

**TOWN OF POMFRET
Selectboard**

Memorandum of Decision

Property Address: 4070 Pomfret Road
Pomfret, Vermont

Parcel No.: 0134

Parcel Size: +/- 58.6 acres

Property Owner: Thomas P. Gubbins
P.O. Box 176
South Pomfret, Vermont 05067

Applicant: Estate of Fred J. Eydtt
7745 Indian Oaks Drive, Apt. H212
Vero Beach, Florida 32966

This Memorandum of Decision (this “Decision”) is issued by the Selectboard of the Town of Pomfret (the “Selectboard”), in connection with the Application for a Driveway or Approach Road Access Permit dated January 5, 2023 (the “Current Application”), by the Estate of Fred J. Eydtt (“Applicant”).

This Decision is made pursuant to the Town of Pomfret Highway Ordinance approved December 2, 2009 (the “2009 Highway Ordinance”)¹ and the enabling state law at 19 V.S.A. 1111(b).

I. Procedural History

A. The Prior Application

Applicant initially submitted an Application for a Driveway or Approach Road Access Permit dated September 27, 2022 (the “Prior Application”). The Prior Application was substantially similar to the Current Application, both of which sought permission to construct a new residential driveway access to Pomfret Road at substantially the same location and in substantially the same configuration, as more particularly described in Section II below. The

¹ The Highway Ordinance was amended on November 16, 2022, which amendment became effective on January 15, 2023 (the “2022 Highway Ordinance”). Because the Prior Application (as defined below), the Reconsideration Request (as defined below) and the Current Application were submitted before the 2022 Highway Ordinance became effective, each was considered under the 2009 Highway Ordinance.

proposed driveway in both applications would traverse lands not owned by Applicant but may be subject to an easement in favor of Applicant.

Following a site visit on September 21, 2022,² the Selectboard initially considered the Prior Application at its October 5, 2022 meeting. At that time, the Selectboard expressed concern that the sight distance at the proposed driveway access location was unsafe due to the high speed of travel on that portion of Pomfret Road, which is posted at 45 miles per hour.

Thereafter the Selectboard asked Applicant to provide a site plan showing the sight distance in both directions from the proposed driveway access location. A Highway Access Plan dated September 27, 2022, revised October 12, 2022 and attached hereto as Exhibit A (the "Highway Access Plan") was provided to the Selectboard on October 12, 2022. The Highway Access Plan indicates "150'+ minimum sight distance" to the south and "200'+ minimum sight distance" to the north of the proposed driveway access location.

The Selectboard denied the Prior Application at its October 19, 2022 meeting (the "Prior Decision"), concluding that the proposed access did not adequately protect and promote the safety of the traveling public as required by 19 V.S.A. 1111(b). In particular, the Selectboard determined that the sight distance south of the proposed driveway access location was insufficient and unsafe.

B. Reconsideration Request and Current Application

On January 6, 2023, Applicant submitted a request for reconsideration of the Prior Decision dated January 6, 2023 (the "Reconsideration Request"), together with the Current Application dated January 5, 2023. The Reconsideration Request asserted, among other things, that the "access location exceeds the required site distances of Section 5.3(k) of the [2009 Highway Ordinance and therefore] complies with 19 V.S.A. § 1111(b)", and urged the Selectboard to reconsider the Prior Decision.

As noted above, the Current Application is substantially similar to the Prior Application insofar as the proposed driveway access location and driveway configuration are essentially unchanged. The Current Application was accompanied by the Highway Access Plan and two photographs of the subject area.

At its February 1, 2023 meeting the Selectboard expressed its understanding that reconsideration requests must be made within thirty (30) days of the subject decision. As eighty (80) days had elapsed between the Prior Decision date and submission of the Reconsideration Request, the Selectboard dismissed the Reconsideration Request as untimely.³

² This initial site visit was conducted prior to receipt of the Prior Application but after the site had been staked to show the intended location of the proposed driveway. As discussed in Section I.C below, the Selectboard conducted an additional site visit on February 8, 2023 prior to rendering this Decision.

³ Although the Current Application is not substantially different than the Prior Application, and the Reconsideration Request was deemed untimely, upon request by Applicant's counsel, the Selectboard agreed that

C. Current Application Hearing

A hearing on the Current Application was held on February 1, 2023. All witnesses were duly sworn. Testimony was heard from Applicant's counsel that the 2009 Highway Ordinance required only a 150-foot sight distance, which the proposed driveway would meet. Applicant's counsel also stated that the proposed driveway was intended to serve a single parcel and that the anticipated traffic volume would be limited to one single-family lot.

The town Road Foreman testified that he made a site visit the previous fall and observed vegetation obstructing the southerly sight line and vehicles traveling above the 45 mile per hour posted speed limit. The Road Foreman also noted that anyone plowing the proposed driveway may need to back into Pomfret Road, creating additional safety concerns. A representative of the Applicant testified that he lived in the dwelling immediately north of the subject location for twenty-five years and understood the Road Foreman's concerns.

The Selectboard adjourned the hearing to its next regular meeting so that another site visit could be made.

Following a second site visit on February 8, 2023, the hearing was continued on February 15, 2023. Additional testimony was heard from Applicant's professional engineer that the sight distance to the south was 160 feet with no modifications, and 230 feet to the south if the ash tree straddling the highway right-of-way and near the southwest corner of the Gubbins Parcel (as defined below) were removed. The engineer also testified that were the driveway relocated north to the existing woods access road, the sight distance to the south would be increased to approximately 300 feet, but that the resulting driveway grade would exceed the maximum allowed by the Town of Pomfret Subdivision Regulations (the "Subdivision Regulations").⁴

The Selectboard closed the hearing on February 15, 2023, held a non-public deliberative session on March 1, 2023, and thereafter reached this Decision.

any materials in the Reconsideration Request not included in the Current Application would be deemed incorporated in the latter. The Selectboard views these additional materials as new or responsive information sufficient to avoid the application of administrative *res judicata* with respect to the Current Application.

⁴ Section 8.6.3 of the Subdivision Regulations limits the centerline grade of private driveways serving one to three parcels to 16%. This standard may be waived to 17% with approval of the Pomfret Planning Commission (Section 8.6.5). On October 11, 2022, the prospective purchaser of Applicant's Parcel provided an excerpt of the Highway Access Plan modified to show a hypothetical driveway alignment including a switchback that would satisfy the maximum grade requirement and intersect Pomfret Road at the existing woods access road, resulting in a greater sight distance to the south than the proposed driveway. See Exhibit B attached hereto. Following the Prior Decision, this alternative was suggested in a verbal communication with Applicant's professional engineer as being more suitable. The alternative location and alignment, however, does not fall entirely within the Right-of-Way (as defined below) and has not been formally proposed to the Selectboard for consideration.

II. Proposed Driveway Access Location and Configuration

The proposed driveway would intersect the east side of Pomfret Road approximately 2,200 feet north of Rudge Road. The intersection would be on the inside of a curve in Pomfret Road. The road curvature, vegetation and a rock outcropping south of the proposed intersection substantially limit the sight distance to the south.

The parcel that would benefit from the proposed driveway is a +/- 105.2 acre parcel (the "Applicant's Parcel", No. 0134-A) that was landlocked by a subdivision made by Applicant's predecessor-in-interest pursuant to the Minor Subdivision Preliminary Approval #ZP16-13 dated July 8, 2016 (the "Subdivision Approval"). The parcel over which the proposed driveway would traverse comprises the remaining lands of the subdivision (the "Gubbins Parcel", No. 0134), which was conveyed by Applicant's predecessor-in-interest to an unrelated party on July 18, 2016.

Following the Subdivision Approval, a land survey of the Gubbins Parcel dated July 11, 2016 was recorded in Slide 117B of the Pomfret Land Records (the "Subdivision Survey"). The Subdivision Approval and Subdivision Survey describe and depict, respectively, a 50-foot wide right-of-way benefitting Applicant's Parcel (the "Right-of-Way"). The Right-of-Way was not explicitly reserved in the conveyance deed from Applicant's predecessor-in-interest.

The Right-of-Way runs in a roughly straight line from Applicant's Parcel southwesterly across the Gubbins Parcel, intersecting Pomfret Road at the proposed driveway access location. The Right-of-Way terminates at the southwest corner of the portion of the Gubbins Parcel lying east of Pomfret Road, which corner abuts a separate parcel (the "Crowley Parcel", No. 0132) owned by another unrelated party.

Despite the absence of an explicit reservation of the Right-of-Way in the deed from Applicant's predecessor-in-interest, the Selectboard accepts the appearance of the Right-of-Way in the Subdivision Approval and the Subdivision Survey as prima facie evidence that Applicant has a property right to traverse the Gubbins Parcel at the proposed driveway access location, which is sufficient for the Selectboard to consider the Current Application and render this Decision. The Selectboard expresses no view as to whether the Right-of-Way confers a conclusive property right of the Applicant to traverse the Gubbins Parcel at the proposed driveway access location.

III. The 2009 Highway Ordinance

Section 5.3(k) of the 2009 Highway Ordinance reads in relevant part that "[m]inimum site distance [of driveways and access roads entering upon a public highway] shall be 150 feet in both directions when viewed from a point 15 feet back from edge of the travelled way."

Applicant has argued that this provision creates a ceiling on the sight distance that the Selectboard may require for any proposed driveway or access road in Pomfret, including Applicant's proposed driveway. The Selectboard disagrees with this position for the following reasons:

- *State Law Conflict.* 19 V.S.A. 1111(b) requires, among other things, that Vermont municipalities protect and promote the safety of the traveling public. Municipal rules must comply with applicable state law. Pomfret roads are posted as low as 25 miles per hour and as high as 50 miles per hour. A blanket 150-foot maximum sight distance would not generally protect and promote the safety of the traveling public, particularly in locations with higher posted speed limits. Either this provision was not intended as a town-wide maximum or it is void for being contrary to state law.
- *State Standards Conflict.* The Vermont Agency of Transportation’s Standards for Residential Drives (No. B-71A) reinforce the Selectboard’s conclusion that the 2009 Highway Ordinance could not have intended a one-size-fits-all, town-wide approach to sight distance. These standards suggest a 360-foot sight distance for a driveway intersecting a 45 mile per hour posted road, as is the case here. Even the standard for a 25 mile per hour posted road – 155 feet – is greater than what Applicant argues is the maximum sight distance that may be required of any driveway anywhere in Pomfret.
- *Plain Language Reading.* In construing its 2009 Highway Ordinance, the Selectboard seeks to give effect to its plain language. The plain language of the 2009 Highway Ordinance describes the site distance standard as a “minimum”. By negative implication, if the 2009 Highway Ordinance describes a minimum site distance, then the Selectboard may impose a greater site distance in appropriate circumstances, but it may not approve a lesser site distance absent a waiver or variance.

For these reasons, the Selectboard concludes that Section 5.3(k) of the 2009 Highway Ordinance provides a floor for the minimum allowable sight distance for driveways and access roads in Pomfret, not a ceiling for what may be required. In the alternative, the Selectboard concludes that the sight distance provision in Section 5.3(k) is void for being contrary to state statute and the controlling rule is 19 V.S.A 1111(b)’s requirement that the safety of the traveling public be adequately protected and promoted.

IV. Decision

Based on the Current Application, materials incorporated by reference from the Reconsideration Request, testimony of witnesses, the findings and conclusions described above, and **subject to the conditions and limitations specified in Section V below**, a permit to construct a residential driveway as depicted in the Highway Access Plan is **approved**.

V. Conditions and Limitations

The decision described above is subject to the following conditions and limitations, which shall be binding on Applicant, its successors and assigns:

- A. The first 20 feet of the driveway shall conform in all material respects to the materials included in the Current Application, Reconsideration Request and the testimony of witnesses, except as expressly modified herein. Any material

change to the foregoing shall require further review and approval by the Selectboard under the regulations applicable at that time.

By way of example and not limitation, a driveway that serves more than one parcel or more than one dwelling would constitute a material change subject to further review and approval by the Selectboard.

- B. The first 20 feet of the driveway shall conform to the standards set forth in Section 5.3(k) of the 2009 Highway Ordinance, except as expressly modified herein.
- C. In order to adequately protect and promote the safety of the traveling public as required by 19 V.S.A. 1111(b), and consistent with Section 5.3(k) of the 2009 Highway Ordinance, prior to construction of the first 20 feet of the driveway, the following visual obstructions shall be removed:
 - 1. The ash tree straddling the highway right-of-way and near the southwest corner of the Gubbins Parcel. Removal shall be in accordance with the Town of Pomfret Tree Policy adopted August 17, 2022 and attached hereto as Exhibit C (the “Tree Policy”); and
 - 2. Additional vegetation, embankment and/or other objects along the common boundary between the Gubbins Parcel and the Crowley Parcel, or within the highway right-of-way on the east side of Pomfret Road in order to create a **minimum 280-foot sight distance** to the south when viewed from a point 15 feet back from the edge of the traveled way (the “Minimum Sight Distance”).⁵

It is noted that approval by other private landowner(s) may be required to undertake the activities described in this Section V.C and Section V.D below. The Selectboard expresses no view as to whether any such approval is required and does not purport to grant any such approval by this Decision.

- D. By acceptance of the permit approved by this Decision, Applicant for itself, its successors and assigns agrees to undertake from time to time such actions as are necessary to maintain the Minimum Sight Distance for so long as the first 20 feet of the driveway remain in use.

⁵ The Selectboard believes the Agency of Transportation’s suggested 360-foot sight distance on 45 mile per hour posted roads adequately protects and promotes the safety of the traveling public at the proposed driveway access location as required by 19 V.S.A. 1111(b). The existing sight distance to the north meets or exceeds this standard. To the south, the Selectboard feels a downward deviation is acceptable for two reasons: (1) a driveway serving a single parcel or dwelling is anticipated to have a limited traffic volume and (2) the more sight distance constrained northbound lane of Pomfret Road is moderately upgrade, thereby reducing the stopping distance necessary for vehicles traveling in that direction.

- E. The standards, restrictions and conditions set forth in the form of Application for Town Highway Right-of-Way Crossing Permit adopted July 6, 2022 and attached hereto as Exhibit D shall apply to all work performed in the highway right-of-way.
- F. Neither this Decision nor the permit approved herein shall be construed as a conveyance by the town of any interest in the town highway right-of-way, or a waiver or relinquishment of its authority therein and thereover, and the town shall continue to own, operate, control and maintain the town highway right-of-way consistent with its current practice and applicable federal, state and local laws, whether or not the same have been expressly referenced herein.
- G. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses, or activities with the 2009 Highway Ordinance, the 2022 Highway Ordinance, the Subdivision Regulations, the Tree Policy, or any other applicable federal, state and local laws was not considered and is not addressed in this Decision. Any prior decision of the Selectboard or other agent or tribunal of the town affecting the subject location shall continue in full force and effect, except as otherwise provided herein.

[Remainder of page intentionally blank. Signature page follows.]

This Decision approved at Pomfret, Vermont, this 6th day of March, 2023, and signed by the chair of the Pomfret Selectboard on its behalf pursuant to 24 V.S.A. 1141.



Emily Grube, chair
Pomfret Selectboard

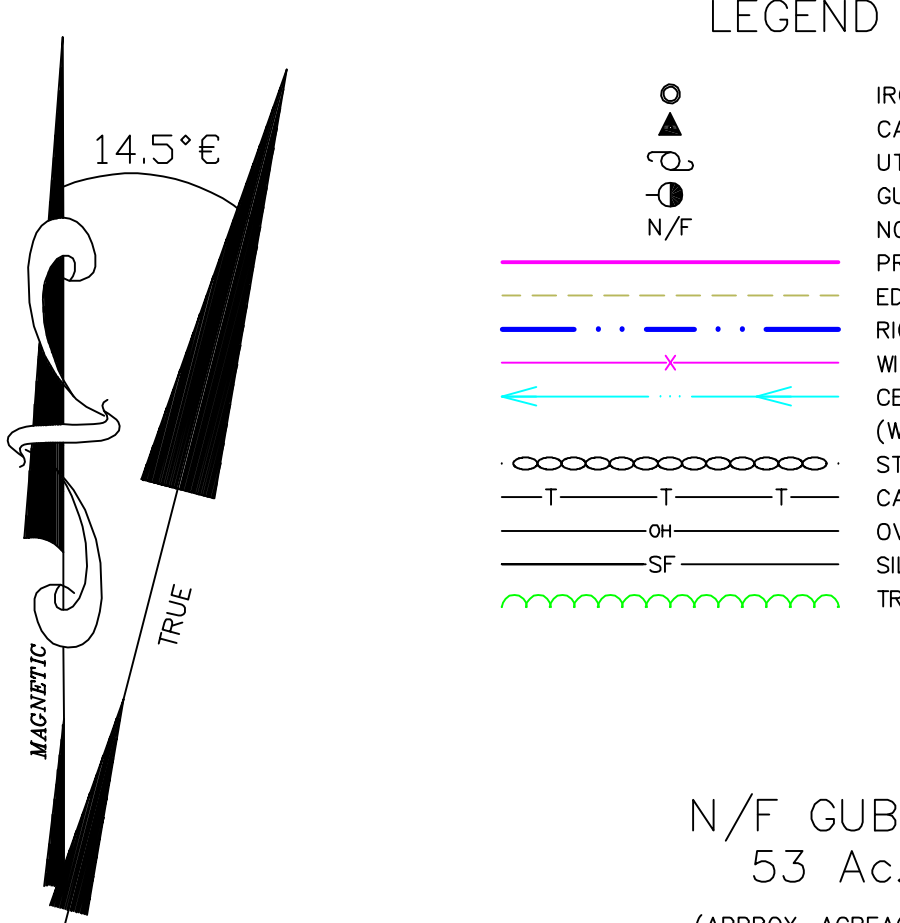
Selectboard members Emily Grube, John Peters, Benjamin Brickner, Steve Chamberlin and Jonathan Harrington voted in the affirmative.

NOTICE: This Decision may be reviewed in the manner provided by law pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

EXHIBIT A

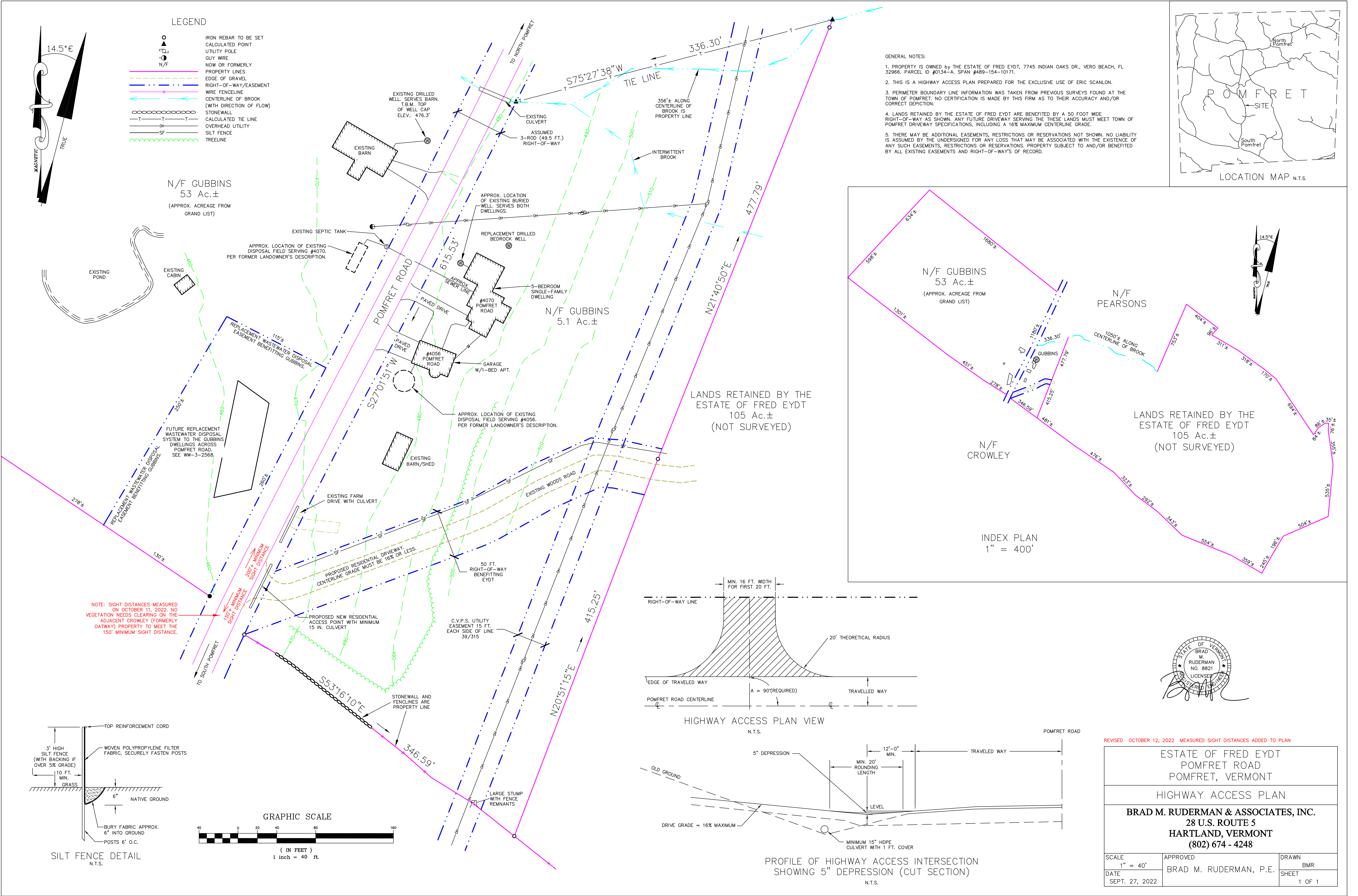
Highway Access Plan

Attached.

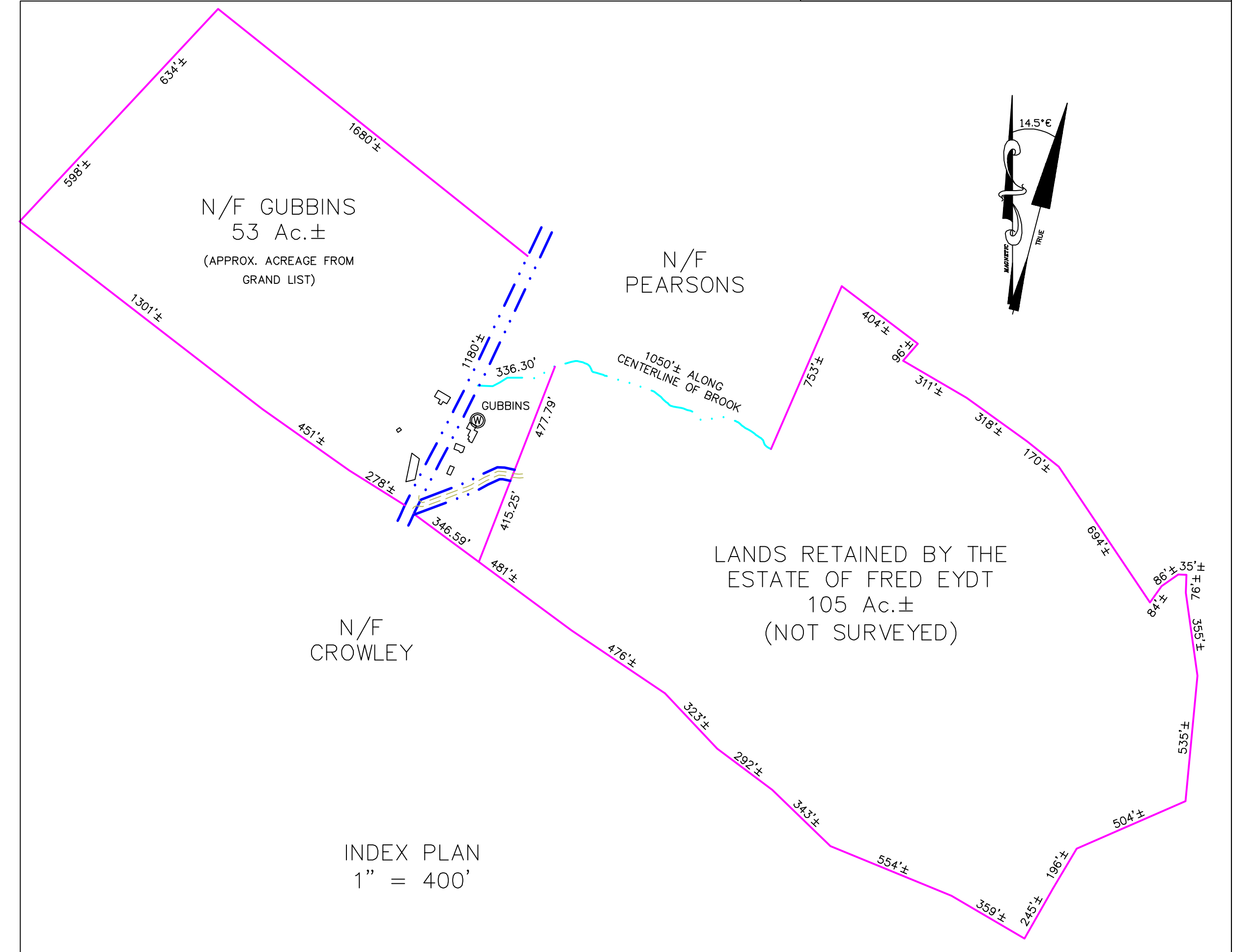
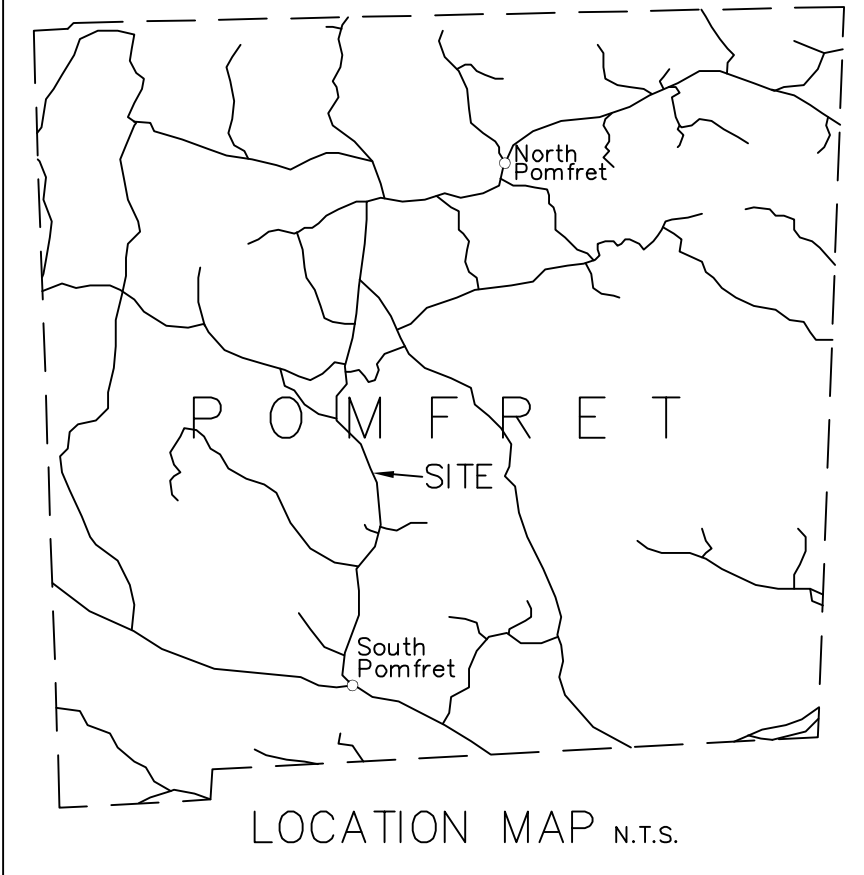


- LEGEND**
- IRON REBAR TO BE SET
 - CALCULATED POINT
 - UTILITY POLE
 - NOW OR FORMERLY
 - N/F PROPERTY LINES
 - EDGE OF GRAVEL
 - RIGHT-OF-WAY/EASEMENT
 - WIRE FENCELINE
 - CENTERLINE OF BROOK (WITH DIRECTION OF FLOW)
 - STONEWALL
 - CALCULATED TIE LINE
 - OVERHEAD UTILITY
 - SILT FENCE
 - TREE LINE

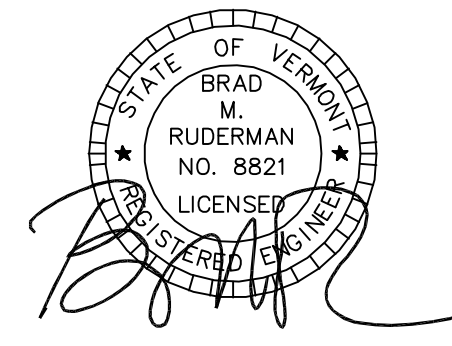
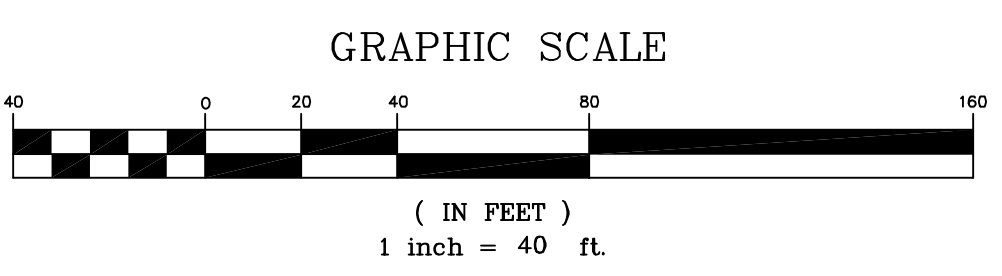
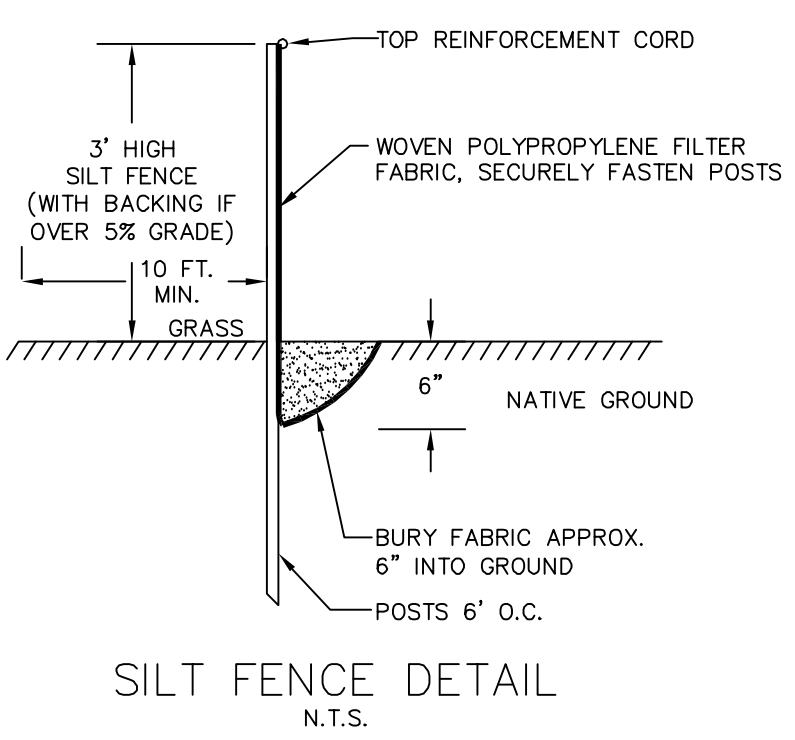
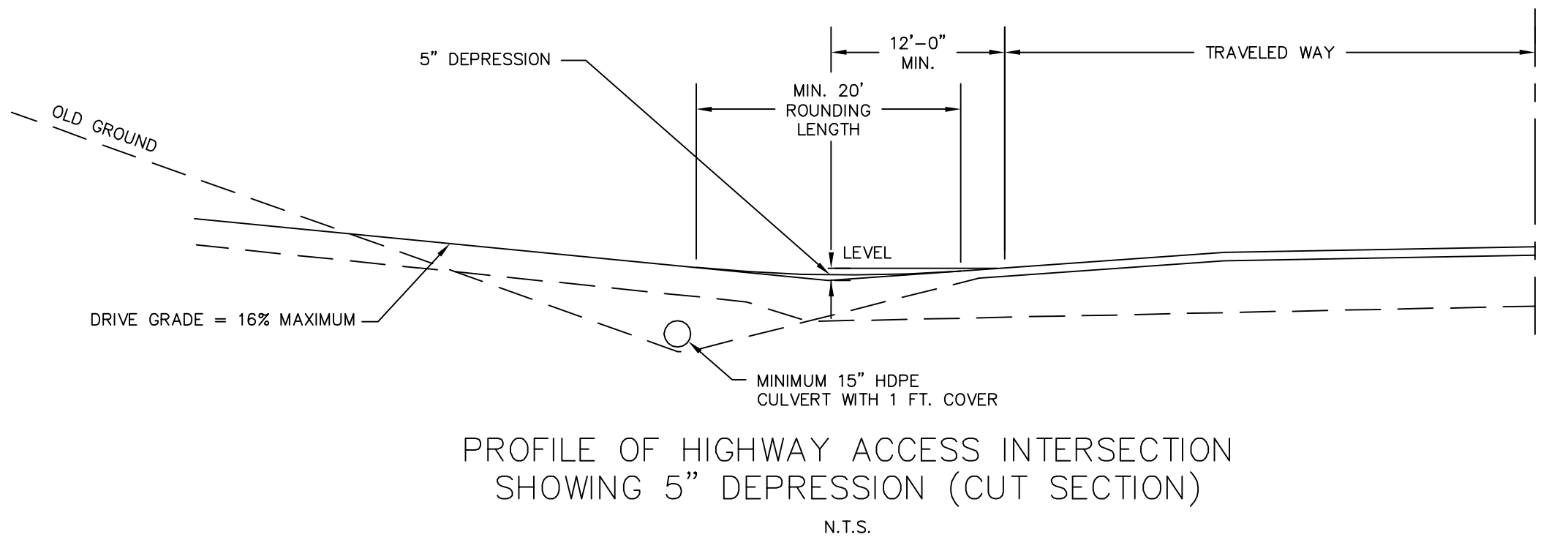
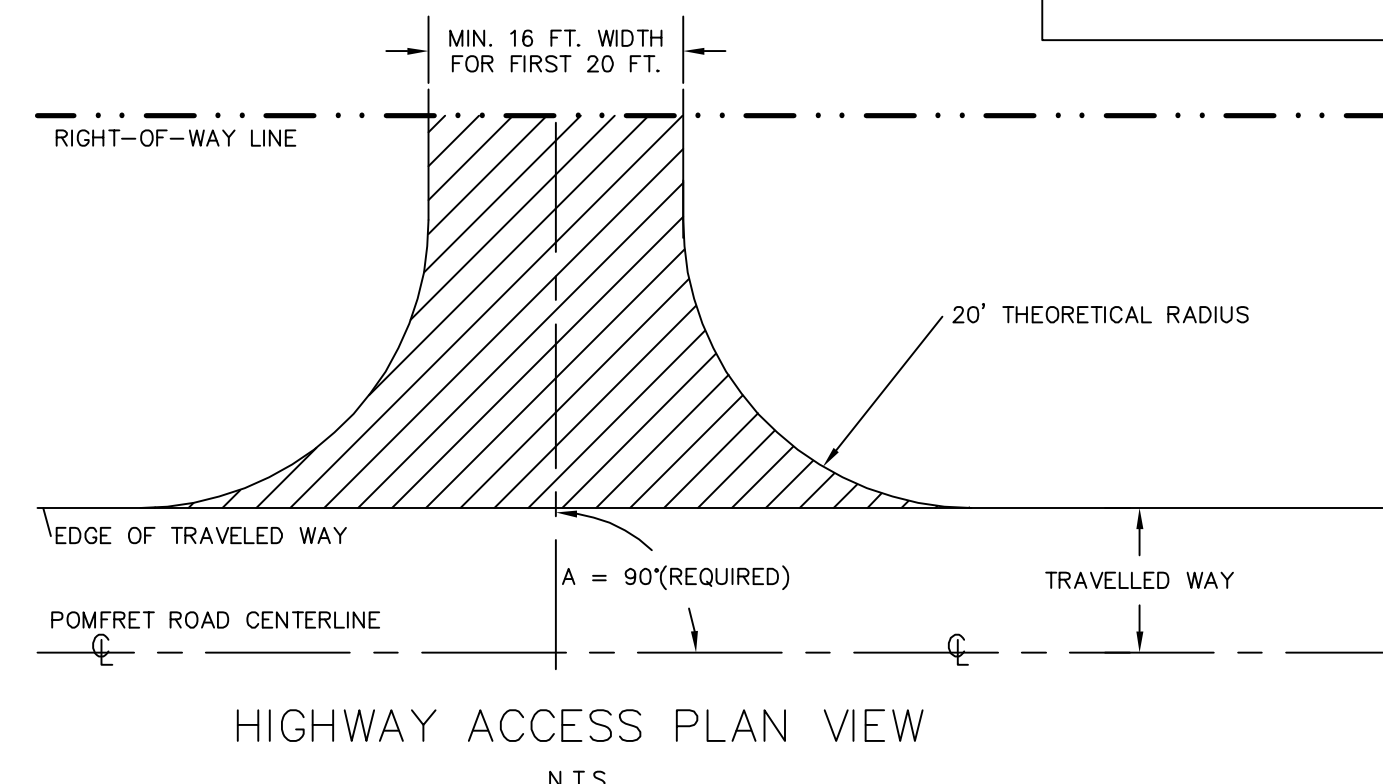
N/F GUBBINS
53 Ac.±
(APPROX. ACREAGE FROM GRAND LIST)



- GENERAL NOTES:**
- PROPERTY IS OWNED BY THE ESTATE OF FRED EYDT, 7745 INDIAN OAKS DR., VERO BEACH, FL 32966. PARCEL ID #0134-A. SPAN #489-154-10171.
 - THIS IS A HIGHWAY ACCESS PLAN PREPARED FOR THE EXCLUSIVE USE OF ERIC SCANLON.
 - PERIMETER BOUNDARY LINE INFORMATION WAS TAKEN FROM PREVIOUS SURVEYS FOUND AT THE TOWN OF POMFRET. NO CERTIFICATION IS MADE BY THIS FIRM AS TO THEIR ACCURACY AND/OR CORRECT DEPICTION.
 - LANDS RETAINED BY THE ESTATE OF FRED EYDT ARE BENEFITED BY A 50 FOOT WIDE RIGHT-OF-WAY AS SHOWN. ANY FUTURE DRIVEWAY SERVING THESE LANDS MUST MEET TOWN OF POMFRET DRIVEWAY SPECIFICATIONS, INCLUDING A 16% MAXIMUM CENTERLINE GRADE.
 - THERE MAY BE ADDITIONAL EASEMENTS, RESTRICTIONS OR RESERVATIONS NOT SHOWN. NO LIABILITY IS ASSUMED BY THE UNDERSIGNED FOR ANY LOSS THAT MAY BE ASSOCIATED WITH THE EXISTENCE OF ANY SUCH EASEMENTS, RESTRICTIONS OR RESERVATIONS. PROPERTY SUBJECT TO AND/OR BENEFITED BY ALL EXISTING EASEMENTS AND RIGHT-OF-WAYS OF RECORD.



NOTE: SIGHT DISTANCES MEASURED ON OCTOBER 11, 2022. NO VEGETATION NEEDS CLEARING ON THE ADJACENT CROWLEY (FORMERLY OATWAY) PROPERTY TO MEET THE 150' MINIMUM SIGHT DISTANCE.



REVISED OCTOBER 12, 2022 MEASURED SIGHT DISTANCES ADDED TO PLAN

ESTATE OF FRED EYDT POMFRET ROAD POMFRET, VERMONT		
HIGHWAY ACCESS PLAN		
BRAD M. RUDERMAN & ASSOCIATES, INC. 28 U.S. ROUTE 5 HARTLAND, VERMONT (802) 674 - 4248		
SCALE 1" = 40'	APPROVED BRAD M. RUDERMAN, P.E.	DRAWN BMR
DATE SEPT. 27, 2022		SHEET 1 OF 1

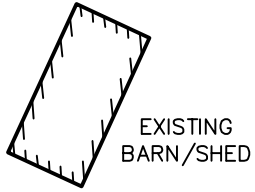
EXHIBIT B

Modified Highway Access Plan

Attached.

PLACEMENT
DISPOSAL
THE GUBBINS
ACROSS
ROAD.
3-2568.

DISPOSAL FIELD SERVING #4056.
PER FORMER LANDOWNER'S DESCRIPTION.



REPLACE EXISTING CULVERT
WITH NEW 18 IN. P.E. PIPE.
MIN. 60 FT. LENGTH

EXISTING & PROPOSED
50' R.O.W.'S MERGE

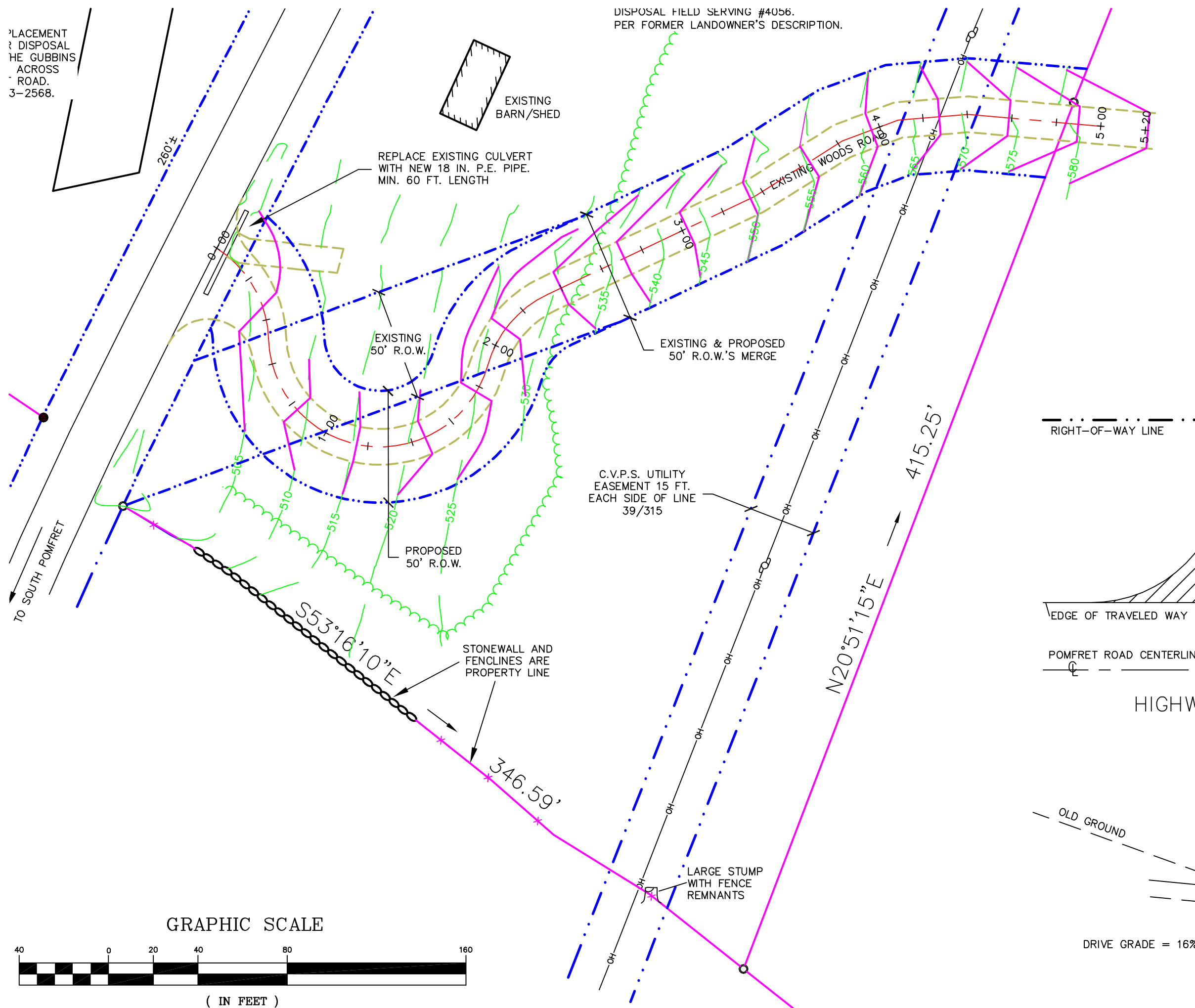
C.V.P.S. UTILITY
EASEMENT 15 FT.
EACH SIDE OF LINE
39/315

PROPOSED
50' R.O.W.

EXISTING
50' R.O.W.

STONEWALL AND
FENCE LINES ARE
PROPERTY LINE

LARGE STUMP
WITH FENCE
REMNANTS



RIGHT-OF-WAY LINE

EDGE OF TRAVELED WAY

POMFRET ROAD CENTERLINE

HIGHWAY

OLD GROUND

DRIVE GRADE = 16%

GRAPHIC SCALE



(IN FEET)
1 inch = 40 ft.

EXHIBIT C

Town of Pomfret Tree Policy

Attached.

Town of Pomfret Tree Policy

Adopted August 17, 2022

Objective

Trees and stone walls along our Town highways contribute significantly to the beauty of Pomfret. Certain shade trees and roadside plantings along the Town right-of-way are protected by state statute. However, proper tree trimming and, where warranted, tree removal, are essential for safe movement of people and vehicles. The purpose of this policy is to provide guidance to Town officials and information to residents and landowners about maintenance, improvements, and alterations to Class 2 and 3 Town highways.

Background

Right-of-way: Municipalities own an easement, or right-of-way, for highway purposes. The width of a highway is usually three rods (49.5 feet), or 24.75 feet each side of the centerline of the currently existing highway but may be wider. For the public benefit of a road, the abutting landowner is stopped from exercising his or her full rights to the land under a right-of-way. The municipality has the authority to remove trees and other growing things, straighten curves, expand the traveled portion, and maintain or improve the road surface, all without the permission of the owners of the land the easement crosses, provided the work is done within the limits of the easement. Towns are obligated to maintain a road to certain standards that are dictated by a road's classification and by state statute. The landowner has rights to remove trees long the public right-of-way, providing that the trees are officially not designated as shade trees by the town.

Public place: Includes cemeteries, greens, parks, lawns around public buildings. Requirements for public shade tree maintenance are similar to those for highways.

Tree Warden: The Tree Warden in each town is appointed by the Selectboard. This person is responsible for preserving shade and ornamental trees in the town public ways and places, determining necessary care of trees, controlling of tree infestations, deciding when diseased, dead, or dying trees should be removed and, planning when new trees are appropriate. The Tree Warden shall hold public hearings when the removal of a shade tree is proposed.

Selectboard: Is responsible for maintaining the usefulness and safety of town roads and will decide on appeals of certain of the Tree Warden's decisions.

Highway Department: Performs or oversees road maintenance, including tree and brush removal.

Pomfret's policy on right-of-way clearing and trees is as follows:

(1) The Town shall comply with State statutes and regulations when performing road work. While the Town is obligated to maintain the usefulness and safety of its roads, it is also interested in preserving their aesthetic qualities.

(2) Except in emergencies, road maintenance that proposes removal of trees from the right-of-way will be reviewed by the Tree Warden. With the Road Commissioner/Road Foreman, the Tree Warden will view trees that have been identified for removal and provide a report to the Selectboard and the Highway Department. The Selectboard and the Highway Department will file the report in the Town Office. The Selectboard will notify the landowners by letter if the report recommends tree removal and hold a public hearing if necessary.

(3) Except in emergencies, landowners will be notified two weeks before work is scheduled in the public right-of-way across their land: tree cutting, road straightening or widening, and any work that will significantly alter the road or right-of-way. The letter will advise landowners of planned work, the tentative schedule for it, and will inform individuals of their opportunity to express their concerns regarding the work. Similar notification of proposed major road reconstruction projects will be mailed at least 60 days before the work is to begin.

(4) Actions that will be taken by the Road Commissioner or Road Foreman before cutting trees or shrubs:

- Confirm the width of the right-of-way, and measure and mark its edges.
- Consult with landowners.
- Describe the location and proposed work to the Tree Warden.
- Request the Tree Warden's opinion whether the proposed work will require cutting of shade, fruit, or ornamental trees or shrubs, and whether such plants are in a residential area. If such plants are to be cut, before obtaining written permission from the Tree Warden, then notify the Selectboard.
- Require a certificate of insurance before a contractor begins any cutting.
- Roadside mowing will maintain clearances for snow removal and road visibility for drivers.
- Brush and trees that could interfere with the operation of Town equipment may be removed.

(5) Actions to be taken by the Tree Warden:

- Consult with the Road Commissioner or Road Foreman on proposed right-of-way clearing.
- If the cutting of public shade trees is recommended, hold a public hearing. When appropriate, issue written permission to the Road Commissioner or Road Foreman to remove trees.

(6) Actions to be taken by the Selectboard:

- Decide cases involving cutting of shade tree, fruit, or ornamental trees or shrubs, after the Tree Warden's hearing, when the Tree Warden is precluded from deciding the case or an interested party requests in writing that the Selectboard do so.

Invasive Plant Management

The Tree Warden may make suggestions on management of invasive plants along the Town right-of-way.

Shade Tree Planting Guidelines

Trees planted by the town are officially designated as shade trees, with the protections outlined in the state statutes. All species of shade trees shall be selected from recommendations by the Vermont Urban & Community Forestry. For tree species to be planted, see Vermont Tree Selection Guide: https://vtcommunityforestry.org/sites/default/files/pictures/complete_vt_tree_selection_guide_2019.pdf.

Funding for Shade Tree Plantings and Removal

The Pomfret Selectboard shall create a town tree removal fund for use by the Tree Warden in the implementation of their duty. Funds in this account may be used by the Town Road Commissioner or Road Foreman, in consultation with of the Tree Warden. The tree removal fund will be important when ash trees damaged by the invasive Emerald Ash Borer need to be removed along the Town right-of-way.

Clean up

Materials cut from the Town right-of-way will be removed as reasonably appropriate.

Material from chipping can be spread on abutters' property with their prior approval.

Logs of an agreed-upon length may be left on abutters' property only with landowners' approval. Any wood from trees less than 6 inches DBH (Diameter Breast Height) that are removed by the Town belongs to the Town. Any wood from trees removed by the landowner, with approval of Tree Warden, belongs to the landowner.

Permit for Public Tree Removal in Pomfret


A permit for public tree removal must be approved by the Pomfret Tree Warden. Here is a link to a Town form that may be used to make such a request see: [Permit for Public Tree Removal](#).

Changes in Pomfret Tree Policy

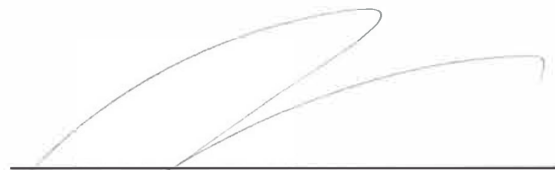
The Pomfret Board of Selectmen reserves the right to establish internal guidelines consistent with this policy and to amend the policy from time to time without future notice.

Adopted this 17th day of August, 2022

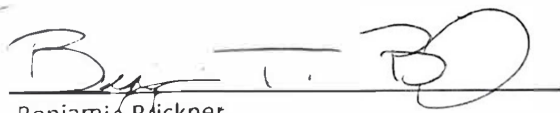
POMFRET SELECTBOARD



Emily Grube, Chair



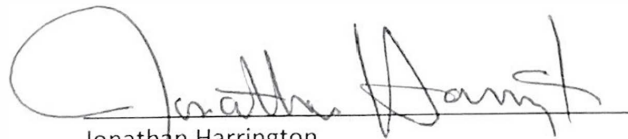
John Peters Jr., Vice-Chair



Benjamin Bjickner



Steve Chamberlin



Jonathan Harrington

EXHIBIT D

Form of Application for Town
Highway Right-of-Way Crossing Permit

Attached.

TOWN OF POMFRET

APPLICATION FOR TOWN HIGHWAY RIGHT-OF-WAY CROSSING PERMIT

(Application fee of \$100 payable to Town of Pomfret)

Landowner Name: _____ Phone: _____ Email: _____

Street Address: _____ State: _____ Zip: _____

The undersigned requests permission to cross over / under (circle one) the right-of-way of _____ (road name)

at _____ (describe precise location)

for the purpose of _____ (describe specific purpose).

The crossing will be approximately _____ (feet) from the intersection of _____ (nearest intersection).

(PROVIDE DETAILED SKETCH OF CROSSING LOCATION ABOVE)

The following standards, restrictions and conditions shall apply to all crossings of a town right-of-way unless waived in writing:

1. Applicant shall contact Dig Safe at 811 at least 48 hours before, but not more than 30 days before, starting excavation activities at any location.
2. All work in the right-of-way shall be performed during daylight hours and shall cease on weekends, holidays, during severe weather events, and between December 1 and April 15, maintenance and emergency repairs excepted.
3. Applicant shall be responsible for all damages to persons, public or private utilities and property resulting from any work done under this permit, even if the Applicant's contractor performs the work.
4. Applicant must comply with all federal and state statutes or regulations and all local ordinances controlling occupancy of public highways. In the event of a conflict, the more restrictive provision shall apply.
5. All excavation and backfilling shall be done under the supervision and to the specification of the town's designated agent.
6. Applicant shall erect and maintain barriers needed to protect the traveling public. The barriers shall be properly lighted at night and must be MUTCD (Manual on Uniform Traffic Control Devices) compliant.
7. Applicant shall do no work nor place any structures or obstacles in the right-of-way, except as authorized by this permit.
8. Applicant shall be responsible to rebuild, repair, restore and make good all injuries or damage to any portion of the right-of-way caused by the permitted work, for a minimum of eighteen (18) months after final inspection by the Town.

Additional standards, restrictions or conditions:

The applicant agrees to adhere to the standards, restrictions and conditions forming a part of this permit.

Applicant Signature Applicant Printed Name Date

Application fee of \$100 received on _____, 20____ by _____.

This permit is issued in accordance with 19 V.S.A. 1111(c) and may be voided in the event of misrepresentation, substantial inaccuracy or failure to undertake construction of the right-of-way crossing within one year of the date of approval.

PERMIT APPROVED this _____ day of _____, 20_____.

Road Commissioner Selectboard Chair

FINAL INSPECTION. The work described in this permit has been constructed in accordance with the above standards, restrictions and conditions and is acceptable under State and local regulations.

Road Commissioner Selectboard Chair Date