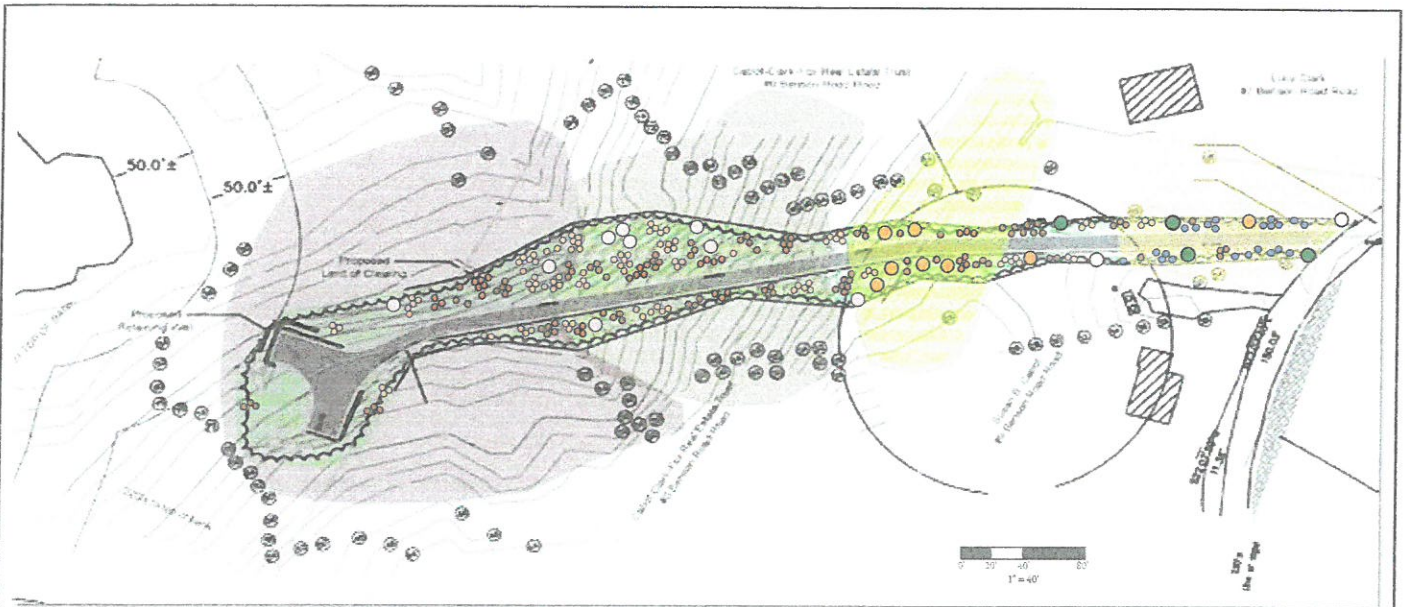
After the initial intensive invasive species management is completed, the project area will be seeded with a custom mix of deep rooted native warm and cool season grasses and forbs including crinkle hairgrass (*Deschampsia flexuosa*), little bluestem (*Schizachyrium scoparium*), poverty grass (*Danthonia 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 Emson 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 steeper 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 (*Heudonia 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 common 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*), Artem. (*Artem. spp.*), and butterfly weed (*Asclepias tuberosa*).
- Temporary irrigation will be required for the first two to 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>      | Scrubby 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> | Beachberry         | 4" Pot   | 18-24" On Center | 4000     |
| <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 | 5 Gallon | 5' On Center     | 11       |
| <i>Myrica pennsylvanica</i>    | Northern bayberry  | 5 Gallon | 5' On Center     | 15       |

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

### GRASSES AND WILDFLOWERS

|                                |                            |         |                  |      |
|--------------------------------|----------------------------|---------|------------------|------|
| <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>Pycnopogon fasciata</i>     | Sickle-leaved golden aster | 5" Plug | 18-24" On Center | 500  |
| <i>Senecio linariifolia</i>    | Stiff aster                | 5" Plug | 18-24" On Center | 300  |
| <i>Asclepias tuberosa</i>      | Butterfly weed             | 5" Plug | 18-24" On Center | 300  |

- 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 scrub - Beach plum/ Bayberry dominant with scrub oak. Pennsylvania sedge and Little bluestem transitions to beachberry dominated groundcover.
- Sandplain/Heathland plant community. Beachberry dominant. Beach heather, reindeer lichen, stiff aster, sickle-leaf aster groundcover.

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

| 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 pensylvanica</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> | Bearberry                  | 4" Pot   | 18-24" On Center | 4000     |
| <i>Vaccinium angustifolium</i> | Lowbush blueberry          | 1 gallon | 4' On Center     | 50       |
| <i>Viburnum dentatum</i>       | Arrowood 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       |
| <b>GRASSES AND WILDFLOWERS</b> |                            |          |                  |          |
| <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.

## References

A Guide to the Natural Communities of Eastern Massachusetts. Manomet Center for Conservation Sciences.

National Invasive Species Council - National Invasive Species Management Plan 2008-2012. <http://www.invasivespeciesinfo.gov/council/mp2008.pdf>

Natural Heritage and Endangered Species Program. NHESP Priority Habitats of Rare Species. [http://maps.massgis.state.ma.us/map\\_ol/oliver.php](http://maps.massgis.state.ma.us/map_ol/oliver.php) - April 22, 2014.

Southeast Exotic Pest Plant Council - Invasive Plant Manual - Bush honeysuckle – <http://www.se-eppc.org/manual/bushhoney.html> -2003.

Wieseler, Susan. Minnesota Department of Natural Resources. Plant Conservation Alliance; Alien Plant Working Group. <http://www.nps.gov/plants/alien/fact/rops1.htm>. 07-July-2009.



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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

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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

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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%<br>For 100 feet | 16%<br>For 200+/-<br>feet | 8% or 6%<br>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-<br>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