

TOWN OF POMFRET
Selectboard

Memorandum of Decision

Property Address: 19 Dinsmoor Road
Pomfret, Vermont

Parcel No.: 3918

Parcel Size: +/- 4.75 acres

Property Owner: Andrew A. and Kathy J. Mann
P.O. Box 20
South Pomfret, Vermont 05067

Applicant: Andrew A. and Kathy J. Mann
P.O. Box 20
South Pomfret, Vermont 05067

This Memorandum of Decision (this “Decision”) is issued by the Selectboard of the Town of Pomfret (the “Selectboard”), in connection with final approval of a permit (the “Permit”) issued upon an Application for Town Highway Access Road Permit (the “Mann Application”) dated July 17, 2023, by Andrew A. and Kathy J. Mann (“Applicant”). The Permit, together with the prior decision of the Selectboard preliminarily approving the same (the “Prior Decision”), is attached as Exhibit A.

For the reasons discussed below, the Selectboard concludes that the work described in the Permit, as conditioned and limited by the Prior Decision, as clarified by the Clarification Letter (as defined below), and as subject to the waiver, conditions and limitations described below, has been constructed in accordance with the conditions, standards and restrictions described in the foregoing documents. Accordingly, the Permit is finally approved. The Selectboard directs its chair to sign the Permit consistent with this Decision and on the Selectboard’s behalf.

I. Procedural History

This is the story of a residential driveway shared by three neighbors who do not get along very well. Playing the unwanted role of intermediary is the Town of Pomfret (the “Town”), a humble Vermont municipality with a \$500,000 non-highway budget that has incurred an unfortunate fraction of this amount in legal fees and other expenses on this matter to date.

Having no town manager or administrator to support them, Pomfret’s citizen Selectboard members try as they might to do right by the Town and its inhabitants, all while seeking to avoid the type of protracted conflict in which nobody wins. Regrettably, we have been

unsuccessful in brokering an agreement among the parties and now must make this final Decision.

A. The Early Days

Dinsmoor Road is a shared private driveway that enables access to Bartlett Brook Road, a town highway (No. 39). The underlying land is owned by Applicant, but the driveway itself serves Applicant's home and two other parcels pursuant to an easement and right-of-way recorded in Book 36, Pages 137-139 of the Pomfret Land Records (the "Existing Easement").

In or before early October 2022, property owner Andy Mann made changes to the driveway at its intersection with Bartlett Brook Road, including replacement of a failed culvert pipe, installation of wooden posts on either side of the driveway opening and removal of hardpack south of the driveway, an area that has come to be known as the hotly contested "South Apron". As a result of the latter two changes, vehicles could no longer traverse the South Apron and were forced to enter Dinsmoor Road between the wooden posts.

In an October 7, 2022 email, Hillary White, Applicant's uphill neighbor and grantee under the Existing Easement, objected to the latter two changes, which she argued made it more difficult for vehicles to enter and exit the driveway and therefore "present[ed] significant risk" in the event of an emergency. They also were within the Town's right-of-way and Mr. Mann had not obtained permission from the Town before making them. A contemporaneous photo of the subject area provided by Dr. White is attached as Exhibit B.

On October 19, 2022, Mr. Mann requested permission to make additional changes to Dinsmoor Road in the Town's right-of-way. Mr. Mann requested, and the Selectboard approved, "(1) remov[ing] the existing wood posts and rock at the intersection of Dinsmoor Road and Bartlett Brook Road, and (2) replac[ing] the existing grass [in the South Apron] with 3" stone at the existing grade".¹

Dr. White objected to these changes as well and on November 1, 2022, submitted an Application for Town Highway Access Road Permit to restore the South Apron to its prior condition. At its November 2, 2022 meeting, the Selectboard scheduled a site visit for November 4, 2022.²

At the site visit, Mr. Mann objected to Dr. White's application in part because the South Apron, according to Mr. Mann, extends beyond the metes and bounds of the Existing Easement.³

¹ Town of Pomfret Selectboard, Regular Meeting Minutes, October 19, 2022, *available* at https://pomfretvt.us/index.php/download_file/view/2036/265/.

² Town of Pomfret Selectboard, Regular Meeting Minutes, November 2, 2022, *available* at https://pomfretvt.us/index.php/download_file/view/2039/265/.

³ Applicant and White are engaged in a separate dispute concerning their respective rights in the Existing Easement and whether these rights extend into the Town's right-of-way. The particulars of this dispute are beyond the scope of this Decision but are subject to pending litigation to which the Town of Pomfret has been made a

Following the site visit, however, in a November 7, 2022 email, Mr. Mann moderated his position and described Dr. White's proposal as "reasonable" but noted details remaining to be confirmed.

To that end, on November 9, 2022, the Selectboard dismissed Dr. White's application without consideration of the merits and instead encouraged the parties to develop a mutually agreeable, joint proposal for review and approval by the Road Foreman as the Selectboard's designee.⁴

Rather than make a joint submission, Mr. Mann made an individual one on November 16, 2022. Dr. White informed the Selectboard on December 1, 2022 that the plan she developed had been rejected by Mr. Mann. As Mr. Mann's proposal was not in the form of an actionable permit application, the Selectboard took no action at that time.

There the matter lay until the following spring.

On April 4, 2023, Mr. Mann requested permission from the Selectboard to place red reflectors in the Town's right-of-way, in a location that would impede traffic on the South Apron. Dr. White and Alison Sander (Mr. Mann's other uphill neighbor and Existing Easement beneficiary) objected to the request. At its April 5, 2023 meeting, the Selectboard declined to approve the same and reiterated its desire to receive a joint proposal from the parties.⁵

Throughout the summer, Selectboard members received or were copied on numerous emails from the parties. Several described objects allegedly placed or removed by other parties in the Town's right-of-way (reflectors, sawhorses, landscape timbers, salt boxes, etc.). Others debated whether Mr. Mann's activities had altered the driveway or merely restored it to a prior state. And still others offered lengthy interpretations of the parties' relative private property rights.

At its July 5, 2023 meeting, the Selectboard referred complaints about objects placed on Dinsmoor Road in the Town's right-of-way to the Road Foreman to determine if any posed a hazard to the town highway or to the traveling public.⁶ By summer's end, most such objects had been removed from the Town's right-of-way and none were deemed a hazard.

B. Summer 2023 Permit Applications

On July 17, 2023, Mr. Mann submitted the Mann Application on behalf of Applicant. The procedural history of the Mann Application through October 13, 2023 (the date on which the

party by Applicant. See *Hillary White et al. v. Andrew Mann et al.*, No. 23-CV-03473 (Vt. Super. Ct.).

⁴ Town of Pomfret Selectboard, Special Meeting Minutes, November 9, 2022, *available* at https://pomfretvt.us/index.php/download_file/view/2046/265/.

⁵ Town of Pomfret Selectboard, Regular Meeting Minutes, April 5, 2023, *available* at https://pomfretvt.us/index.php/download_file/view/2150/265/.

⁶ Town of Pomfret Selectboard, Regular Meeting Minutes, July 5, 2023, *available* at https://pomfretvt.us/index.php/download_file/view/2218/265/.

Prior Decision was issued) is more particularly described in the Prior Decision and incorporated by reference herein.

Reference is also made to a concurrent decision of the Selectboard (the “White Decision”) on an Application for Town Highway Access Road Permit (the “White Application”) dated August 7, 2023, by Hillary D. White and Philip Dechert (collectively, “White”). The White Decision is attached as Exhibit C.

The Mann Application and the White Application presented competing proposals to modify Dinsmoor Road where it intersects Bartlett Brook Road. Ultimately, the Selectboard approved the permit sought by the Mann Application and denied the permit sought by the White Application, in each case for reasons explained in the Prior Decision and the White Decision, respectively.

In short, while the work proposed in each application would have improved the driveway relative to its then-current state, the Selectboard determined that the work proposed by the Mann Application more closely aligned with applicable standards of the Pomfret Highway Ordinance (the “Highway Ordinance”).⁷

C. Request for Clarification

On November 8, 2023, counsel to White sought clarification of certain provisions of the Mann Decision by email attached as Exhibit D. The Selectboard addressed these points in a reply letter dated November 29, 2023 and attached as Exhibit E (the “Clarification Letter”). Among other things, the Clarification Letter extended the original deadline to complete the permitted work until May 31, 2024.

D. Further Proceedings

On May 28, 2024, Applicant stated by email that “the permitted construction of the Dinsmoor R[oad] driveway is complete,” with the significant caveat that Applicant did not complete excavation of an embankment north of Dinsmoor Road (the “Embankment”) as doing so “would require removal of a large ash tree”.

By not fully excavating the Embankment as contemplated in the Prior Decision, the entrance to Dinsmoor Road – required by the Highway Ordinance to be at least 16 feet wide and 20 feet deep – was missing an approximately 3-foot isosceles right triangle in the area farthest from the town highway. Applicant argued this non-compliance “does not appear to be material” as the unexcavated area “would be little used, if used at all.”

A hearing on final approval of the Permit was held on June 18, 2024, during a special meeting of the Selectboard. The events of this hearing are more particularly described in Section 5(f) of the

⁷ Town of Pomfret, Highway Ordinance, adopted June 21, 2023, *available at* https://pomfretvt.us/files/4016/8740/6683/Pomfret_Highway_Ordinance_as_adopted_2023-06-21.pdf.

related Selectboard meeting minutes.⁸ At a site visit preceding the hearing, it was observed that while the driveway entrance was approximately 22 feet wide (more than the 16 feet required by the Highway Ordinance), the Embankment was not sufficiently excavated such that the entrance was at least 20 feet deep across 16 feet of opening. Tim Ulman and Mary Ellen Parkman of Northwoods Excavating, Inc., a commercial and residential site work contractor based in Thetford Center, were present at the site visit and hearing where they explained that the Embankment was already steeper than advisable and that further excavation would increase the risk of erosion into the driveway and runoff into the town highway unless the Embankment was sloped back by at least 17 feet. Mr. Ulman further explained how Applicant's non-compliance could be remedied, the feasibility of doing so, and the work necessary to do so, including further excavation of the Embankment to moderate its slope and enlarge the traveled way of Dinsmoor Road.

Following the June 18 hearing, the Selectboard deliberated and made a preliminary determination that most conditions of the Permit has been met (or were moot) and that all but one would be satisfied if the following minor modifications were made: (1) finish grading to provide adequate drainage, (2) ditching along the north edge of the driveway to capture runoff, and (3) stabilization of the Embankment with mulch matting. The foregoing was relayed to the parties via counsel in an email dated June 21, 2024 and attached as Exhibit F. The Selectboard also indicated that once the foregoing minor modifications were made, it would consider partially waiving the remaining condition – the 16-foot wide by 20-foot deep entrance requirement – to avoid further excavation and possible destabilization of the Embankment.⁹

On July 3, 2024, counsel to Applicant stated by email his client's belief that the requested modifications had been made. At its July 17, 2024 meeting, the Selectboard concluded that while the three minor modifications described above had been completed, a full 16-foot by 20-foot wide entrance was necessary and that waiver of the same was not appropriate at that time. As a result, to comply with the Highway Ordinance, the Selectboard determined it was necessary to (1) further excavate the Embankment to create at least 20 feet of depth across at least 16 feet of Bartlett Brook Road frontage and (2) lower the level of material along the south edge of the driveway such that water does not drain from that area into the town road.¹⁰ This information was relayed to the parties in an email dated July 18, 2024 and attached as Exhibit G.

On July 19, 2024, counsel to Applicant stated by email that his client had lowered the material along the south edge and was "working on a plan to accomplish the additional excavation". In a

⁸ Town of Pomfret Selectboard, Special Meeting Minutes, June 18, 2024, *available* at https://pomfretvt.us/index.php/download_file/view/2454/265/.

⁹ During its deliberative session on June 18, the Selectboard also determined that references in the Prior Decisions and Clarification Letter to "20-foot wide by 16-foot deep area" erroneously reversed the dimensions required of highway access roads. The Highway Ordinance refers to an area "20 feet back" and "16 feet wide" and it was the Selectboard's intent to follow the ordinance when approving the Permit.

¹⁰ Town of Pomfret Selectboard, Regular Meeting Minutes, July 17, 2024, *available* at https://pomfretvt.us/index.php/download_file/view/2472/265/.

letter dated August 1, 2024 and attached as Exhibit H, however, counsel to Applicant indicated that his client would not complete the additional excavation “due to concerns that continue to be raised by their excavator . . . including the discovery of a large rock of unknown size buried within the remaining area to be excavated”. Applicant instead proposed shifting the driveway entrance 3 feet south to obtain 20 feet of depth across a 16-foot-wide opening without need for further excavation and indicated that he would “to the extent necessary” seek a waiver from the Selectboard “since the 16' by 20' access area will be in a slightly different location from the approved permit.” By reply email dated August 2, 2024, counsel to White indicated the proposed shift was unacceptable, even though it would allow partial reclamation of the South Apron and more closely aligned with the work that had been proposed by White in the White Application.

An additional hearing on final approval of the Permit was held on August 21, 2024, during a regular meeting of the Selectboard. The events of this hearing are more particularly described in Section 6(b) of the related Selectboard meeting minutes.¹¹ Prior to the hearing, counsels to Applicant and White submitted dueling memoranda supporting and opposing (respectively) approval of the Permit. These memoranda are attached as Exhibits I and J, respectively. Following the August 21 hearing, the Selectboard deliberated and determined the additional work requested on July 18 (namely the further excavation) was incomplete and that the Permit conditions still had not been met.

Between August 21 and September 4, 2024, the parties conferred at the Town’s request to determine what additional work was needed, who would perform the additional work, and who would be financially responsible for the cost of such work. No agreement on these points was reached during this time.

At its September 4 meeting, the Selectboard approved hiring Gurney Brothers Construction, an excavation contractor based in Springfield, Vermont, to prepare site plans showing how the work could be completed in satisfaction of the Permit conditions.¹² A site visit with principal Dan Gurney, Applicant, White and their respective counsels occurred on October 28, 2024. Mr. Gurney thereafter prepared site plans depicting the proposed work (the “Gurney Plans”). These plans were delivered to the Town on November 19, 2024, forwarded to Applicant and White’s respective counsels on December 2, 2024, and are attached as Exhibit K.

On December 6, 2024, White’s counsel sent a list of questions based on the Gurney Plans, which were forwarded to Mr. Gurney on December 9, 2024. These questions are attached as Exhibit L. On December 19, 2024, and without answering the questions posed, Mr. Gurney informed the Town that he no longer wished to be involved with the project.

¹¹ Town of Pomfret Selectboard, Regular Meeting Minutes, August 21, 2024, *available* at https://pomfretvt.us/index.php/download_file/view/2477/265/.

¹² Town of Pomfret Selectboard, Regular Meeting Minutes, September 4, 2024, *available* at https://pomfretvt.us/index.php/download_file/view/2483/265/.

Meanwhile, another winter arrived, and with it the typical early season wet and heavy snows, ground freezes and thaws. Applicant, White and others continued making regular use of driveway as then configured. And the Selectboard received no reports from the traveling public or any other party regarding drainage, snow removal, maintenance, or other safety issues concerning the traveled way of Bartlett Brook Road or the first 20 feet of Dinsmoor Road.¹³

After its December 19, 2024 and January 8, 2025, meetings, the Selectboard deliberated on final approval of the Permit and thereafter reached this Decision.

II. Applicable Standards

A. Pomfret Highway Ordinance

Section 5.3(k) of the Highway Ordinance requires that the first 20 feet of a driveway entering upon a town highway meet the following standards, unless the same are waived or varied:

- Intersection angle of 90 degrees to the town highway.
- Minimum sight distance in both directions (the required distance being determined by reference to the posted speed limit of the intersecting town highway).
- Sixteen foot minimum width.
- Grading and slope such that water from the driveway does not enter the town highway (it being recommended that the driveway have a grade dropping six inches in ten feet before extending either up or down slope).
- Culverts to be installed if necessary to prevent deterioration of the town highway.
- Vegetation and trees to be removed if necessary to provide for visibility and safety.

B. State Law

Relevant state law at 19 V.S.A. 1111 requires, among other things, that a permit be obtained by anyone wishing to use any part of a highway right-of-way, including to develop, construct, regrade or resurface any driveway, entrance or approach. State law further empowers Vermont municipalities to protect and promote the safety of the traveling public, maintain reasonable levels of service on the existing highway system, and protect the public investment in the existing highway infrastructure.

¹³ The parties continue to disagree on where snow plowed from the first 20 feet of Dinsmoor Road should be placed. However, the parties have multiple options in this regard that do not impair the usability or safety of the first 20 feet of Dinsmoor Road. Rather, this appears to be a continuation of the disagreement over the traversability of the South Apron.

C. Application of Applicable Standards

Based on the Mann Application, Revised Site Plan, Clarification Letter, testimony of witnesses, and the findings and conclusions described below, the Selectboard finds that Applicant's modifications to Dinsmoor Road meet the applicable standards set forth in the Highway Ordinance, with the following exception:

- The modified opening of Dinsmoor Road is not 16 feet wide for the first 20 feet back from edge of the town highway as required by Section 5.3(k) of the Highway Ordinance.

The modified opening is approximately 22 feet wide, but contrary to the Highway Ordinance, the modified opening is not 20 feet deep along at least 16 feet of opening. By not fully excavating the Embankment as contemplated in the Prior Decision, the northeast corner of the modified opening is only about 17 feet deep. The result is an approximately 3-foot isosceles right triangle "missing" from the required 20-by-16 foot wide opening. The "missing" triangle is at the back of the modified opening, at its farthest point from the town highway.

For the reasons discussed in Section II.D below, the Selectboard waives this standard to the extent of non-compliance as of the date of this Decision, in accordance with Section 5.2 of the Highway Ordinance.

By meeting the applicable Highway Ordinance standards, as the same have been waived herein, the Selectboard also finds that Applicant's modifications to Dinsmoor Road adequately protect the interests articulated in 19 V.S.A. 1111.

D. Highway Access Standards Waiver

Section 5.2 of the Highway Ordinance provides that the Selectboard may waive or vary certain design and construction standards "after consideration of public and private interests, topography, adequacy of highway design, ease of snow removal, drainage, and maintenance of safe conditions in all seasons for the traveling public." Among these standards is the requirement in Section 5.3(k) that "[f]or the first 20 feet back from edge of Town highway, the driveway or access road shall be 16 feet wide".

As noted in Section II.C above, the modified opening of Dinsmoor Road is not 20 feet deep across at least 16 feet of opening. A roughly 3-foot isosceles right triangle is "missing" from the corner of the opening farthest from the traveled way of Bartlett Brook Road. The slope and mass of the Embankment have frustrated Applicant's several attempts to complete the excavation necessary to comply with Section 5.3(k). To require Applicant to do so despite the topography would risk destabilizing the Embankment, which in turn would increase the risk of erosion into the driveway and runoff into the town highway.

After considering the public and private interests, topography, adequacy of highway design, ease of snow removal, drainage, and maintenance of safe conditions in all seasons for the traveling public, the Selectboard concludes it is not necessary to further excavate the

Embankment, nor to further modify the highway access in order to achieve the purposes of the Highway Ordinance and 19 V.S.A. 1111.

As built, the modified highway access is a material improvement relative to the driveway that existed prior to the Mann Application, which had a narrower and shallower opening, tighter turning radius, and steeper grade uphill from the town highway requiring most users to make sharp turns when entering onto and exiting.

The moderated grade of the modified highway access will reduce runoff entering onto the town highway and the risk that vehicles will overrun the traveled way of Dinsmoor Road or Bartlett Brook Road, particularly in winter conditions. The wider turning radius will improve visual sightlines and reduce potential vehicular conflicts.

Equally important, as this matter has been pending longer than anyone reasonably could have anticipated when receiving Dr. White's initial objection to Mr. Mann's activities 825 days ago, the Town now has nearly a year of experience with the as-built modified driveway access. Perhaps not surprising given the material improvements described above, the as-built modified driveway access appears to work pretty well. Since the modifications were made, the traveling public has been protected and kept safe. Reasonable levels of service on the existing highway system have been maintained. And the public investment in the existing highway infrastructure has been protected. The "missing" triangle has not impaired these interests.

For these reasons, the Selectboard waives the standards contained in Section 5.3(k) of the Highway Ordinance to the extent the as-built modified driveway access does not meet the same as of the date of this Decision.

III. Decision

Based on the Mann Application, Revised Site Plan, testimony of witnesses, and the findings and conclusions described above, the Selectboard concludes that the work described in the Permit, as conditioned and limited by the Prior Decision, as clarified by the Clarification Letter, and subject to the waiver described above and the conditions and limitations described below, has been constructed in accordance with the conditions, standards and restrictions described in the foregoing documents. Accordingly, the Permit is finally **approved**. The Selectboard directs its chair to sign the Permit consistent with this Decision and on the Selectboard's behalf.

The Prior Decision and the "Conditions and Limitations" described therein are superseded by this Decision and the Permit granted herein. In the event of any conflict between the provisions of the Prior Decision and this Decision, the provisions of this Decision shall control. All "Conditions and Limitations" described in the Prior Decision are deemed satisfied or waived and are replaced in their entirety by the conditions and limitations described below.

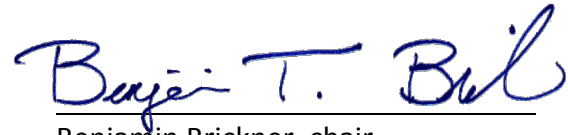
IV. Conditions and Limitations

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

- A. Applicant shall be responsible for the maintenance and repair of the driveway within the town highway right-of-way so that the driveway continues to comply with this Decision, the Permit and all applicable ordinances, laws, and conditions not expressly waived herein. Failure to do so shall constitute a violation of the Permit and the Town may seek any and all remedies available and exercise all enforcement powers permitted by law, including suspension of the Permit until compliance is obtained.
- B. Applicant understands that they shall be solely responsible for protecting the public from all risk of damage, loss, injury or otherwise (including without limitation personal injury or death to any person and damage to property of the Town or third persons) that may occur due to the use, repair, maintenance, installation, and replacement of the driveway.
- C. 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.
- D. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses, or activities with the Highway Ordinance 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 8th day of January, 2025, and signed by the chair of the Pomfret Selectboard on its behalf pursuant to 24 V.S.A. 1141.

A handwritten signature in blue ink that reads "Benjamin T. Brickner". The signature is written in a cursive style and is positioned above a horizontal line.

Benjamin Brickner, chair
Pomfret Selectboard

Selectboard members Benjamin Brickner, John Peters Jr., Steve Chamberlin, Meg Emmons and Emily Grube 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

Permit and Prior Decision

Attached.

TOWN OF POMFRET

APPLICATION FOR TOWN HIGHWAY ACCESS ROAD PERMIT
(Application fee of \$100 payable to Town of Pomfret)

Access Road Type (check one): Private Drive* Agricultural Forestry

Applicant Name: Andrew & Kathy Mann Phone: [REDACTED] Email: [REDACTED]

Applicant Mailing Address: PO Box 20 State: S.Pomfret Zip: 05067

(Complete only if Applicant is not the Landowner)

Landowner Name: _____ Phone: _____ Email: _____

Landowner Mailing Address: _____ State: _____ Zip: _____

The undersigned Applicant requests permission to develop, construct, or change the grade of the access road type indicated above.

Access Road Location: on the East side (cardinal direction) of Bartlett Brook Road (town highway name)
at approximately 5300' (feet) from the intersection of Pomfret Road (nearest town highway intersection).

Please provide a brief description of the work to be done: Widen existing drive on the north side in order to acquire a Driveway Access Permit conforming to existing specifications re width, 90 degree intersection, 1' slope away from town road for first 20' in order to improve driveway safety.

See attached sketch.

Width of driveway will be between 17' and 19'. Driveway will enter town road at 90 degrees and pitch away from town road 1' over the first 20' from the town road. See green rectangle on sketch.

The remainder of the existing driveway will be available for plowed snow and sand.

Site distances are at least 155' in both directions. Sand pile will be moved during construction.

Culvert at bottom of driveway will be extended as necessary.

(PROVIDE DETAILED SKETCH OF ACCESS LOCATION AND LAYOUT ABOVE)

The following conditions, standards and restrictions shall apply to the first 20 feet of a newly developed, constructed, or grade changed access road (measured from the edge of the traveled way) unless waived herein:

General Conditions

1. *Application Fee.* A \$100 non-refundable application fee shall be submitted before an application will be considered.
2. *Site Visit.* The Selectboard and Road Commissioner shall make a site visit prior to approving a permit.
3. *Final Site Inspection.* Upon completion of work, the Applicant or its agent shall notify the Town within ten days to arrange a final site inspection.
4. *Noncompliance.* Any work deemed not in compliance with the permit shall be corrected and reinspected for approval.
5. *Final Approval.* Work shall be approved by the Selectboard or its designee before any use of the access may be started.

* Each residence is limited to one driveway access.

Design Standards¹


1. *Intersection Angle.* Access roads shall be constructed at a 90 degree angle to the town highway.
2. *Minimum Sight Distance.* Sight distances shall be at least as shown in the table below in both directions when viewed from a height of eye of 2.0 feet on the roadway to a height of eye of 3.5 feet on the drive at a point 15 feet back from edge of the traveled way (when entering upon paved portions of town highways) or 10 feet back from edge of the traveled way (when entering upon any other portion of a town highway). The "posted speed" shall be deemed to be 45 mph (when entering upon an unposted Class 2 highway) or 25 mph (when entering upon any other unposted highway).

Minimum Sight Distance

Posted Speed (mph)	Minimum Sight Distance (feet)
25	155
30	200
35	250
40	305
45	360

3. *Access Road Width.* Access roads shall be 16 feet wide and graded and sloped such that water from the access road does not enter the Town highway. It is recommended that the driveway or access road have a grade dropping six inches in 10 feet before extending either up or down slope.
4. *Culverts.* Culverts shall be installed if deemed necessary by the Selectboard or its designee and shall conform to standards described in Section 5.3(h) of the Pomfret Highway Ordinance.
5. *Vegetation.* Vegetation and trees shall be removed as necessary to provide for visibility and safety.

The undersigned Applicant agrees to adhere to the conditions, standards and restrictions forming a part of this permit, and understands that this permit, if issued, will be issued in accordance with 19 V.S.A. 1111 and the Pomfret Highway Ordinance and may be voided in the event of misrepresentation, substantial inaccuracy or failure to undertake development, construction, or changing the grade of the access road within one year of the date of approval. If Applicant is not the Landowner, Applicant has provided the Landowner with a copy of this completed Application and obtained the Landowner's signature below.


 Applicant Signature
 Andrew Mann
 Applicant Printed Name
 2023-07-17
 Date

(Complete only if Applicant is not the Landowner)

The undersigned Landowner acknowledges they have received a copy of this completed Application.

 Landowner Signature

 Landowner Printed Name

 Date

[Remainder of page intentionally blank. Application form continues on next page.]

¹ Any of the standards listed herein may be waived or varied upon the Applicant's request and following consideration by the Selectboard and Road Commissioner of public and private interests, topography, adequacy of highway design, ease of snow removal, drainage, and maintenance of safe conditions in all seasons for the traveling public.

OFFICIAL USE ONLY

Application fee of \$100 received on July 17, 20 23 by Becky Fielder.

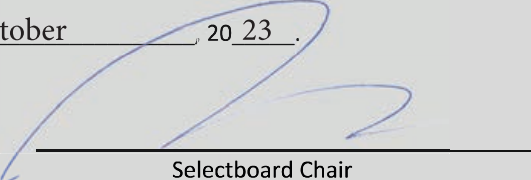
Culvert Required (min. 18-inch diameter)? Yes No

Additional conditions, standards and restrictions; waivers of design standards (if any):

See attached memorandum of decision.

PERMIT APPROVED this 13th day of October, 20 23.

n/a
Road Commissioner


Selectboard Chair

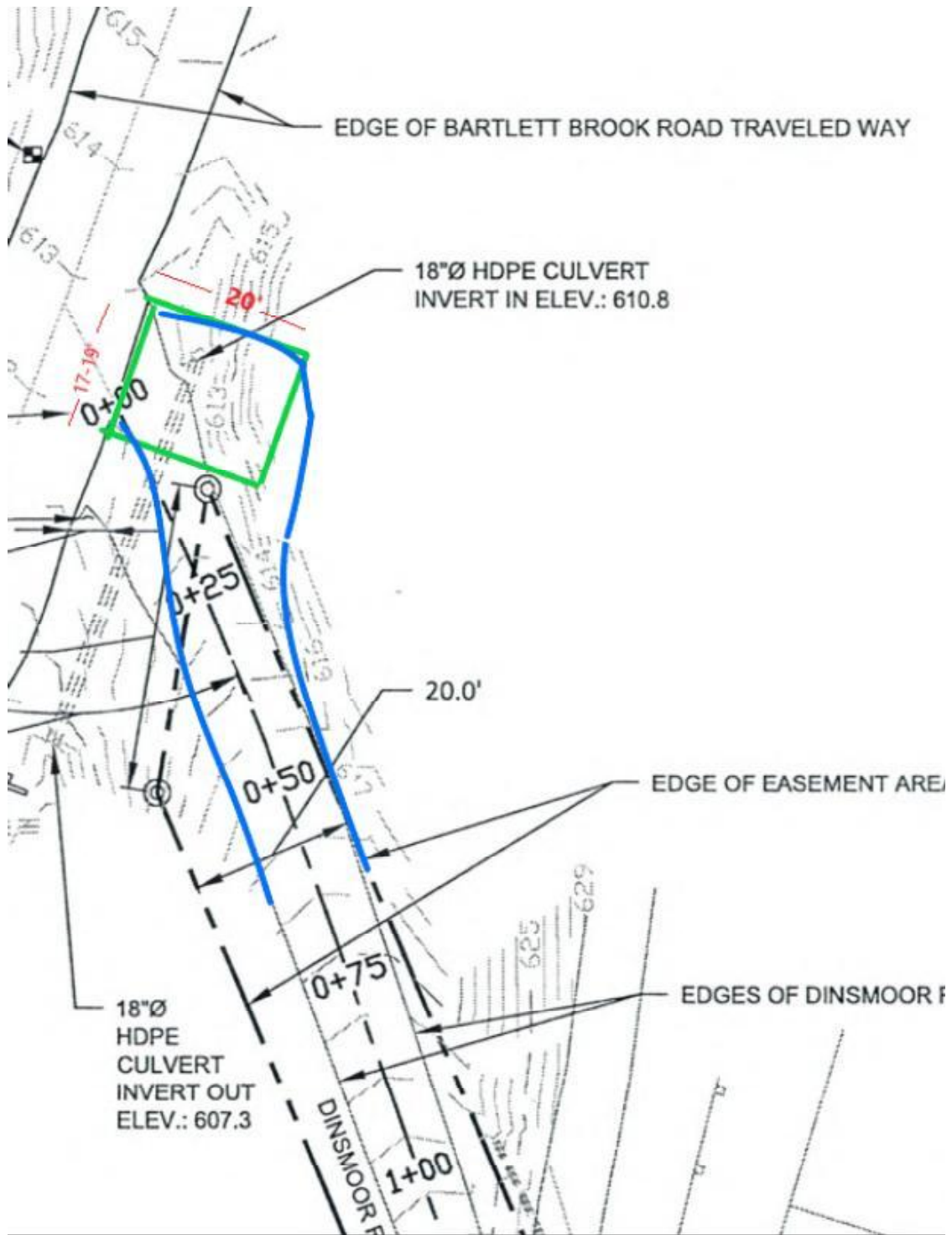
FINAL APPROVAL. The work described in this permit has been constructed in accordance with the above conditions, standards and restrictions and is acceptable under State and local regulations.

Road Commissioner

Selectboard Chair

Date

Form adopted by the Pomfret Selectboard June 21, 2023. Supersedes all prior dated forms.



**TOWN OF POMFRET
Selectboard**

Memorandum of Decision

Property Address: 19 Dinsmoor Road
Pomfret, Vermont

Parcel No.: 3918
Parcel Size: +/- 4.75 acres

Property Owner: Andrew A. and Kathy J. Mann
P.O. Box 20
South Pomfret, Vermont 05067

Applicant: Andrew A. and Kathy J. Mann
P.O. Box 20
South Pomfret, Vermont 05067

This Memorandum of Decision (this “Decision”) is issued by the Selectboard of the Town of Pomfret (the “Selectboard”), in connection with the Application for Town Highway Access Road Permit dated July 17, 2023, by Andrew A. and Kathy J. Mann (“Applicant”) and attached hereto as Exhibit A (the “Mann Application”).

The Mann Application seeks to modify Dinsmoor Road (a private driveway) where it intersects Bartlett Brook Road (Town Highway No. 39), as more particularly described in Section I.B below.

I. Dinsmoor Road and Proposed Modifications

A. Dinsmoor Road

Dinsmoor Road serves three residential parcels: (1) No. 3918 owned and occupied by Applicant, (2) No. 3918-A owned by the Hillary D. White Revocable Trust and occupied by Hillary D. White and Philip Dechert (the “White Parcel”), and (3) No. 3918-B owned by Alison Sander and occupied by a lessee (the “Sander Parcel”).

While the area proposed to be modified by the Mann Application is located on Applicant’s property, the White Parcel and the Sander Parcel benefit from an easement and right-of-way to traverse Applicant’s property at and adjacent to this location (the “Existing Easement”).

Bartlett Brook Road begins at Pomfret Road (Town Highway No. 1) and runs north to the joint intersection of Totman Hill Road (Town Highway No. 38) and Legal Trail No. 3. Totman Hill Road then proceeds southwest to Legal Trail No. 4. In Pomfret, the operation of motor vehicles on

Legal Trails requires a permit that may be issued only under limited circumstances.¹ As a result, nearly all traffic utilizing Dinsmoor Road approaches from and departs to the south, in the direction of Pomfret Road.

The existing traveled way of Dinsmoor Road intersects Bartlett Brook Road at a skew angle requiring most users to make sharp turns when approaching from and departing to the south. Dinsmoor Road is also moderately graded uphill from the town highway. As a result, the driveway can be challenging to navigate, particularly in winter conditions.

B. Proposed Driveway Modifications

The Mann Application proposes to address these challenges by excavating the embankment north of the existing traveled way of Dinsmoor Road to create a level graded, 20-foot wide by 16-foot deep area in which vehicles may enter onto and exit from Bartlett Brook Road. This would result in an approximately 90-degree intersection between Dinsmoor Road and Bartlett Brook Road, versus the skew angle that now exists.

By comparison, the White Application (as defined below) proposes to establish a shared access apron south of the existing traveled way of Dinsmoor Road with the similar goal of improving intersection navigability, albeit without reducing the uphill grade.

II. Procedural History

A. The White Application and White-Mann Litigation

This Decision is made concurrently with a decision on an Application for Town Highway Access Road Permit dated August 7, 2023, by Hillary D. White and Philip Dechert (the “White Application”). Like the Mann Application, the White Application also seeks to modify Dinsmoor Road where it intersects Bartlett Brook Road. Each application has been evaluated on its own merits, but with consideration given to whether one or the other better meets the applicable standards described in Section III below.

Both applicants also are engaged in an ongoing dispute concerning their respective rights in the Existing Easement. The particulars of this dispute are beyond the scope of this Decision, but are subject to pending litigation (the “White-Mann Litigation”) to which the Town of Pomfret has been made a party by Applicant.² The Town’s status as a party to the White-Mann Litigation, and the involuntary means by which it became a party, were not considered by the Selectboard when reaching this Decision.

¹ Town of Pomfret, Ordinance Pertaining to Travel on Trails, adopted August 4, 2004, *available at* https://pomfretvt.us/files/1014/0068/3275/trails_ordinance__policy.pdf.

² See Hillary White et al. v. Andrew Mann et al., No. 23-CV-03473 (Vt. Super. Ct.).

B. The Mann Application

Applicant submitted the Application on July 17, 2023, via hard copy to the Town Clerk, and via email to the Selectboard, Ms. Sander and counsel to Dr. White and Mr. Dechert. The Selectboard conducted a site visit on August 16, 2023.³ On September 10, 2023, Applicant submitted the revised site plan attached hereto as Exhibit B (the “Revised Site Plan”).⁴

A hearing on the Mann Application was held on September 12, 2023, during a special meeting of the Selectboard at which a hearing on the White Application also was held. The events of the Mann Application hearing are more particularly described in Section 5 of the related Selectboard meeting minutes.⁵

The Selectboard closed the Mann Application hearing on September 12, 2023, held non-public deliberative sessions on September 20, 2023 and October 4, 2023, and thereafter reached this Decision.

III. Applicable Standards

A. Pomfret Highway Ordinance

Section 5.3(k) of the Town of Pomfret Highway Ordinance (the “Highway Ordinance”)⁶ requires that the first 20 feet of a driveway entering upon a town highway meet the following standards, unless the same are waived or varied:

- Intersection angle of 90 degrees to the town highway.
- Minimum sight distance in both directions (the required distance being determined by reference to the posted speed limit of the intersecting town highway).
- Sixteen foot minimum width.
- Grading and slope such that water from the driveway does not enter the town highway (it being recommended that the driveway have a grade dropping six inches in ten feet before extending either up or down slope).
- Culverts to be installed if necessary to prevent deterioration of the town highway.

³ The August 16, 2023, site visit was the latest of several visits made by the Selectboard. An earlier site visit was made on November 4, 2022, to review prior driveway modifications proposed by Applicant and the White Parcel occupants that ultimately were not implemented. Selectboard members and the Road Foreman made additional visits at various times during the eighteen months prior to this Decision.

⁴ The Revised Site Plan (and the original plan attached to the Application) is an altered excerpt of the MacKenzie Engineering and Construction plans included with the White Application.

⁵ Town of Pomfret Selectboard, Special Meeting Minutes, September 12, 2023, *available* at https://pomfretvt.us/index.php/download_file/view/2256/265/.

⁶ Town of Pomfret, Highway Ordinance, adopted June 21, 2023, *available* at https://pomfretvt.us/files/4016/8740/6683/Pomfret_Highway_Ordinance_as_adopted_2023-06-21.pdf.

- Vegetation and trees to be removed if necessary to provide for visibility and safety.

B. State Law

Relevant state law at 19 V.S.A. 1111 requires, among other things, that a permit be obtained by anyone wishing to use any part of a highway right-of-way, including to develop, construct, regrade or resurface any driveway, entrance or approach. State law further empowers Vermont municipalities to protect and promote the safety of the traveling public, maintain reasonable levels of service on the existing highway system, and protect the public investment in the existing highway infrastructure.

C. Application of Applicable Standards

Based on the Mann Application, Revised Site Plan and testimony of witnesses, the Selectboard finds that the proposed modifications to Dinsmoor Road meet the applicable standards set forth in the Highway Ordinance. In particular, the proposed modifications would create a 90-degree intersection with Bartlett Brook Road and level grading over the first 20 feet of the driveway. The minimum sight distance and width standards are met as well. The culvert requirement is addressed in Section V below.

The result is a material improvement relative to the existing driveway, which has a moderate grade uphill from the town highway and requires most users to make sharp turns when entering onto and exiting from Dinsmoor Road.

The level grading will reduce runoff entering the town highway and the risk that vehicles will overrun the traveled way of Dinsmoor Road or Bartlett Brook Road, particularly in winter conditions. The 90-degree intersection will improve visual sightlines and reduce potential vehicular conflicts.

By meeting the applicable Highway Ordinance standards, the Selectboard also finds that the proposed modifications adequately protect the interests articulated in 19 V.S.A. 1111(b).

While the Mann Application does not include original engineering or site plans, following multiple site visits, the Selectboard concludes the proposed driveway modifications are feasible and likely to achieve the outcome described by Applicant.

All Town Highway Access Road Permits are subject to final approval once construction is complete. Should the proposed modifications prove infeasible or otherwise not be made as approved herein, final approval will be withheld until corrective action is taken.

IV. Decision

Based on the Mann Application, Revised Site Plan, 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 Revised Site Plan is **approved**.

V. Conditions and Limitations

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

- A. The proposed modifications to Dinsmoor Road shall be made as soon as practicable, at Applicant's cost, and Applicant shall use best efforts to complete all work in the highway right-of-way by November 30, 2023.

If despite Applicant's best efforts all work in the highway right-of-way cannot be completed by November 30, 2023, Applicant shall by the same date remove (or cause to be removed) all objects, fill or obstructions in the highway right-of-way interfering with normal use of the existing traveled way of Dinsmoor Road or maintenance of the highway right-of-way.

- B. The first 20 feet of the driveway shall conform in all material respects to the materials included in the Mann Application, Revised Site Plan and 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, the inability to complete the excavation necessary to create a level graded, 20-foot by 16-foot area at the intersection of Dinsmoor Road and Bartlett Brook Road would constitute a material change subject to further review and approval by the Selectboard.


- C. The first 20 feet of the driveway shall conform to the standards set forth in Section 5.3(k) of the Highway Ordinance, except as expressly modified herein.
- D. 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 C shall apply to all work performed in the highway right-of-way, including but not limited to rebuilding, repairing, restoring and making good all injuries or damage to any portion of the right-of-way caused by the permitted work.
- E. The proposed excavation shall be completed in accordance with applicable standards contained in Section 203 of the VTrans Standard Specifications for Construction, 2024 ed.⁷

⁷ State of Vermont, Agency of Transportation, Standard Specifications for Construction (2024 ed.), available at <https://vtrans.vermont.gov/highway/construct-material/construct-services/pre-contractspecifications/vermont/2024>.

- F. The existing culvert at the bottom of Dinsmoor Road and running parallel to Bartlett Brook Road shall be extended north as necessary to capture anticipated runoff from the modified driveway.
- G. The area south of Dinsmoor Road and within the highway right-of-way shall be restored to a permeable surface sufficient to absorb anticipated runoff from the modified driveway and kept open to allow for placement of snow removed from the driveway.
- H. Applicants shall grant to the record owners of the White Parcel and the Sander Parcel, and to their respective heirs and assigns (collectively, "Grantees"), an easement and right-of-way (the "New Easement") on terms no less favorable to Grantees as are granted in that certain Quit Claim Deed dated June 12, 1987, by and between Applicant, as grantor, and Hillary W. Dechert and Philip Dechert, Jr., as grantees, recorded June 12, 1987, in Book 36 Pages 137-139 of the Pomfret Land Records, and attached hereto as Exhibit D. The New Easement shall include all of the lands and premises within the red circles depicted on the Revised Site Plan (to the extent the same are not already included in the Existing Easement), shall not purport to extinguish any prior easements or rights-of-way of record, and shall be prepared at Applicant's sole cost and expense.
- I. 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.
- J. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses, or activities with the Highway Ordinance 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 13th day of October, 2023, and signed by the chair of the Pomfret Selectboard on its behalf pursuant to 24 V.S.A. 1141.



John Peters Jr., chair
Pomfret Selectboard

Selectboard members John Peters Jr., Benjamin Brickner, Steve Chamberlin, Meg Emmons and Emily Grube 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

Mann Application

Attached.

TOWN OF POMFRET

APPLICATION FOR TOWN HIGHWAY ACCESS ROAD PERMIT
(Application fee of \$100 payable to Town of Pomfret)

Access Road Type (check one): Private Drive* Agricultural Forestry

Applicant Name: Andrew & Kathy Mann Phone: [REDACTED] Email: [REDACTED]

Applicant Mailing Address: PO Box 20 State: S.Pomfret Zip: 05067

(Complete only if Applicant is not the Landowner)

Landowner Name: _____ Phone: _____ Email: _____

Landowner Mailing Address: _____ State: _____ Zip: _____

The undersigned Applicant requests permission to develop, construct, or change the grade of the access road type indicated above.

Access Road Location: on the East side (cardinal direction) of Bartlett Brook Road (town highway name)
at approximately 5300' (feet) from the intersection of Pomfret Road (nearest town highway intersection).

Please provide a brief description of the work to be done: Widen existing drive on the north side in order to acquire a Driveway Access Permit conforming to existing specifications re width, 90 degree intersection, 1' slope away from town road for first 20' in order to improve driveway safety.

See attached sketch.

Width of driveway will be between 17' and 19'. Driveway will enter town road at 90 degrees and pitch away from town road 1' over the first 20' from the town road. See green rectangle on sketch.

The remainder of the existing driveway will be available for plowed snow and sand.

Site distances are at least 155' in both directions. Sand pile will be moved during construction.

Culvert at bottom of driveway will be extended as necessary.

(PROVIDE DETAILED SKETCH OF ACCESS LOCATION AND LAYOUT ABOVE)

The following conditions, standards and restrictions shall apply to the first 20 feet of a newly developed, constructed, or grade changed access road (measured from the edge of the traveled way) unless waived herein:

General Conditions

1. *Application Fee.* A \$100 non-refundable application fee shall be submitted before an application will be considered.
2. *Site Visit.* The Selectboard and Road Commissioner shall make a site visit prior to approving a permit.
3. *Final Site Inspection.* Upon completion of work, the Applicant or its agent shall notify the Town within ten days to arrange a final site inspection.
4. *Noncompliance.* Any work deemed not in compliance with the permit shall be corrected and reinspected for approval.
5. *Final Approval.* Work shall be approved by the Selectboard or its designee before any use of the access may be started.

* Each residence is limited to one driveway access.

Design Standards¹


1. *Intersection Angle.* Access roads shall be constructed at a 90 degree angle to the town highway.
2. *Minimum Sight Distance.* Sight distances shall be at least as shown in the table below in both directions when viewed from a height of eye of 2.0 feet on the roadway to a height of eye of 3.5 feet on the drive at a point 15 feet back from edge of the traveled way (when entering upon paved portions of town highways) or 10 feet back from edge of the traveled way (when entering upon any other portion of a town highway). The "posted speed" shall be deemed to be 45 mph (when entering upon an unposted Class 2 highway) or 25 mph (when entering upon any other unposted highway).

Minimum Sight Distance

Posted Speed (mph)	Minimum Sight Distance (feet)
25	155
30	200
35	250
40	305
45	360

3. *Access Road Width.* Access roads shall be 16 feet wide and graded and sloped such that water from the access road does not enter the Town highway. It is recommended that the driveway or access road have a grade dropping six inches in 10 feet before extending either up or down slope.
4. *Culverts.* Culverts shall be installed if deemed necessary by the Selectboard or its designee and shall conform to standards described in Section 5.3(h) of the Pomfret Highway Ordinance.
5. *Vegetation.* Vegetation and trees shall be removed as necessary to provide for visibility and safety.

The undersigned Applicant agrees to adhere to the conditions, standards and restrictions forming a part of this permit, and understands that this permit, if issued, will be issued in accordance with 19 V.S.A. 1111 and the Pomfret Highway Ordinance and may be voided in the event of misrepresentation, substantial inaccuracy or failure to undertake development, construction, or changing the grade of the access road within one year of the date of approval. If Applicant is not the Landowner, Applicant has provided the Landowner with a copy of this completed Application and obtained the Landowner's signature below.


 Applicant Signature
 Andrew Mann
 Applicant Printed Name
 2023-07-17
 Date

(Complete only if Applicant is not the Landowner)

The undersigned Landowner acknowledges they have received a copy of this completed Application.

 Landowner Signature

 Landowner Printed Name

 Date

[Remainder of page intentionally blank. Application form continues on next page.]

¹ Any of the standards listed herein may be waived or varied upon the Applicant's request and following consideration by the Selectboard and Road Commissioner of public and private interests, topography, adequacy of highway design, ease of snow removal, drainage, and maintenance of safe conditions in all seasons for the traveling public.

OFFICIAL USE ONLY

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

Culvert Required (*min. 18-inch diameter*)? Yes No

Additional conditions, standards and restrictions; waivers of design standards (if any):

PERMIT APPROVED this _____ day of _____, 20____.

Road Commissioner

Selectboard Chair

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

Road Commissioner

Selectboard Chair

Date

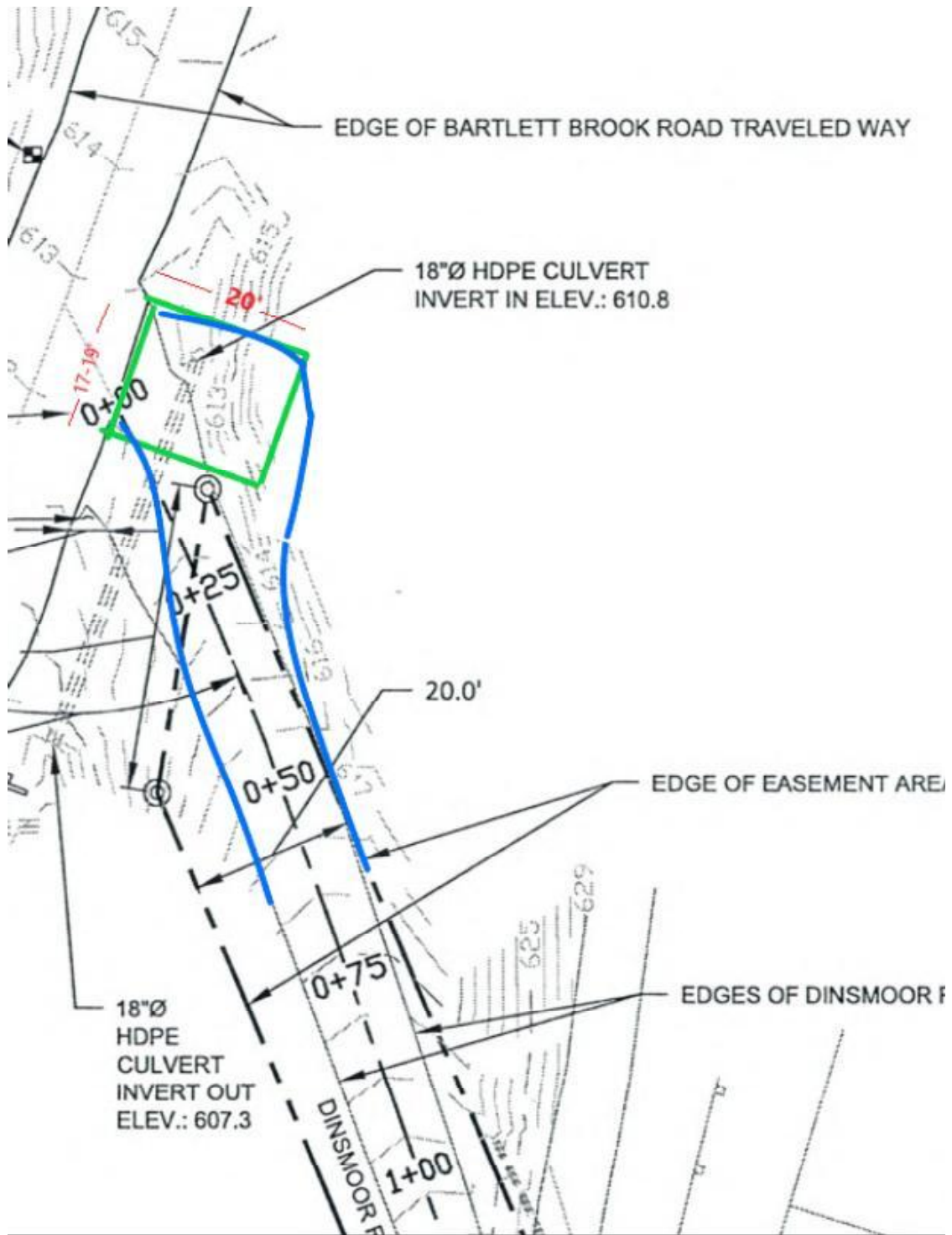


EXHIBIT B

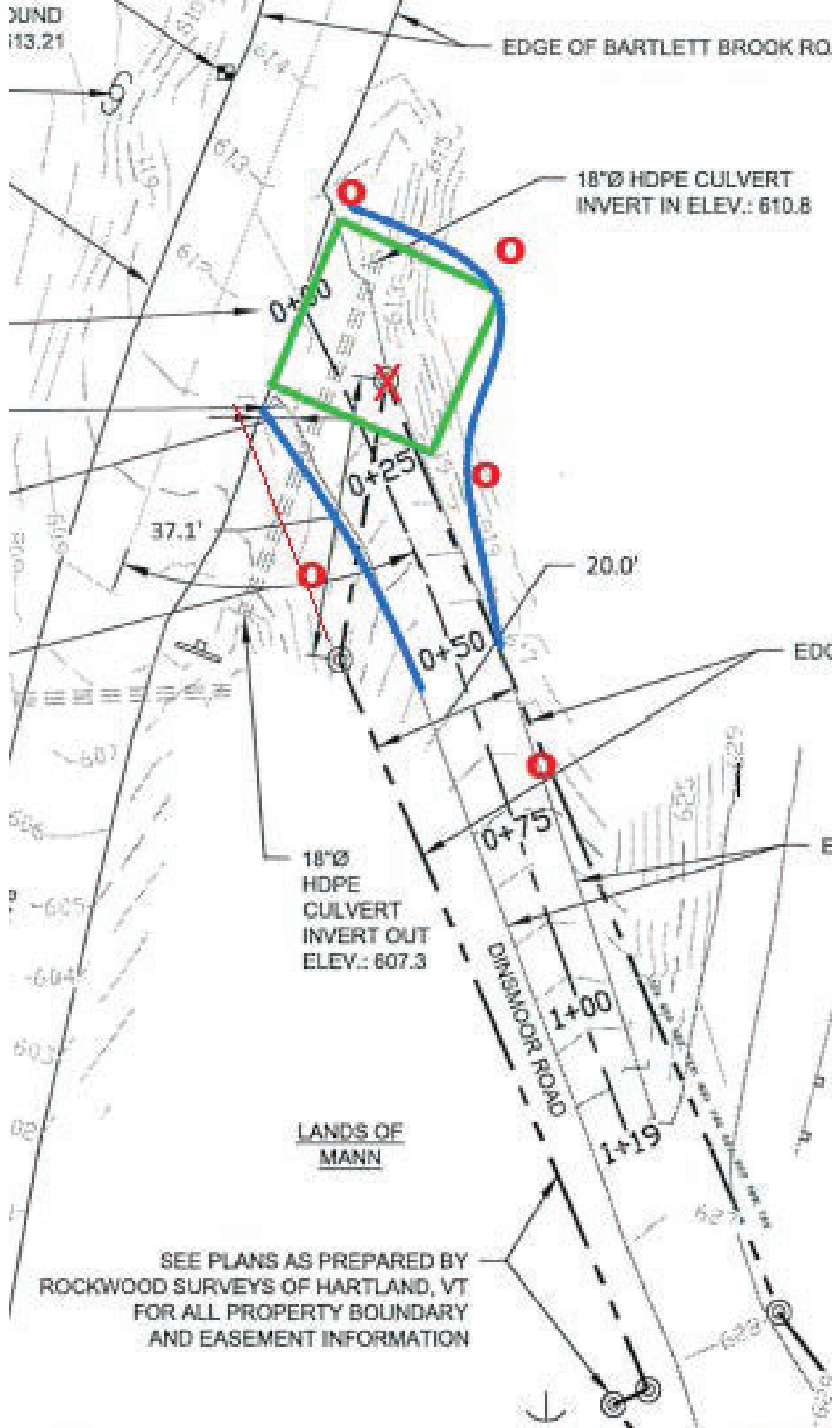
Revised Site Plan

Attached.

XUND
113.21

EDGE OF BARTLETT BROOK RD

18"Ø HDPE CULVERT
INVERT IN ELEV.: 610.8



18"Ø
HDPE
CULVERT
INVERT OUT
ELEV.: 607.3

LANDS OF
MANN

SEE PLANS AS PREPARED BY
ROCKWOOD SURVEYS OF HARTLAND, VT
FOR ALL PROPERTY BOUNDARY
AND EASEMENT INFORMATION

EXHIBIT C

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.

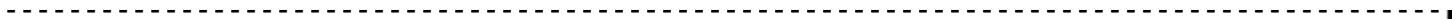
_____ Applicant Signature _____ Applicant Printed Name _____ Date

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

*Form adopted by the Pomfret Selectboard July 6, 2022, with a technical correction made on January 1, 2023.
Supersedes all prior dated forms.*

EXHIBIT D

1987 Quit Claim Deed
(Pomfret Land Records Book 36 Pages 137-139)

Attached.

Know all Men by these Presents

That We, Andrew A. Mann and Kathy Jean Mann

of Pomfret in the County of Windsor
and State of Vermont Grantors, in the consideration of
One dollar and Other Good and Valuable Consideration Dollars
paid to our full satisfaction by
Philip Dechert, Jr. and Hillary W. Dechert

of Pomfret in the County of Windsor
and State of Vermont Grantee s, have REMISED, RELEASED,
AND FOREVER QUITCLAIMED unto the said
Philip Dechert, Jr. and Hillary W. Dechert, and their

all right and title which heirs or assigns,
we the said Andrew A. Mann and Kathy Jean Mann

easement and right-of-way or our heirs have in, and to a
certain ~~piece of land~~ in Pomfret in the
County of Windsor and State of Vermont, described as
follows, viz:

- Being an easement and right of way in common with grantors, their heirs and assigns, for ingress and egress to the land and premises of grantees, across land and premises conveyed to the grantors by the following deeds:
1. Warranty deed of Raymond L. Collamore and Alice G. Collamore dated November 26, 1984 and recorded in Book 34 at Page 281 of the Town of Pomfret Land Records, and
 2. Warranty deed of Kurt A. Vreeland and Patricia A. Vreeland dated November 12, 1984 and recorded in Book 34 at page 282 of the Town of Pomfret Land Records.

The location of this right of way is shown on a plan prepared by Bruno Associates, Inc. P.C. entitled "Proposed Right-of-way across lands of Andrew and Kathy Mann in Pomfret, Vermont" dated December 1986, scale 1" = 40', and is described thereon as follows:

Commencing at a 5/8" rebar set in the ground near the intersection of Town Highway #39 and an existing drive, and running S 22 degrees 10' E 132.4' to a rebar set in the ground; thence proceeding S 36 degrees 12' E 67.8' to a rebar set in the ground; thence turning an angle to the left and proceeding N 58 degrees 43' E 10.0' to a point; thence turning an angle to the right and proceeding S 28 degrees 37' E 246.4' to a 1/2" iron pipe; thence turning an angle to the right and proceeding N 86 degrees 27' W 41.3' to a point; thence turning an angle to the right and proceeding N 28 degrees 37' W 223.0' to a point; thence proceeding N 36 degrees 12' W 68.2' to a point; thence turning an angle to the right and proceeding N 67 degrees 50' E 5.0' to a point; thence turning an angle to the left and proceeding N 22 degrees 10' W 103.6' to a point; thence turning an angle to the right and proceeding N 10 degrees 27' E 37.1' to a 5/8" rebar, being the point and place of beginning.

Also conveyed herein is an easement in common with Grantors, their heirs and assigns, for electric and telephone utility purposes, to be established and located identically to the utility easement being conveyed by instrument of these grantors dated December 12, 1986 to Central Vermont Public Service Corporation and New England Telephone and Telegraph Company.

continued...

Both grantors and grantees intend by delivery and acceptance of this deed to extinguish all other and prior easements and rights-of-way of record and in fact which may cross the grantors' land for the benefit of grantees' land, including, without limitation, those rights-of-way created by deeds of Ehrick J. Wood and Blanche R. Wood to William H. Maynes and Shannon H. Maynes dated July 8, 1966 and recorded in Book 29 at page 225 of the Town of Pomfret Land Records, and dated September 24, 1965 and recorded in Book 29 at page 110 of the Town of Pomfret Land Records.

The rights and interests conveyed herein are subject to rights of mortgages under now existing mortgages.

Grantees, their heirs and assigns, shall notify grantors in advance of any cutting of trees within the herein conveyed easement area, except in case of emergency.

Grantees, for themselves and their heirs and assigns, waive any claim for contribution in the event that grantors or their family members wish to connect to the utility lines established within this easement. Grantors reserve that right to connect to said utility lines for themselves and their family members, but not for other assigns.

Reference may be had to the above-mentioned deeds and plan and to all prior deeds in the Town of Pomfret Land Records for a more particular description of the rights herein conveyed.

Grantees, their heirs and assigns, are further conveyed a reasonable right if necessary, to repair and maintain their driveway, and for such specific purpose may exceed the bounds of the herein-conveyed easement only with Grantor's permission, such permission, not to be unreasonably withheld. It is specifically agreed and understood between the parties hereto, their heirs and assigns and successors, that such right shall be limited to the necessity of repair in the event of washout, substantial deterioration and the like, necessitating substantial repairs or reinstallation of the subject driveway. If this right is exercised, Grantees, their heirs and assigns shall repair at their expense any damage thereby caused to Grantor's premises, and shall restore Grantor's premises to as near its original condition as possible.

continued....

TO HAVE AND TO HOLD all right and title in and to said quit-claimed premises, with the appurtenances thereof, to the said Philip Dechert, Jr. and Hillary W. Dechert, and their

heirs and assigns forever.

AND FURTHERMORE we the said Andrew A. Mann and Kathy Jean Mann

do for ourselves and our heirs, executors and administrators, covenant with the said Philip Dechert, Jr. and Hillary W. Dechert, and their

heirs and assigns, that from and after the ensembling of these presents the said

Andrew A. Mann and Kathy Jean Mann

will have and claim no right, in, or to the said quit-claimed premises. except as set forth herein

IN WITNESS WHEREOF, we hereunto set our hand and seal this day of A.D. 19

In Presence of

Signatures of Andrew A. Mann, Kathy Jean Mann, Heidi S. Kenison, Philip Dechert, Jr., Hillary W. Dechert by Philip Dechert Jr. her attorney in fact, and witnesses Muriel Norman and Norma Martin.

STATE OF VERMONT, Windsor County ss. At 12th day of June A. D. 1987 this

Andrew A. Mann and Kathy Jean Mann

personally appeared, and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed.

Before me Muriel Norman Notary Public (Title)

STATE OF VERMONT WINDSOR COUNTY, SS At Bridgewater this 10 day of June 1987 PHILIP DECHERT, JR. and HILLARY W. DECHERT personally appeared, and they acknowledged this instrument by them sealed and subscribed, to be their free act and deed. Before me Norma Martin Town Clerk Notary Public

Pomfret Town Clerk's Office: Received for record on June 12, A.D. 1987 at 12:40 P.M. A true copy. Attest: Hazel B. Harrington Town Clerk

Vermont Property Transfer Tax 32 V.S.A. Chap. 231 ACKNOWLEDGMENT Return Rec'd. Tax Paid. Board of Health Cert. Rec'd. Vt. Land Use & Development Plans Act Cert. Rec'd. Return No. 9782902 Signed Hazel Harrington, Clerk Date June 12, 1987

EXHIBIT B

October 2022 Photo of Dinsmoor Road

Attached.



EXHIBIT C

White Decision

Attached.

**TOWN OF POMFRET
Selectboard**

Memorandum of Decision

Property Address: 19 Dinsmoor Road
Pomfret, Vermont

Parcel No.: 3918
Parcel Size: +/- 4.75 acres

Property Owner: Andrew A. and Kathy J. Mann
P.O. Box 20
South Pomfret, Vermont 05067

Applicant: Hillary White and Philip Dechert
P.O. Box 148
South Pomfret, Vermont 05067

This Memorandum of Decision (this “Decision”) is issued by the Selectboard of the Town of Pomfret (the “Selectboard”), in connection with the Application for Town Highway Access Road Permit dated August 7, 2023, by Hillary D. White and Philip Dechert (“Applicant”) and attached hereto as Exhibit A (the “White Application”).

The White Application seeks to modify Dinsmoor Road (a private driveway) where it intersects Bartlett Brook Road (Town Highway No. 39), as more particularly described in Section I.B below.

I. Dinsmoor Road and Proposed Modifications

A. Dinsmoor Road

Dinsmoor Road serves three residential parcels: (1) No. 3918 owned and occupied by Andrew A. and Kathy J. Mann (collectively, the “Landowner”), (2) No. 3918-A owned by the Hillary D. White Revocable Trust and occupied by Applicant (the “White Parcel”), and (3) No. 3918-B owned by Alison Sander and occupied by a lessee (the “Sander Parcel”).

While the area proposed to be modified by the White Application is located on the Landowner’s property, the White Parcel and the Sander Parcel benefit from an easement and right-of-way to traverse the Landowner’s property at and adjacent to this location (the “Existing Easement”).

Bartlett Brook Road begins at Pomfret Road (Town Highway No. 1) and runs north to the joint intersection of Totman Hill Road (Town Highway No. 38) and Legal Trail No. 3. Totman Hill Road then proceeds southwest to Legal Trail No. 4. In Pomfret, the operation of motor vehicles on

Legal Trails requires a permit that may be issued only under limited circumstances.¹ As a result, nearly all traffic utilizing Dinsmoor Road approaches from and departs to the south, in the direction of Pomfret Road.

The existing traveled way of Dinsmoor Road intersects Bartlett Brook Road at a skew angle requiring most users to make sharp turns when approaching from and departing to the south. Dinsmoor Road is also moderately graded uphill from the town highway. As a result, the driveway can be challenging to navigate, particularly in winter conditions.

B. Proposed Driveway Modifications

The White Application proposes to address these challenges by establishing a shared access apron south of the existing traveled way of Dinsmoor Road, supported by a precast concrete headwall at the outlet of the existing culvert at the bottom of Dinsmoor Road and running parallel to Bartlett Brook Road. This would result in an approximately 75-degree intersection between Dinsmoor Road and Bartlett Brook Road, versus the more skewed angle that now exists. By shifting the driveway centerline downhill (due to the proposed apron being off-center and down grade from the existing traveled way), the moderate uphill grade would remain, and in some places become modestly steeper.²

By comparison, the Mann Application (as defined below) proposes to excavate the embankment north of the existing traveled way of Dinsmoor Road with the similar goal of improving intersection navigability, while also reducing the uphill grade.

II. Procedural History

A. The Mann Application and White-Mann Litigation

This Decision is made concurrently with a decision on an Application for Town Highway Access Road Permit dated July 17, 2023, by the Landowner (the “Mann Application”). Like the White Application, the Mann Application also seeks to modify Dinsmoor Road where it intersects Bartlett Brook Road. Each application has been evaluated on its own merits, but with consideration given to whether one or the other better meets the applicable standards described in Section III below.

Both applicants also are engaged in an ongoing dispute concerning their respective rights in the Existing Easement. The particulars of this dispute are beyond the scope of this Decision, but are subject to pending litigation (the “White-Mann Litigation”) to which the Town of Pomfret has been made a party by the Landowner.³ The Town’s status as a party to the White-Mann

¹ Town of Pomfret, Ordinance Pertaining to Travel on Trails, adopted August 4, 2004, *available at* https://pomfretvt.us/files/1014/0068/3275/trails_ordinance__policy.pdf.

² *Compare* Sheet C1.10 with Sheet C2.10 in the MacKenzie Engineering and Construction plans attached hereto as Exhibit B (the “Construction Plans”).

³ *See* Hillary White et al. v. Andrew Mann et al., No. 23-CV-03473 (Vt. Super. Ct.).

Litigation, and the involuntary means by which it became a party, were not considered by the Selectboard when reaching this Decision.

B. The White Application

Applicant submitted the Application on August 7, 2023, via hard copy to the Town Clerk, and via email from Applicant's counsel to the Town's outside counsel, which email was circulated to the Selectboard the same day. The Selectboard conducted a site visit on August 16, 2023.⁴

A hearing on the White Application was held on September 12, 2023, during a special meeting of the Selectboard at which a hearing on the Mann Application also was held. The events of the White Application hearing are more particularly described in Section 6 of the related Selectboard meeting minutes.⁵

The Selectboard closed the White Application hearing on September 12, 2023, held non-public deliberative sessions on September 20, 2023 and October 4, 2023, and thereafter reached this Decision.

III. Applicable Standards

A. Pomfret Highway Ordinance

Section 5.3(k) of the Town of Pomfret Highway Ordinance (the "Highway Ordinance")⁶ requires that the first 20 feet of a driveway entering upon a town highway meet the following standards, unless the same are waived or varied:

- Intersection angle of 90 degrees to the town highway.
- Minimum sight distance in both directions (the required distance being determined by reference to the speed limit of the intersecting town highway).
- Sixteen foot minimum width.
- Grading and slope such that water from the driveway does not enter the town highway (it being recommended that the driveway have a grade dropping six inches in ten feet before extending either up or down slope).
- Culverts to be installed if necessary to prevent deterioration of the town highway.

⁴ The August 16, 2023, site visit was the latest of several visits made by the Selectboard. An earlier site visit was made on November 4, 2022, to review prior driveway modifications proposed by Applicant and the Landowner that ultimately were not implemented. Selectboard members and the Road Foreman made additional visits at various times during the eighteen months prior to this Decision.

⁵ Town of Pomfret Selectboard, Special Meeting Minutes, September 12, 2023, *available* at https://pomfretvt.us/index.php/download_file/view/2256/265/.

⁶ Town of Pomfret, Highway Ordinance, adopted June 21, 2023, *available* at https://pomfretvt.us/files/4016/8740/6683/Pomfret_Highway_Ordinance_as_adopted_2023-06-21.pdf.

- Vegetation and trees to be removed if necessary to provide for visibility and safety.

B. State Law

Relevant state law at 19 V.S.A. 1111 requires, among other things, that a permit be obtained by anyone wishing to use any part of a highway right-of-way, including to develop, construct, regrade or resurface any driveway, entrance or approach. State law further empowers Vermont municipalities to protect and promote the safety of the traveling public, maintain reasonable levels of service on the existing highway system, and protect the public investment in the existing highway infrastructure.

C. Application of Applicable Standards

Based on the White Application, Construction Plans and testimony of witnesses, the Selectboard finds that the proposed modifications to Dinsmoor Road meet some but not all of the applicable standards set forth in the Highway Ordinance. The proposed modifications also raise concerns around the interests articulated in 19 V.S.A. 1111(b).

The proposed modifications would meet the minimum sight distance and width standards in the Highway Ordinance, and the Construction Plans adequately provide for improvements to the existing culvert that would be necessitated by the new apron.

Although the proposed modifications would improve the existing skew angle intersection with Bartlett Brook Road, they would not create a 90-degree intersection. Vehicles entering onto and exiting from Dinsmoor Road still would need to make sharp turns, albeit through a wider turning radius than they do presently. As the proposed modifications would not reduce the existing grade, vehicles would remain at risk of overrunning the traveled way of Dinsmoor Road or Bartlett Brook Road, particularly in winter conditions, endangering the traveling public within the highway right-of-way.

While the Construction Plans provide for a drainage swale south of the proposed apron, the post-construction grade still presents a risk that runoff will enter the town highway during heavy rain events, causing erosion of the existing highway infrastructure. The apron, swale and headwall would occupy the area now used for driveway snow removal, increasing the likelihood that snow must be pushed into the highway right-of-way, further jeopardizing the highway infrastructure.⁷

The Selectboard acknowledges that the proposed modifications would improve elements of the existing driveway, despite not meeting all of the Applicable Standards described in Section III above. Were there no immediately available and more conforming alternative, the Selectboard

⁷ Leaving snow in the plowed portion of the highway right-of-way also would contravene the Town's Winter Road Maintenance Policy. See Town of Pomfret, Winter Road Maintenance Policy, adopted February 5, 1992, available at https://pomfretvt.us/files/4314/0068/3230/Summer_and_Winter_Road_Maintenance_Policy_2-5-1992.pdf.

would consider whether waivers and/or variances of the unmet standards were appropriate under the circumstances.

It is not necessary to reach that question, however, as an immediately available and more conforming alternative exists in the Mann Application, provided the same is appropriately conditioned, including to ensure that Applicant will enjoy the same or greater easement rights over the Mann Application area as they do now over the existing traveled way of Dinsmoor Road.

The Selectboard recognizes that considerable time and resources were spent to prepare the Application, Construction Plans and related land survey by Rockwood Land Services, LLC, and appreciates the professionalism and diligence of each party who prepared these materials for the Selectboard's review.

IV. Decision

Based on the White Application, Construction Plans, testimony of witnesses, the findings and conclusions described above, and **subject to the further limitations specified in Section V below**, a permit to construct a residential driveway is **denied**.

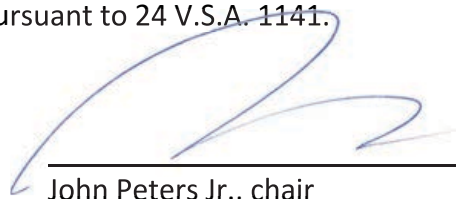
V. Further Limitations

The decision described in Section IV above is subject to the following further limitations:

- A. This Decision shall not 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.
- B. This Decision applies only to the subject matter contained herein. The conformity of any other structures, uses, or activities with the Highway Ordinance 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 13th day of October, 2023, and signed by the chair of the Pomfret Selectboard on its behalf pursuant to 24 V.S.A. 1141.

A handwritten signature in blue ink, appearing to read "John Peters Jr.", is written over a solid black horizontal line.

John Peters Jr., chair
Pomfret Selectboard

Selectboard members John Peters Jr., Benjamin Brickner, Steve Chamberlin, Meg Emmons and Emily Grube 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

White Application

Attached.

TOWN OF POMFRET

APPLICATION FOR TOWN HIGHWAY ACCESS ROAD PERMIT
(Application fee of \$100 payable to Town of Pomfret)

Access Road Type (check one): Private Drive* Agricultural Forestry

Applicant Name: Hillary White and Philip Dechert Phone: [REDACTED] Email: [REDACTED]

Applicant Mailing Address: 195 Dinsmoor Road, So. Pomfret State: VT Zip: 05067

(Complete only if Applicant is not the Landowner)

Landowner Name: _____ Phone: _____ Email: _____

Landowner Mailing Address: _____ State: _____ Zip: _____

The undersigned Applicant requests permission to develop, construct, or regrade the access road type indicated above.

Access Road Location: on the east side (cardinal direction) of Bartlett Brook Road (town highway name)
at approximately 5,100 (feet) from the intersection of Pomfret Road (nearest town highway intersection).

Please provide a brief description of the work to be done: See Attached with Exhibits. This is not an application for a permit to create a new driveway access. It is an application to restore and improve an existing access located in the Town's ROW which has been utilized by the applicants for 35 years (+/-). Access has been rendered unsafe and the proposed plan remedies the current state of the access.

(PROVIDE DETAILED SKETCH OF ACCESS LOCATION AND LAYOUT ABOVE)

The following conditions, standards and restrictions shall apply to the first 20 feet of a newly developed, constructed, or regraded access road (measured from the edge of the traveled way) unless waived herein:

General Conditions

1. *Application Fee.* A \$100 non-refundable application fee shall be submitted before an application will be considered.
2. *Site Visit.* The Selectboard and Road Commissioner shall make a site visit prior to approving a permit.
3. *Final Site Inspection.* Upon completion of work, the Applicant or its agent shall notify the Town within ten days to arrange a final site inspection.
4. *Noncompliance.* Any work deemed not in compliance with the permit shall be corrected and reinspected for approval.
5. *Final Approval.* Work shall be approved by the Selectboard or its designee before any use of the access may be started.

* Each residence is limited to one driveway access.

Design Standards[†]

1. *Intersection Angle.* Access roads shall be constructed at a 90 degree angle to the town highway.
2. *Minimum Sight Distance.* Sight distances shall be at least as shown in the table below in both directions when viewed from a point 15 feet back from edge of the traveled way and at a height of eye of 3.5 feet on the drive to a height of eye of 2.0 feet on the roadway. The "posted speed" for unposted Class 3 highways shall be deemed to be 30 mph.

Minimum Sight Distance

<i>Posted Speed (mph)</i>	<i>Minimum Sight Distance (feet)</i>
25	155
30	200
35	250
40	305
45	360

3. *Access Road Width.* Access roads shall be 16 feet wide and graded and sloped such that water from the access road does not enter the Town highway. It is recommended that the driveway or access road have a grade dropping six inches in 10 feet before extending either up or down slope.
4. *Culverts.* Culverts shall be installed if deemed necessary by the Selectboard or its designee and shall conform to standards described in Section 5.3(h) of the Pomfret Highway Ordinance.
5. *Vegetation.* Vegetation and trees shall be removed as necessary to provide for visibility and safety.

The undersigned Applicant agrees to adhere to the conditions, standards and restrictions forming a part of this permit, and understands that this permit, if issued, will be issued in accordance with 19 V.S.A. 1111 and the Pomfret Highway Ordinance and may be voided in the event of misrepresentation, substantial inaccuracy or failure to undertake development, construction, or regrading of the access road within one year of the date of approval. If Applicant is not the Landowner, Applicant has provided the Landowner with a copy of this completed Application and obtained the Landowner's signature below.

x Philip Dechert Jr.
Hillary D. White
 Applicant Signature

PHILIP DECHERT JR.
HILLARY D. WHITE
 Applicant Printed Name

8-7-23
8-7-23
 Date

(Complete only if Applicant is not the Landowner)

The undersigned Landowner acknowledges they have received a copy of this completed Application.

 Landowner Signature

 Landowner Printed Name

 Date

[Remainder of page intentionally blank. Application form continues on next page.]

[†] Any of the standards listed herein may be waived or varied upon the Applicant's request and following consideration by the Selectboard and Road Commissioner of public and private interests, topography, adequacy of highway design, ease of snow removal, drainage, and maintenance of safe conditions in all seasons for the traveling public.

OFFICIAL USE ONLY

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

Culvert Required (*min. 18-inch diameter*)? Yes No

Additional conditions, standards and restrictions; waivers of design standards (if any):

PERMIT APPROVED this _____ day of _____, 20____.

Road Commissioner

Selectboard Chair

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

Road Commissioner

Selectboard Chair

Date

Form adopted by the Pomfret Selectboard January 4, 2023. Supersedes all prior dated forms.

Attachment to Application for Town Highway Access Reconstruction/Improvement Road Permit
Town of Pomfret, Vermont

This attachment and the appended exhibits are submitted as part of Dr. White's Application for Town Highway Access Road Permit dated August 7, 2023.

Description of the topography of the Dinsmoor Rd easement and the Public ROW.

The area of travelled way subject to Dr. White's and Mr. Dechert's application allows access by Dr. White and Mr. Dechert via a deeded ROW (see Exhibit) to their dwelling, as well as other property owners uphill from the intersection of Dinsmoor Road and Bartlett Brook Road. As you enter Dinsmoor road from Bartlett Brook Road, there begins a steep ascent adjacent to (and north of) the north apron and a deep ravine adjacent to (and south of) the south apron onto Bartlett Brook Road. The turn into Dr. White's and Mr. Dechert's driveway, as it currently exists requires navigating a sharp and narrow angle with immediate/abrupt/steep/dangerous elevation gain and which can require multi-point turns or travel into oncoming traffic.

Dinsmoor Rd is a grandfathered and preexisting shared driveway.

Dr. White and Mr. Dechert are parties to the shared driveway, which was first set up by the original division of land into parcels by Ehrick Wood (1965/1966 Wood to Maynes to Griglik to White/Dechert to White) who conveyed a deeded ROW easement access to every parcel along Dinsmoor Rd (as recorded in the town's records). **Book 29, Page 225 (recorded 7/18/1966)**

As title owner of 195 Dinsmoor Rd, Dr. White and Mr. Dechert holds a right to use this 1966 ROW access easement described within the original warranty deed referenced above. This 1966 easement governs the parts of Dinsmoor Rd not specified in the 1987 easement (referenced below): the town ROW access below the 1987 easement, and the section of Dinsmoor Rd that is above Mr. and Mrs. Mann's lower parcel.

Dr. White and Mr. Dechert are also grantees of the 1987 Dinsmoor Rd ROW easement

In 1987 Mr. and Mrs. Mann conveyed an easement to Dr. White and Mr. Dechert which only covers a section of the lower portion of Dinsmoor Rd that runs along Mr. and Mrs. Mann's lower parcel. **Book 36, Page 137-39 (recorded 6/12/1987)**

This easement does not include the Public ROW, nor the bulk of the length of Dinsmoor Rd. The 1987 Dinsmoor Rd easement establishes, amongst other rights, that Dr. White and Mr. Dechert have the right to repair Dinsmoor Rd as necessary to protect their rights of access.

Safety issues for the town road and its intersection with Dinsmoor Rd.

In 2022, the downhill half of the rolling crown at the bottom of Dinsmoor Road was chiseled out to create an abrupt and steep grade change. Prior to 2022, access was had in the manner and along the route of the plan provided as part of this application. The 2022 change blocked access across the south apron. In 2023, a more substantial berm was constructed within a foot or so of the town travel way.

This "berm" has had the effect of obstructing access to Dinsmoor Road via the south apron and created significant safety issues, to Wit:

1. The berm blocks safe and convenient passage by emergency vehicles.
2. That berm will be in the path of the town plow lane in winter.

3. That berm prevented the Dinsmoor Road plow truck from being able to properly clear the apron lying in the highway right of way.
4. Delivery vehicles frequently cannot make the turn onto Dinsmoor Road, so they park at the bottom and block traffic on the town road.
5. Service vehicles frequently have to back up Dinsmoor Road or go past and turn around and approach the driveway from the north (this not being suitable for trucks with trailers or other oversized vehicles needing to access uphill landowners).
6. The berm forces oncoming traffic into the opposite lane of travel in order to access the driveway. Bartlett Brook Road is slightly curved and has an elevation gain right where Dinsmoor Road meets it, making it difficult to assess oncoming town highway traffic due to such a narrow, angular entryway.
7. The berm obstructs the sightlines of those persons entering Bartlett Brook Road from Dinsmoor Road. Drivers who cannot turn their neck far enough to the left are at high risk of not being able to see oncoming traffic on Bartlett Brook Road as it currently exists.
8. The berm has the potential to cause harmful water drainage onto the town road since there is no proper drainage swale.

The engineering plan presented by Dr. White and Mr. Dechert in the permit application provides a solution for all of these safety issues.

The engineering plan prepared by Ian McKenzie, PE and the survey prepared by Tim Rockwood (licensed surveyor) that define the boundaries of the Dinsmoor Road easement demonstrate that Mr. McKenzie's plan will provide safe, convenient, and long-term access by property owners benefitted by the above referenced easement deeds all within the recorded easement boundaries.

The proposed work is predominantly within the Public ROW. As such, and in consultation with the Town, Dr. White and Mr. Dechert are submitting this permit application. In so doing, however, they reserve all available rights they have in law or equity to maintain safe access along the deeded right of way from Bartlett Brook Road to their property either as between Dr. White and Mr. Dechert and the Town and/or Dr. White and Mr. Dechert and Mr. and Mrs. Mann.

Dr. White's and Mr. Dechert's deeded right of way grants are appended as Exhibit 1.

Tim Rockwood's survey of Dinsmoor Road and Dr. White's and Mr. Dechert's property is appended as Exhibit 2.

Ian MacKenzie's Executive Summary of the proposed plan is appended as Exhibit 3.

Ian MacKenzie's Engineering plans are appended as Exhibit 4

Pictures of the berm and gravel pile as of July 29, 2023 are appended as Exhibit 5

1984 and 1986 Bruno and Associates survey of Mr. and Mrs. Mann's property as referenced in Tim Rockwood' Survey is appended as Exhibit 6.

Engineering plan highlights:

1. The current 1-foot turning radius will become a 15-foot turning radius.
2. The current 46-degree angle between town road and driveway centerlines will become a 75-degree angle within the first 15-feet. (A minimum of 60-degrees is preferable.)

3. An 18-inch precast concrete headwall near the culvert outflow will stabilize the south apron and help prevent erosion, control drainage, etc.
4. The town shoulder will be restored.
5. A drainage swale with appropriate specifications will be added to improve drainage and protect the town highway.
6. Specifications for materials deemed suitable by the engineer will be confirmed prior to placement. Construction with these materials will be a significant improvement for stabilization and drainage:
 - a. Subbase material. An 18-inch minimum layer of 3-inch minus dense grade crushed stone (VAOT 704.06) will be used for the subbase material and crowned.
 - b. Surface material. A 4-inch-thick surface fine (VAOT 704.05B) will be used for the surface material.
7. Culverts: The culvert at the bottom of the driveway and parallel to the town road was recently replaced (~2021-2022) as allowed by the town.
8. Vegetation: as needed with approval by the town.

Dr. White and Mr. Dechert's engineer carefully considered a north apron expansion but rejected the same since a more northerly access will not meet engineering standards, will prevent reasonable ingress and egress on Dinsmoor Road, and will prevent gain of momentum under icy conditions (i.e., vehicles will not have sufficient travel momentum to ascend Dinsmoor Road if icy).

Dr. White and Mr. Dechert have standing to submit this permit application request: "The nature of a right of way is such that travel or usage as access is encouraged." *Patch v. Baird*, 140 Vt. 60, 64, 435 A.2d 690, 692 (1981) "[T]he owner of the easement is entitled to a convenient, reasonable, and accessible way, having regard to the interest and convenience of the owner of the land as well as their own." *VTRE Invs. v. MontChilly, Inc.*, 2020 VT 77, ¶ 23 (references omitted). A grantee of an easement "has the same right of property therein as he has in land. He is entitled to his specific property and cannot be divested thereof without his consent." *La Fleur v. Zelenko*, 101 Vt. 64, 72, 141 A. 603, 606 (1928). The grantee of a right of way has the duty and the right "to construct or keep in repair the way granted." *Walker v. Pierce*, 38 Vt. 94, 98 (1865).

Respectfully submitted,

Dr. Hillary White
Mr. Philip Dechert, Jr.

Hillary D. White
Philip Dechert

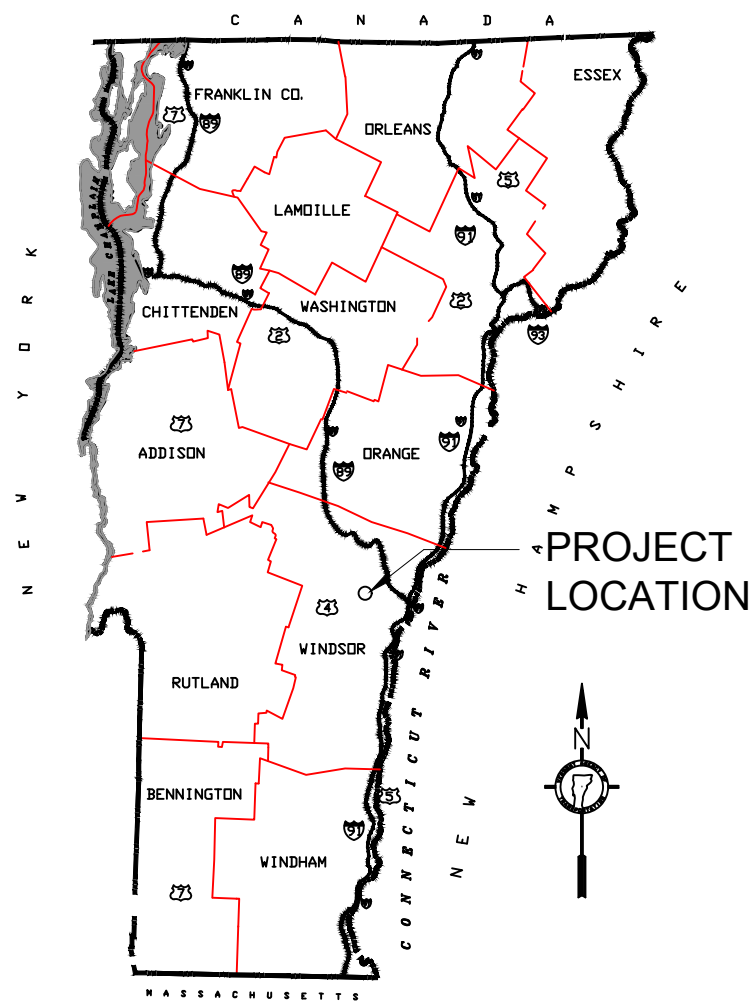
EXHIBIT B

Construction Plans

Attached.

Project: Dinsmoor Road Access to Bartlett Brook Road
Client: Hillary White
Location: Bartlett Brook Road
Windsor County
Pomfret, Vermont

Exhibit 4



PREPARED BY:

Mackenzie
Engineering and Construction







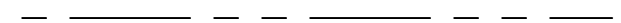



1313 VT Route 110
South Royalton, VT 05068
Email: ian@mack-eng.com

DATE: JUNE 13, 2023

GENERAL NOTES:

1. RIGHT OF WAY AND PROPERTY BOUNDARY INFORMATION IS AS PROVIDED BY ROCKWOOD LAND SERVICES, LLC. OF HARTLAND, VERMONT.
2. PROPERTY LINES, EASEMENTS AND OTHER REAL PROPERTY DESCRIPTIONS PROVIDED IN THIS PLAN SET ARE FOR THE USE OF SHARED ACCESS IMPROVEMENT PLANNING ONLY. THEY DO NOT DEFINE LEGAL RIGHTS OR MEET LEGAL REQUIREMENTS FOR A LAND SURVEY AS DESCRIBED IN 26 V.S.A. s-2502(4), AND SHALL NOT BE USED IN LIEU OF A SURVEY AS THE BASIS OF ANY LAND TRANSFER OR ESTABLISHMENT OF ANY PROPERTY RIGHT.
3. IAN S. MACKENZIE, PE DOES NOT TAKE WITNESS TO PROPERTY BOUNDARY INFORMATION.
4. EXISTING CONTOUR AND ELEVATION INFORMATION AS SHOWN IS RELATIVE AND NOT BASED ON ACTUAL MEAN SEA LEVEL DATUM.
5. PROPOSED INFORMATION AND FEATURES INDICATED BY FRAMED TEXT
6. PLAN NORTH ORIENTATION IS APPROXIMATE BASED ON TRUE NORTH.
7. ALTERATION OF ANY INFORMATION AS DEPICTED WITHIN THESE PLANS IS PROHIBITED AND SHALL RENDER THESE DOCUMENTS VOID.
8. AGENT/OWNER/CLIENT IS RESPONSIBLE FOR OBTAINING AND MAINTAINING COMPLIANCE WITH ALL LIFE, SAFETY, OSHA, AND BUILDING PERMITS PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION AS NECESSARY.
9. CONTRACTOR(S) IS(ARE) RESPONSIBLE TO PERFORM ALL SERVICES IN ACCORDANCE TO ALL APPLICABLE STATE AND FEDERAL WORK SAFETY CODES.
10. ALL EARTHWORK SHALL BE PERFORMED IN ACCORDANCE TO THE VERMONT LOW RISK SITE HANDBOOK. CONTRACTOR IS RESPONSIBLE FOR ALL EROSION AND SEDIMENT CONTROL.
11. LOCATIONS, ELEVATIONS AND ORIENTATION OF ALL PHYSICAL ITEMS IN WORK AREA SHALL BE VERIFIED AND FURTHER IDENTIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. ANY DISCREPANCY IN ELEVATIONS OR DIMENSIONS SHOWN ON THE PLANS SHALL BE IMMEDIATELY REPORTED TO THE ENGINEER.
12. CONTRACTOR SHALL BE RESPONSIBLE TO PROPERLY DIGSAFE THE WORK SITE AND ALSO LOCATE EXISTING PRIVATE & NON-MEMBER UNDERGROUND UTILITIES THAT MAY NOT BE LOCATED BY A DIGSAFE EFFORT.
13. CONTRACTOR IS RESPONSIBLE FOR BEING FAMILIAR WITH ALL CURRENT APPLICABLE VERMONT ENVIRONMENTAL PROTECTION RULE CHAPTERS.
14. BURIED AND OVERHEAD UTILITIES WERE NOT LOCATED.
15. BASE SURVEY, PHYSICAL AND TOPOGRAPHIC INFORMATION IS PER TOPOGRAPHIC SURVEY AS PERFORMED BY MACKENZIE ENGINEERING AND CONSTRUCTION, LLC FOR THE PURPOSE OF SHARED ACCESS IMPROVEMENT ONLY.
16. TOPOGRAPHIC SURVEY WAS PERFORMED WITH LEICA TOTAL STATION.

LEGEND

- CONTOUR – MAJOR 
- CONTOUR – MINOR 
- CONTOUR – PROPOSED  1376
- EDGE OF STREAM 
- TOP OF BANK 
- EXISTING CULVERT 
- EASEMENT 
- EXISTING EDGE OF GRAVEL 
- EXISTING TREELINE 
- DIRECTION OF STREAM FLOW 

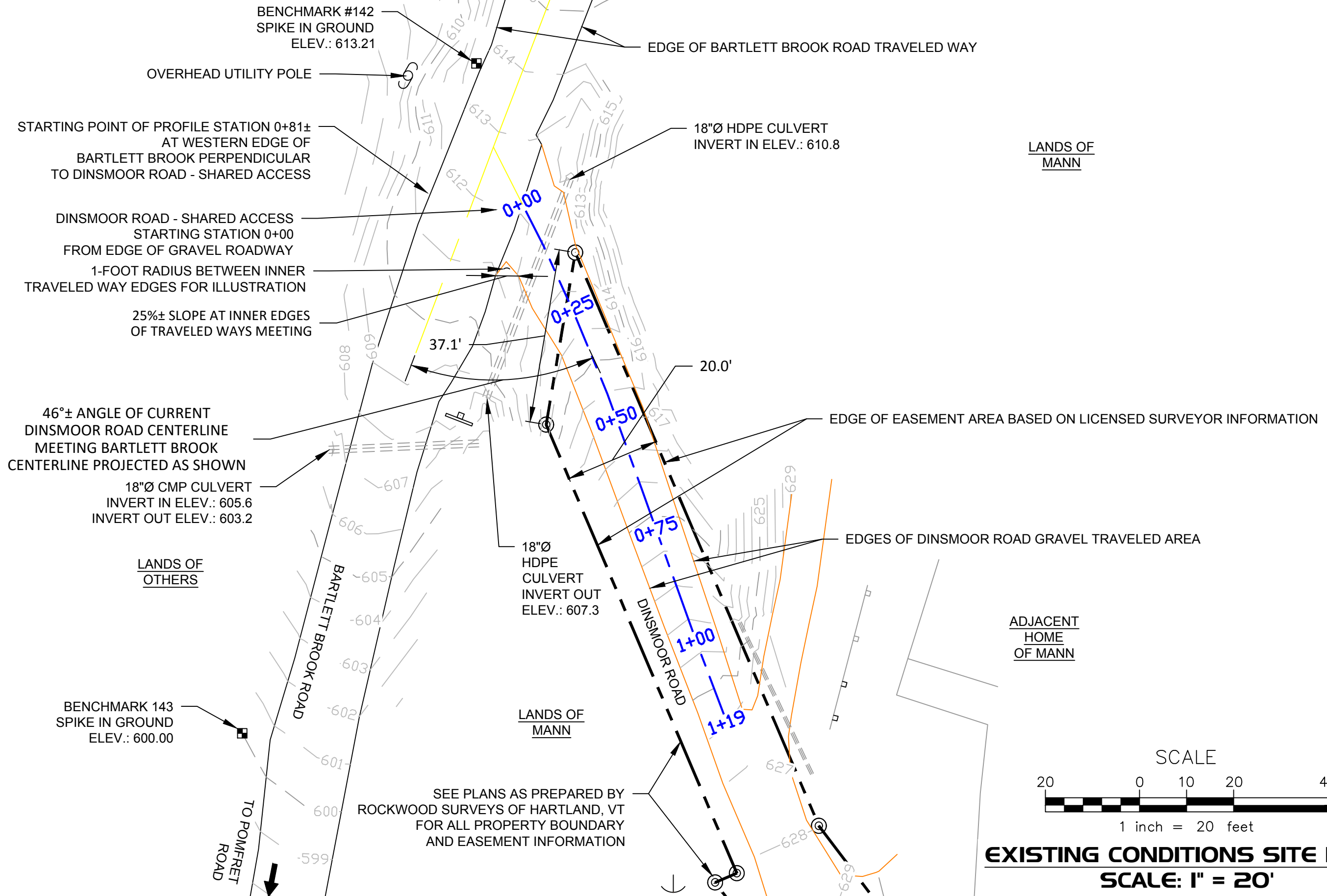
**PROJECT NOTES
AND LEGEND SHEET**

PROJECT TITLE:	SHARED ACCESS ENTRANCE TO BARTLETT BROOK
SHEET TITLE:	NOTES AND LEGEND
PROJECT NO.:	2304
SHEET NO.:	CO.00
DATE:	6-12-23

DINSMOOR ROAD
SHARED ACCESS
Bartlett Brook
Pomfret, Vermont



MACKENZIE
Engineering and Construction
1313 VT Route 110, So. Royalton, VT 05068
Mobile No.: 802 - 356 - 5617
E-mail: ian@mack-eng.com

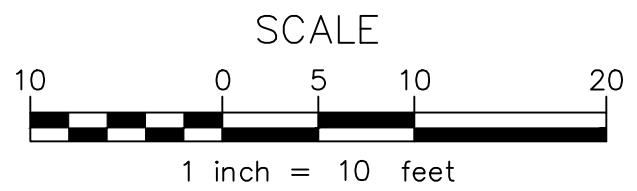
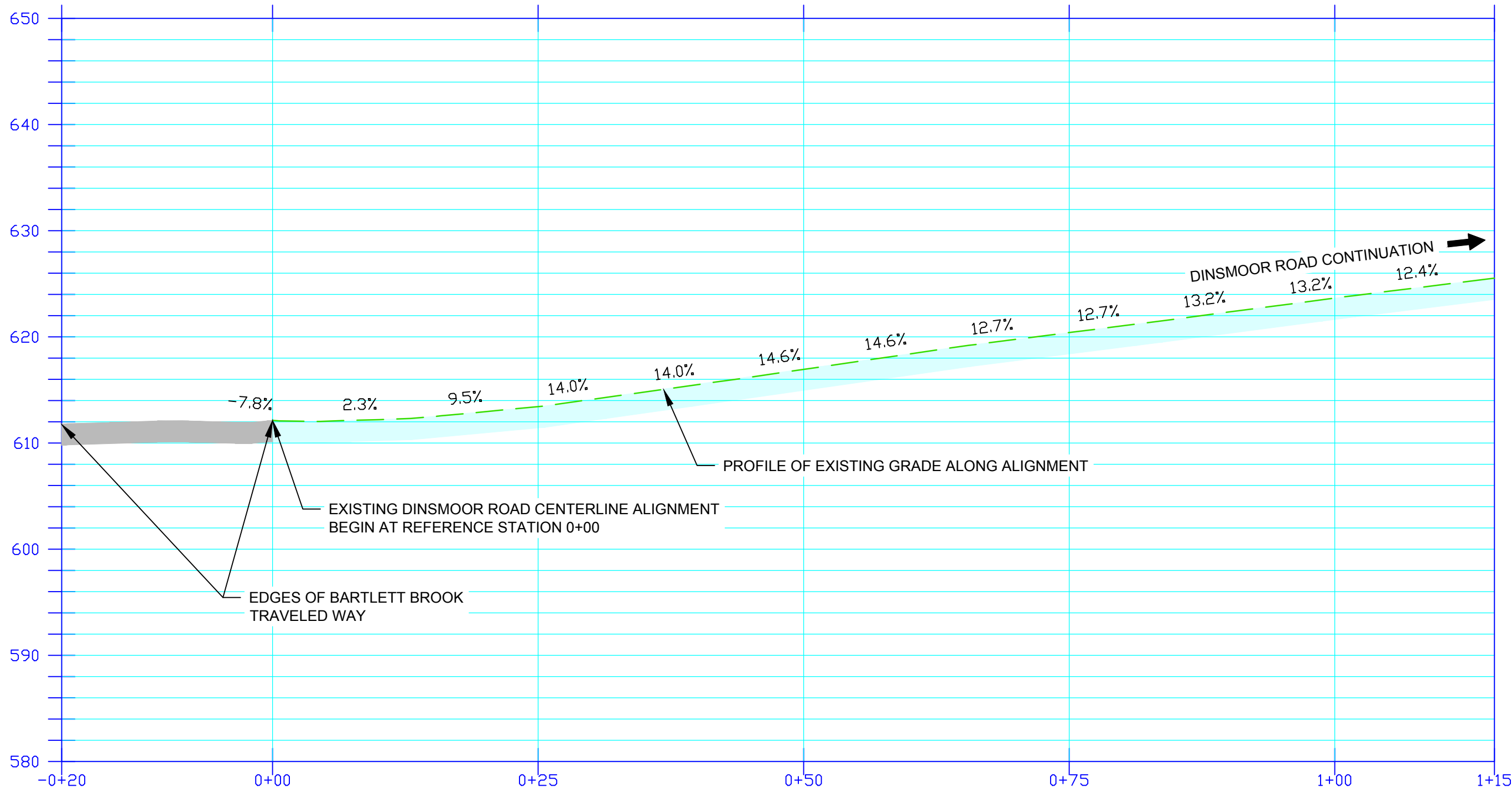


PROJECT TITLE:	SHARED ACCESS ENTRANCE TO BARTLETT BROOK	PROJECT NO.:	2304
SHEET TITLE:	EXISTING CONDITIONS SITE PLAN	SHEET NO.:	C1.00
		DATE:	5-8-23

DINSMOOR ROAD
SHARED ACCESS
Bartlett Brook
Pomfret, Vermont



MACKENZIE
Engineering and Construction
1313 VT Route 110, So. Royalton, VT 05068
Mobile No.: 802 - 356 - 5617
E-mail: ian@mack-eng.com



DINSMOOR ROAD
EXISTING CENTERLINE ALIGNMENT PROFILE
SCALE: 1" = 10' (HORIZONTAL & VERTICAL)

PROJECT TITLE:	SHARED ACCESS ENTRANCE TO BARTLETT BROOK
SHEET TITLE:	EXISTING CENTERLINE PROFILE
PROJECT NO.:	2304
SHEET NO.:	C1.10
DATE:	6-12-23

DINSMOOR ROAD
 SHARED ACCESS
 Bartlett Brook
 Pomfret, Vermont



MACKENZIE
 Engineering and Construction
 1313 VT Route 110, So. Royalton, VT 05068
 Mobile No.: 802 - 356 - 5617
 E-mail: ian@mack-eng.com

BENCHMARK #142
SPIKE IN GROUND
ELEV.: 613.21

PROPOSED CENTERLINE ALIGNMENT
STARTING POINT OF STATION 1+00

LANDS OF
OTHERS

75°± ANGLE OF PROPOSED
DINSMOOR ROAD CENTERLINE
MEETING BARTLETT BROOK
CENTERLINE PROJECT AS SHOWN

TAPER ROAD SHOULDER
GRADE TO APRON,
TRANSITION GRADES
AS SHOWN

INSTALL STONE-LINED
DRAINAGE SWALE
AT SOUTH SIDE
OF SHARED ACCESS

RESTORE TOWN
ROAD SHOULDER

18"Ø PRECAST
CONCRETE HEADWALL
SEE DETAIL SHEET C2.20

FINISH GRADING (TYP)

15' RADIUS AS
SHOWN PROPOSED

EASEMENT BOUNDARY
MONUMENT TO BE SET
BY LIC. SURVEYOR

LANDS
OF MANN

LIMITS OF DISTURBANCE
TO PROVIDE PROPER FINISH SURFACE GRADING AND TRANSITIONS AS NECESSARY

MAINTAIN NORTH DRIVEWAY EDGE

EASEMENT BOUNDARY MONUMENT
TO BE SET BY LICENSED SURVEYOR

MAINTAIN NORTH DRAINAGE DITCH

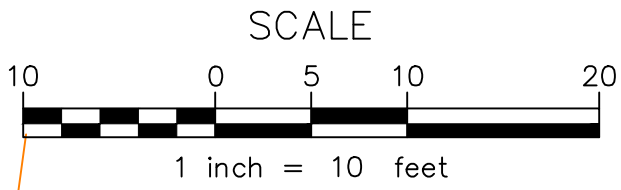
PROVIDE 16% MAX GRADE ALONG CENTRAL PORTION OF SHARED ACCESS

WIDENING OF SHARED ACCESS TO MEET 15' RADIUS

EXTENT OF SHARED ACCESS BOX-CUT AND GRADING
SEE SHARED ACCESS SECTION DETAIL, SHEET C2.20

MAINTAIN WORK WITHIN EASEMENT BOUNDARY
SEE PLANS AS PREPARED BY LICENSED SURVEYOR

LANDS OF
MANN



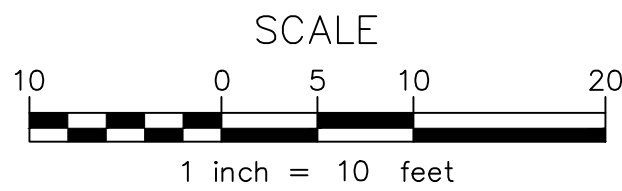
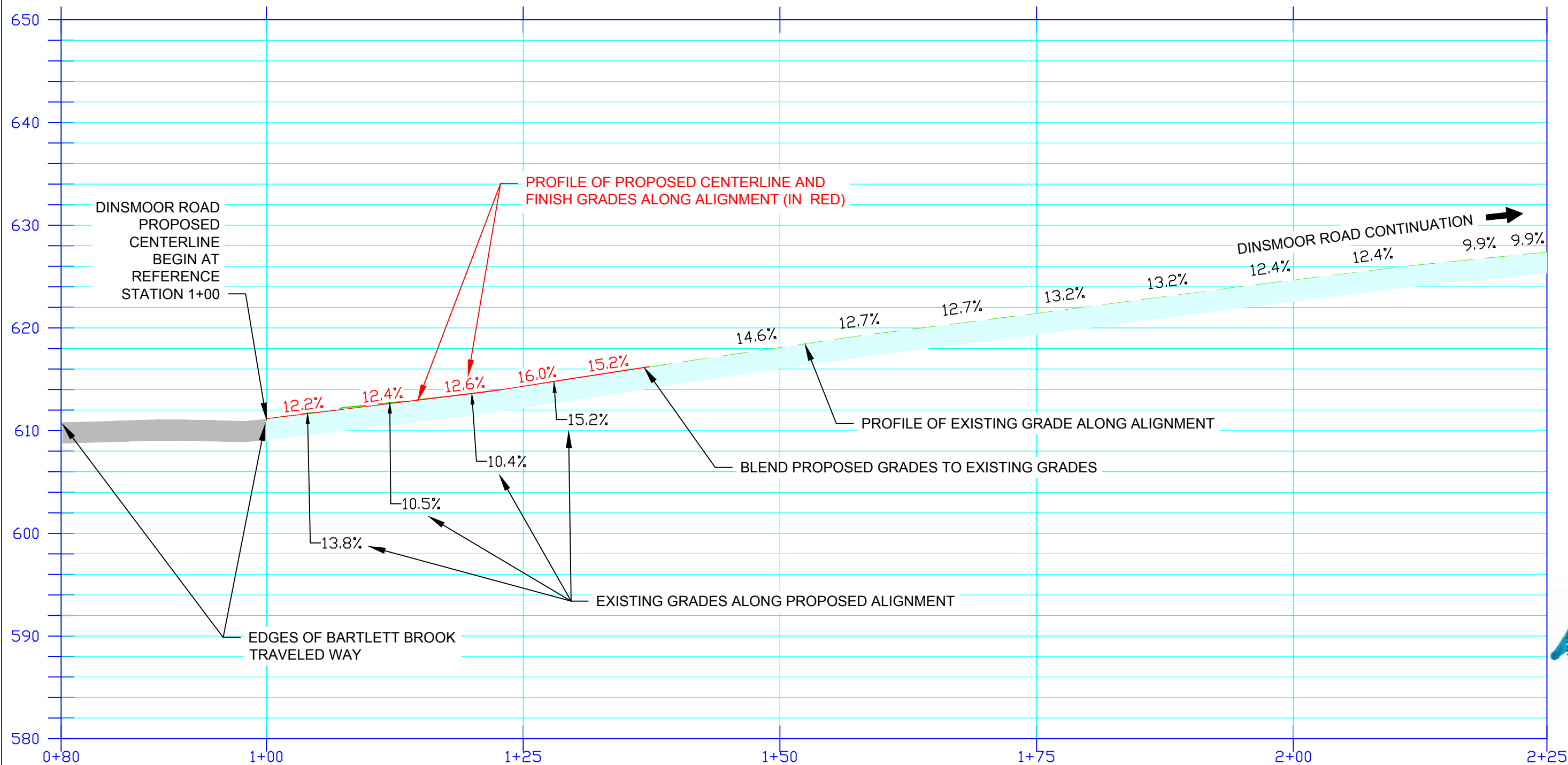
PROPOSED IMPROVEMENTS PLAN
SCALE: 1" = 10'

PROJECT TITLE:	SHARED ACCESS ENTRANCE TO BARTLETT BROOK	PROJECT NO.:	2304	SHEET NO.:	C2.00	DATE:	6-13-23
SHEET TITLE:	PROPOSED IMPROVEMENTS PLAN - OPTION "A"						

DINSMOOR ROAD
SHARED ACCESS
Bartlett Brook
Pomfret, Vermont



MACKENZIE
Engineering and Construction
1313 VT Route 110, So. Royalton, VT 05068
Mobile No.: 802 - 356 - 5617
E-mail: ian@mack-eng.com



DINSMOOR ROAD
PROPOSED CENTERLINE ALIGNMENT PROFILE
SCALE: 1" = 10' (HORIZONTAL & VERTICAL)

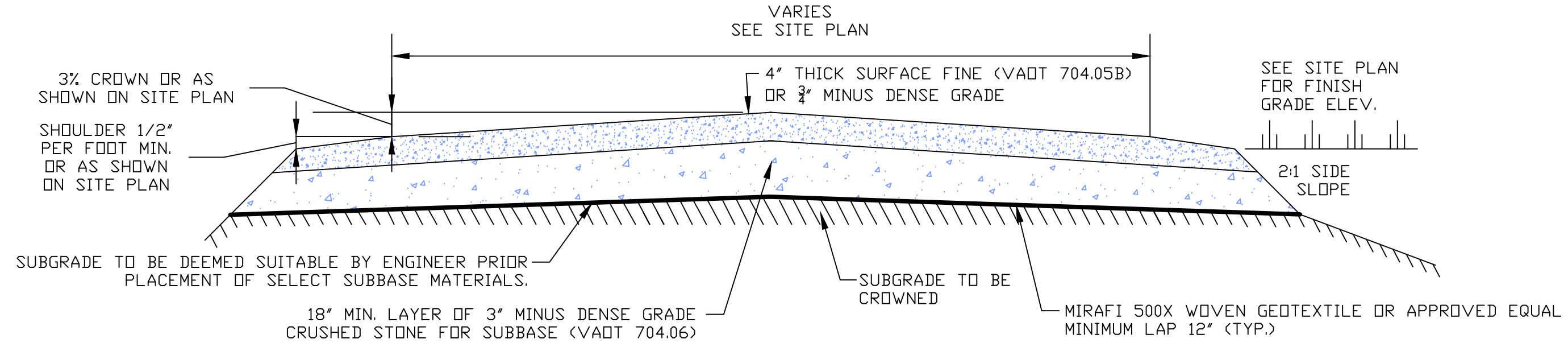
PROJECT TITLE:	SHARED ACCESS ENTRANCE TO BARTLETT BROOK
SHEET TITLE:	PROPOSED CENTERLINE PROFILE
PROJECT NO.:	2304
SHEET NO.:	C2.10
DATE:	6-13-23

DINSMOOR ROAD
 SHARED ACCESS
 Bartlett Brook
 Pomfret, Vermont



MACKENZIE
 Engineering and Construction
 1313 VT Route 110, So. Royalton, VT 05068
 Mobile No.: 802 - 356 - 5617
 E-mail: ian@mack-eng.com

VARIES
SEE SITE PLAN

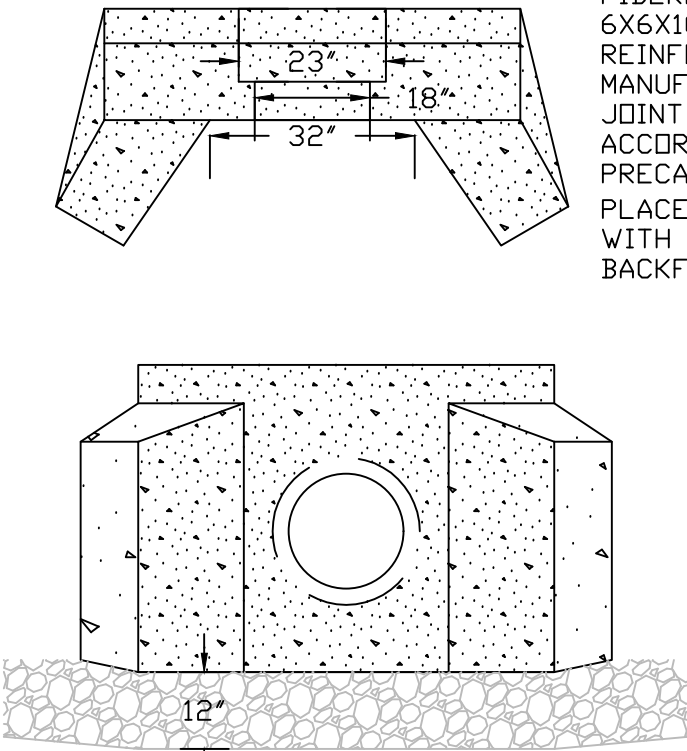


**SHARED ACCESS BOX-CUT AND GRADING
CROSS SECTION DETAIL
NOT TO SCALE**

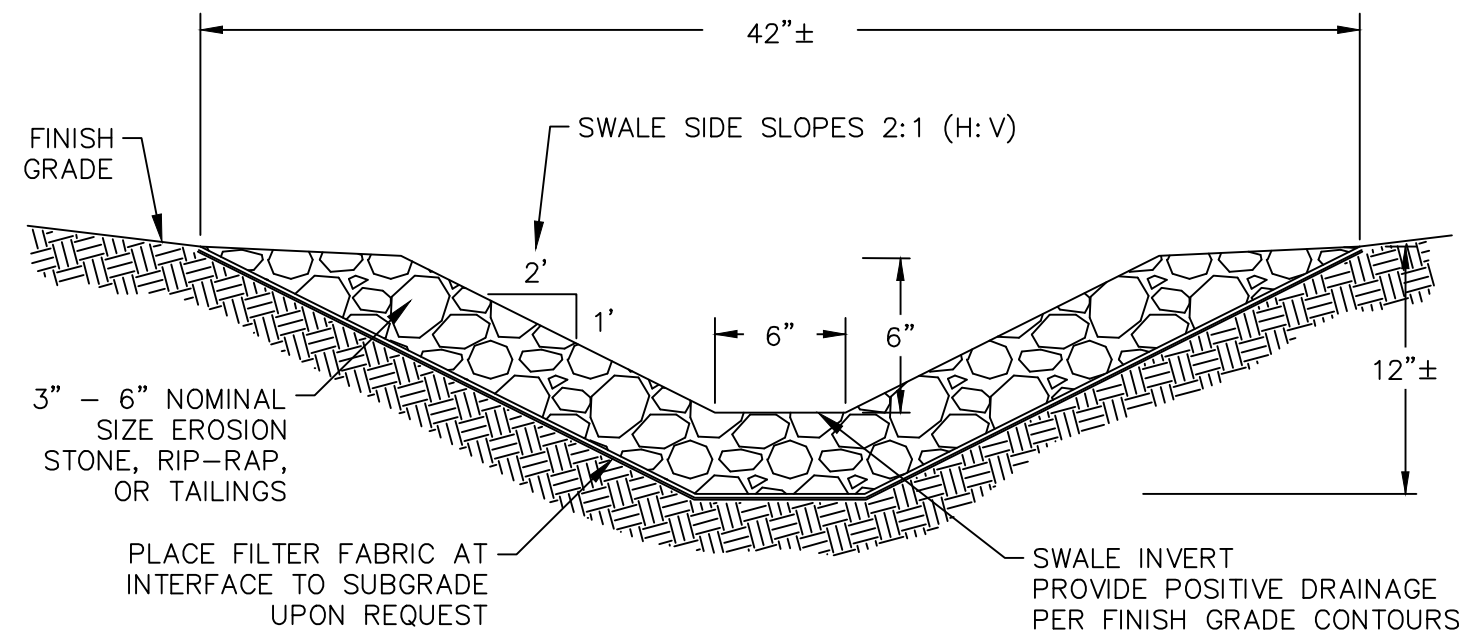
FINAL ROADWAY CONSTRUCTION WILL REQUIRE:

- REMOVAL OF ALL CONTAMINATED CRUSHED GRAVEL BASE MATERIALS CAUSED BY CONSTRUCTION ACTIVITIES.
- REFILL, REPLACEMENT AND COMPACTION OF THE SUBBASE TO PROVIDE A MINIMUM DEPTH AS SHOWN.
- GRANULAR MATERIALS SHALL BE COMPACTED TO 95% OF THE MODIFIED PROCTOR DENSITY.

NOTE:
PRECAST CONCRETE HEADWALL AS SHOWN IS BY WEED PRECAST OF WHITE RIVER JCT., VT. CONSTRUCTED OF 4000 PSI COMPRESSIVE STRENGTH CONCRETE BASED ON 28 DAY CURE WITH STANDARD FIBERMESH AT 1.5 PCY. 6X6X10 GA. WELDED WIRE MATT WITH #3 AND #4 REBAR REINFORCEMENT TO BE PROVIDED ACCORDING TO MANUFACTURER'S SPECIFICATIONS. JOINT SEAL OR MORTAR CULVERT PIPE TO STRUCTURE ACCORDING TO MANUFACTURER'S SPECIFICATIONS. PRECAST HEADWALL IS 5,800# PER MANUFACTURER. PLACE ON 12" COMPACTED 1 1/2" CLEAN CRUSHED STONE PAD WITH MIRAFI 160N FABRIC AT SUBGRADE INTERFACE. BACKFILL WITH CLEAN GRANULAR BACKFILL



**PRECAST CONCRETE HEADWALL DETAIL
NOT TO SCALE**



**STONE-LINED SWALE DETAIL
NOT TO SCALE**



PROJECT TITLE:	SHARED ACCESS ENTRANCE TO BARTLETT BROOK	PROJECT NO.:	2304
SHEET TITLE:	MISCELLANEOUS DETAILS	SHEET NO.:	C2.20
DATE:	6-13-23		

DINSMOOR ROAD
SHARED ACCESS
Bartlett Brook
Pomfret, Vermont

DOCUMENT NOT VALID
WITHOUT ORIGINAL
STAMP & SIGNATURE

Mackenzie
Engineering and Construction
1313 VT Route 110, So. Royalton, VT 05068
Mobile No.: 802 - 356 - 5617
E-mail: ian@mack-eng.com

EXHIBIT D

Request for Clarification

Attached.

Decision re Mann Town Highway Access Road Permit Application

Jason Crance <Jason@crancelaw.com>

Wed, Nov 8, 2023 at 9:25 AM

To: Benjamin Brickner <benjamin.brickner@pomfretvt.us>, Andrew Mann <[REDACTED]>

Cc: Alison Sander <[REDACTED]>, Cabot Teachout <cteachout@doolaw.com>, John Peters <john.peters@pomfretvt.us>, Becky Fielder <clerk@pomfretvt.us>, Joseph McLean <jmclean@firmspf.com>

Dear Ben and members of the Select Board,

I am writing to request reconsideration and clarification of two (2) provisions of the Memorandum of Decision and Driveway Permit with Conditions and Limitations issued to Andrew Mann on October 13, 2023.

Given that the deadline to appeal the Select Board's decision under VRCP 75 is fast approaching, and consistent with my conversation with Attorney McLean, please confirm upon receipt of this request for reconsideration and clarification that the thirty (30) day appeal deadline under VRCP 75 is tolled analogous to the provisions of VRCP 59.

Dr. White and Mr. Dechert seek reconsideration and clarification from the Selectboard regarding: (1) the contemplated disposition of the "berm" or "flat spot" currently constructed within the Town's highway right-of-way given Mr. Mann's testimony at the hearing indicating his willingness to remove the "berm," and the Select Board's imposition of Condition and Limitation A and Condition and Limitation G addressing the location and existence of the berm or flat spot; and (2) the approved Permit Application and the Memorandum of Decision and the perceived conflicts they have with each other and with Mr. Mann's Amended Site Plan, testimony, and Condition and Limitation B.

Request for Clarification and Reconsideration regarding the removal of the Berm or Flat Spot

With respect to the "berm", during the hearing Mr. Mann testified (34:30) that he could lower the "flat spot" [the berm], that he planned on lowering the flat spot, and that the reason the flat spot was so tall was because he got two loads of hardpack to put down to make a surface for his sand. He also testifies (35:07) that "if this is all a go, [to] cut that [the flat spot] down, at least enough to put 6 to 12 inches of top soil or other material to plant grass," and that he has "no problem dropping it [the flat spot] down to meet the driveway."

In that context, second part of Condition A reads: "[i]f despite Applicant's [Mr. Mann] best efforts all work in the highway right-of-way cannot be completed by November 30, 2023, Applicant shall by the same day remove (or cause to be removed) all objects, fill or other obstructions in the highway right-of-way interfering with the normal use of the existing traveled way of Dinsmoor Road or maintenance of the highway right-of way."

Condition G reads: "[t]he area south of Dinsmoor Road and within the highway right-of way shall be restored to a permeable surface sufficient to absorb the anticipated runoff from the modified driveway and kept open to allow for placement of snow removed from the driveway."

At the hearing before the Select Board on September 12, 2023, there was conflicting testimony with respect to the "normal use" of the existing traveled way of Dinsmoor Road and the Memorandum of Decision does not address or define what that "normal use" was. Nor does the Memorandum of Decision address what the definition of normal use looks like on the ground and as contemplated by the second paragraph of Condition A.

As it pertains to Condition G, pictures of the “berm” or “flat spot” were submitted into evidence at the hearing. It appears (and depending on the Select Board’s definition of “normal use”) that a portion of the fill deposited by Mr. Mann may not be within the “normal use” of the travel way. However, it is not disputed that all of the “berm” or “flat spot” or fill that exists was deposited wholly within the Town right-of-way. Although Condition G indicates that the area within the highway right of way needs to be restored to a permeable surface sufficient to absorb anticipated runoff from the modified driveway and kept open to allow for placement of snow removed from the driveway, it does not indicate whether that means, for example, that the slope and grade of this restoration needs to be consistent with the existing slope and grade of the unaltered portion of the Town’s right-of-way. As a result clarification is requested on this issue as well.

Lastly, the Memorandum of Decision makes no reference to the fact that Mr. Mann added the fill and constructed the “berm” or “flat spot” within the Town right of way and without any permit to do so. Nor does Mr. Mann’s Permit Application identify any proposed berm or flat spot. Moreover, Mr. Mann testified that at the time of the hearing he was “85% finished” with what he was proposing at that same hearing (21:24), an admission that he was already working in the Town right-of-way without a permit in violation of 19 VSA 1111(b) and Section 7.4 of Pomfret’s Highway Ordinance. As such, and irrespective of the clarification requests above, Dr. White and Mr. Dechert request the Select Board reconsider this issue and require Mr. Mann to remove all fill he has deposited into the right of way and return the area to the south of Dinsmoor road to the condition it was prior to him depositing any fill there for any reason whether this permit goes forward or is appealed.

Request for Clarification and Reconsideration of the Driveway Area Dimensions

Mr. Mann’s Permit Application indicates that he proposes to construct a “[w]idth of driveway between 17’ and 19’”. “Driveway will enter town road at 90 degrees and pitch away from the town road 1’ over the first 20’ from the town road.” “See green rectangle on sketch.” Condition and Limitation B states that “[t]he first 20 feet of the driveway shall conform in all material respects to the materials included in the Mann Application, Revised Site Plan, and testimony of the witnesses, except as modified herein.”

As set forth in Footnote 4 of the Memorandum of Decision, Mr. Mann chose to use altered CAD engineering drawings prepared by Ian MacKenzie for his Revised Site Plan and which were part of Dr. White’s and Mr. Dechert’s proposed driveway permit application. CAD drawings are not sketches. CAD drawings use actual units of measurement based on the existing topography and distances on the ground. Although ultimately rejected by the Select Board, Mr. MacKenzie testified as to how he created his drawings and what the lines in his site plan represented as to distance, elevation, slope, and the markers called out on the ground. Those same distances and slope exist in Mr. Mann’s Revised Site Plan to which he is bound per the Memorandum of Decision and Conditions of Limitation.

Attached as Slide 1 and Slide 2 to this request for reconsideration are CAD drawings prepared by Mr. MacKenzie. In Slide 1 Mr. MacKenzie has overlaid Mr. Mann’s Revised Site Plan onto a CAD drawing that mirrors the lines and circles Mr. Mann drew and submitted as part of his Revised Site Plan. By way of comparison, Slide 2 is the actual CAD drawing calling out Mr. Mann’s lines (and the distances he drew for the driveway area). Mr. Mann testified (13:42) that the blue lines in his Revised Site Plan represented the edges of his proposed (and approved) travel way on Dinsmoor Road. Given that testimony, and given what he submitted as a Revised Site Plan, those CAD drawings demonstrate that Mr. Mann’s Revised Site Plan actually contemplates an almost square box that is 23.1’ in width along Bartlett Brook Road and 23.4 feet deep.

This reading is also consistent with the Select Board’s Condition H which requires Mr. Mann to grant the record owners of the White Parcel and Sander Parcel a right of way in terms no less favorable to the 1987 right of way as defined to include all of the lands and premises within the red circles depicted on the Revised Site Plan. The distance to the red circles which will provide the White and Sander parcels additional rights of ingress and egress are beyond the distances called out in the Permit Application, the testimony of the parties including Mr. Mann, and the Memorandum of Decision with Conditions and Limitations.

By way of illustration and comparison, attached are Slides 3 through 6. These CAD slides illustrate the location of the proposed driveway box if Mr. Mann is bound by the language of his permit application (i.e., between 17' and 19' feet wide and pitching away from the road 1' over the first 20'). As the Select Board will note, whether 17' or 19' feet wide (as set forth in Slide 3 and Slide 5), if the driveway area defined in the permit application is located at the southern end of Mr. Mann's site plan abutting his southern boundary of the proposed (and approved) Dinsmoor Road travel way, there appears to be little or no need for the extension of the culvert at the north end of Dinsmoor road, a topic of discussion and expectation at the September 13 hearing (14:42 and 28:32). The location of the green box at that point in the CAD slides is consistent with his own testimony (21:24) that the project is 85% finished and that "[t]he only part that is really going to change is the upper left hand corner [on the Revised Site Plan] where we still got to cut it back."

Alternatively, if either a 17' or 19' box is located at the northern end of the Revised Site Plan (as set forth in Slide 4 and Slide 6) abutting the proposed (and approved) Dinsmoor Road travel way to the north, the southern end of the driveway entrance is located almost in the middle of the proposed travel way which is inconsistent with Mr. Mann's testimony and potentially changes what the Select Board contemplated in Conditions F and Condition G given that it is unclear what work would be contemplated between the edge of the green box and the southern edge of Mr. Mann's proposed travel way in his site plan.

Lastly, on Page 2 of the Memorandum of Decision, the Select Board indicates that the Mann application proposes to address the challenges of the existing Dinsmoor Road by "excavating the embankment north of the existing traveled way of Dinsmoor Road to create a level graded 20-foot wide by 16-foot deep area." Condition B also references a 20 foot wide by 16 foot deep area of "90-degree intersection between Dinsmoor Rd and Bartlett Brook Rd...". Mr. Mann testified (32:06) that he painted a white line in a picture from the site visit and that was 20 feet along Bartlett Brook road and stated that he was only required to have 16 feet but wanted to have "plenty of extra room." However, even at 20 feet of width it is unclear where the Select Board contemplates the beginning and end of that area within the proposed Dinsmoor Road travel way identified in the Revised Site Plan.

It is therefore unclear: (1) what the Select Board is approving as to the specific dimensions of the green box in Mr. Mann's Revised Site Plan (if not those dimensions as Mr. Mann drew them on the Revised Site Plan and as illustrated in Slides 1 and 2); (2) if not the dimensions as set forth in the Revised Site Plan, what the Select Board expects the actual dimensions to be (both along Bartlett Brook Road and extending onto Dinsmoor Road); and (3) where the Select Board anticipates Mr. Mann locating the green box on his Revised Site Plan as between the boundaries of his proposed (and approved) new travel way of Dinsmoor road.

To expedite and or assist in the clarification and reconsideration, Dr. White and Mr. Dechert are happy to produce Mr. MacKenzie at their expense to map out the location of Mr. Mann's driveway area as contemplated by the approved permit and conditions imposed.

For the above reasons, Dr. White and Mr. Dechert seek reconsideration and clarification of the basis for the Selectboard's decisions and conditions.

Dr. White and Mr. Dechert to supplement this request for reconsideration and clarification as necessary.

Thank you for your time and consideration of these requests.

Regards,

Jason

Jason R. Crance

Law Office of Jason R. Crance

65 Dartmouth College Highway

Lyme, NH 03768

Phone: 603-643-8801

Fax: 603-643-5297


www.crancelaw.com


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[Quoted text hidden]

6 attachments

 **2304-SITE-231105-1.pdf**
214K

 **2304-SITE-231105-2.pdf**
137K

 **2304-SITE-231105-3.pdf**
136K

 **2304-SITE-231105-4.pdf**
136K

 **2304-SITE-231105-5.pdf**
137K


 **2304-SITE-231105-6.pdf**
137K

EXHIBIT E

Clarification Letter

Attached.



TOWN OF POMFRET, VERMONT

SELECTBOARD

November 29, 2023

VIA ELECTRONIC MAIL

Law Office of Jason R. Crance
65 Dartmouth College Highway
Lyme, New Hampshire 03768
Attention: Jason R. Crance, Esq.
jason@crancelaw.com

Meub Associates, PLC
65 Grove Street
Rutland, Vermont 05701
Attention: Andrew James Snow, Esq.
snow@yourvtlawyer.com

Re: Request for Clarification
Decision re: Mann Town Highway Access Road Permit Application

Dear Messrs. Crance and Snow:

Thank you for your email messages dated November 8, 2023 and November 13, 2023, respectively. This letter responds to requests for clarification presented in those messages. Capitalized terms used but not defined herein are defined in that certain Memorandum of Decision dated October 13, 2023 (the "Mann Decision"), with respect to the Application for Town Highway Access Road Permit dated July 17, 2023, by Andrew A. and Kathy J. Mann.

1. Deadline to Complete Work. Section V.A of the Mann Decision provides in part that "Applicant shall use best efforts to complete all work in the highway right-of-way by November 30, 2023."

We understand work in the highway right-of-way has not commenced and therefore is unlikely to be completed by November 30. We also understand the delay in commencement was due in part to representations made to the Superior Court by parties to the ongoing White-Mann Litigation.

For this reason, the Selectboard finds that the failure to complete work by November 30 is not for lack of Applicant's best efforts and that a new deadline of May 31, 2024 is appropriate under the circumstances; *provided* that work in the highway right-of-way shall not commence before April 15, 2024 without prior approval of the Pomfret Road Foreman.

2. Restoration for Safe Use. Section V.A of the Mann Decision also provides that "[i]f despite Applicant's best efforts all work in the highway right-of-way cannot be completed by November 30, 2023, Applicant shall by the same date remove (or cause to be removed) all objects,

fill or obstructions in the highway right-of-way interfering with normal use of the existing traveled way of Dinsmoor Road or maintenance of the highway right-of-way.”

The Selectboard intended this condition to achieve two goals, should the proposed modifications not be completed by November 30: first, to restore that portion of Dinsmore Road within the highway right-of-way to its condition prior to its recent modification (i.e., to its condition in early 2022). And second, to ensure adequate space to remove snow safely from Dinsmoor Road without plowing across or depositing material within the traveled way of Bartlett Brook Road.

The Selectboard expects the requirements of Section V.G of the Mann Decision to be met when the proposed modifications are completed. In the meantime, to promote the safety of the traveling public and protect the existing highway infrastructure, Applicant promptly must alter the existing berm such that it no longer interferes with maintenance of the highway right-of-way and allows snow to be safely removed from the driveway. In all other respects, Dinsmoor Road within the highway right-of-way must be returned to its pre-modification condition until the proposed modifications are complete.

3. Driveway Area Dimensions. The Selectboard understood the proposed modifications to include “a level graded, 20-foot wide by 16-foot deep area in which vehicles may enter onto and exit from Bartlett Brook Road.” See Section I.B of the Mann Decision. Any discrepancy revealed by overlaying the Revised Site Plan onto more precise CAD drawings should be resolved in favor of the Applicable Standards described in Sections III.A and III.B of the Mann Decision.

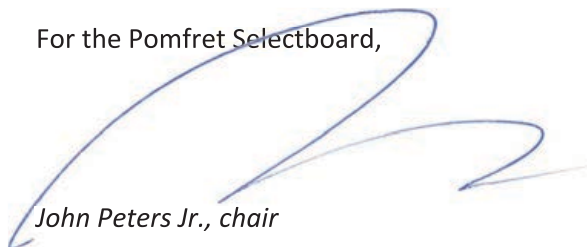
The Selectboard anticipates (but does not require) this will entail shifting the 20-foot wide by 16-foot deep area north to facilitate a 90-degree intersection, more moderate grade and wider turning radius. Enlarging this area up to the dimensions revealed on the CAD drawings also would be acceptable if doing so advances the Applicable Standards.

In either case, the existing culvert at the bottom of Dinsmoor Road and running parallel to Bartlett Brook Road must be extended north as necessary to capture anticipated runoff from the modified driveway. In addition, the New Easement dimensions must encompass the entire portion of Dinsmoor Road (once the proposed modifications are complete) not already included in the Existing Easement.

* * * * *

It is the Selectboard’s intent that the approvals, conditions and limitations provided in the Mann Decision continue in full force and effect, except as the same may have been clarified by this letter.

For the Pomfret Selectboard,



John Peters Jr., chair

Cc: Alison Sander (via email to [REDACTED])
Richard Dalton (via email to [REDACTED])

EXHIBIT F

June 2024 Email to Applicant and White Counsels
re: Determination of Compliance with Permit

Attached.

From: Joseph McLean <jmclean@firmspf.com>

Sent: Friday, June 21, 2024 12:19 PM

To: Andrew Snow <snow@yourvtlawyer.com>; Jason Crance <Jason@crancelaw.com>

Subject: Dinsmoor Road - Access Permit

Dear Andrew and Jason: I am writing on behalf of the Pomfret Selectboard to communicate to each of you the Board's preliminary determinations regarding the compliance of Mr. Mann's work within the right-of-way of Dinsmoor Road with his highway access (§ 1111) permit.

Based on the site visit, attended by Ben Brickner (with other Selectboard members independently visiting the site), and information/evidence adduced at the hearing on Monday, the Board has preliminarily determined that most of its previously imposed permit conditions have been met (or are now moot) and that others will be met once the following minor modifications are made:

1. Finish grade to allow water to shed to either side of the driveway and eliminate puddling;
2. Add a shallow ditch to the north side of the driveway to capture runoff from the excavated bank; and
3. Stabilize the excavated bank with mulch matting.

The board is inclined to waive all but one of the remaining conditions based on § 5.2 of the Town's Highway Ordinance, which sets forth the relevant considerations (ease of snow removal, drainage, safety of the traveling public, etc.) to authorize a waiver. Practically speaking, the Board's waiver would be for the ~ 3' x 4' triangle that was not excavated, resulting in a corner missing from the required 16-foot wide by 20-foot deep entry area. (* N/B: Mr. Mann's permit references in several places a "20-foot wide by 16-foot deep area". The Board has concluded this is a typo and the dimensions were reversed. The Highway Ordinance refers to an area "20 feet back" and "16 feet wide" and it was the board's intention when granting the permit to follow the Ordinance.)

The Board is not inclined to waive the condition that Mr. Mann grant an easement to the reconfigured area. There was some discussion about this during the public hearing, with Jason asserting the proposed easement is unacceptable. However, there is no proposed easement yet, only the map images that Andrew circulated Monday afternoon.

The Board would like to wait to render any final determination regarding the modified access, as built, and permit compliance until after (1) the minor modifications listed above are made and (2) an acceptable and recordable easement has been prepared and reviewed. Incidentally, this may solve Jason's tolling/vacation problem as the Board is unlikely to make an appealable decision until its next meeting on July 3.

Thank you. Please let me know if you have any questions.

Best,

Joseph S. McLean, Esq.

Stitzel, Page & Fletcher, P.C.

PO Box 1507

171 Battery Street

Burlington, VT 05401-1507

Phone 802-660-2555

Fax 802-660-2552

www.firmspf.com

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EXHIBIT G

July 2024 Email to Applicant and White Counsels
re: Additional Work to Comply with Permit

Attached.

July 17 Selectboard Meeting Follow-up (Dinsmoor Road)

Benjamin Brickner <benjamin.brickner@pomfretvt.us>

Thu, Jul 18, 2024 at 3:59 PM

To: Jason Crance <Jason@crancelaw.com>, Andrew Snow <snow@yourvtlawyer.com>, "Sander, Alison (ABS_GMail)"

<[REDACTED]>, Richard Dalton <[REDACTED]>

Cc: Joseph McLean <jmclean@firmspf.com>, Beriah Smith <bsmith@firmspf.com>, John Peters <john.peters@pomfretvt.us>

Hi all. Following up on last night's meeting, and with the goal of finally approving (or affirmatively declining to finally approve) Mr. Mann's highway access permit at the Selectboard's next meeting on August 7, the Selectboard has asked to see the following additional work completed by Mr. Mann:

- Further excavation of the embankment such that there is at least 20 feet of depth across at least 16 feet of Bartlett Brook Road frontage as required by Section 5.3(k) of the town's Highway Ordinance; and
- Lowering the level of material at the upper portion of the "south apron" -- without creating a cliff -- such that water will drain off the driveway in that area, rather than down it and potentially into the town road, also as required by Section 5.3(k).

Though not specifically discussed last night, in the interest of achieving a final resolution on August 7, I offer the following points as suggestions:

- The additional work described above should not reduce the existing Bartlett Brook Road frontage, which presently is more than 16 feet, nor otherwise revert the progress made by work previously completed;
- Following completion of the further excavation, the mulch matting and shallow ditch along the north edge of the driveway should be replaced, moved or extended as necessary to achieve the purposes described in Joe McLean's June 21 email to Andrew Snow and Jason Crance; and
- The draft easement previously delivered to the town should be modified to include the additional driveway area created by the further excavation, to the extent the same is not already included.

Joe's colleague Beriah Smith (copied here) will assist the town in this matter going forward. Please include Beriah on all future Dinsmoor Road-related correspondence.

Thank you,
Ben

--

Benjamin Brickner | Town of Pomfret
5218 Pomfret Road | North Pomfret, Vermont 05053
benjamin.brickner@pomfretvt.us | <http://www.pomfretvt.us/>

Please note that any response to this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act.

EXHIBIT H

July 2024 Memo from Applicant's Counsel

Attached.



WILLIAM H. MEUB, ESQ.
ANDREW J. SNOW, ESQ.
SEAN P. DILLON, ESQ.

GREGORY ULLSTROM, ESQ.
INACTIVE

LAW CLERK
Eric G. Erwin

PARALEGALS/LEGAL ASSISTANTS
Linda Fenton
Betsy Keirstead
Conrad Meub
Grace Paquette
Madeline Pare
Chris Sullivan

Writer's email address:
snow@yourvtlawyer.com

August 1, 2024

Beriah Smith
bsmith@firmspf.com

Benjamin Brickner
benjamin.brickner@pomfretvt.us

Via Email Only

**Re: Mann Driveway Access Permit
Request to continue final decision until August 21, 2024**

Dear Beriah and Ben:

This letter is sent on behalf of my clients, Andrew and Kathy Mann. Based on the July 18th Email from Ben Brickner, the Manns understand that the Town intends to make a final decision on whether to approve the work performed under the Manns' driveway access permit at the upcoming Board meeting on August 7, 2024. For the reasons discussed below, the Manns respectfully request that the Selectboard postpone making any final decision until its next scheduled meeting on August 21st, or any time thereafter as determined by the Selectboard so that the Mann's attorney (the undersigned) is able to attend and represent the Manns at any meeting related to a final decision on the permitted work.

To be transparent, at this time the Manns do not plan to complete the additional excavation work on the northern embankment due to concerns that continue to be raised by their excavator, but, as will be explained below, they intend to provide a full 16' wide by 20' deep access area within the improved driveway as required by Section 5.3(k) of the Town's Highway Ordinance.

When the Manns began performing the work authorized by the permit earlier this year, they intended to fully excavate the north bank to create a 16' by 20' access area as depicted in the drawings attached to the Permit. Unfortunately, what is planned and what can be reasonably accomplished based on the conditions on the ground once the work begins are not always the same. When their excavator was performing this work, he determined that the condition of the embankment, including the discovery of a large rock of unknown size buried within the

remaining area to be excavated, made further excavation unreasonable. It was the excavator's opinion that continuing to excavate the back corner of the box was likely to create additional problems and issues with the embankment and recommended that the Manns stop where they did. At the site visit on June 18, 2024, and the Selectboard meeting that followed, Andy identified that the completed work did not include the full 16' x 20' access area and acknowledged that this meant the work performed did not fully comply with the permit requirements. Due to the small size of the non-conforming area and the concerns raised by their excavator, the Manns requested that the Town issue a waiver under Section 5.2 of the Town's highway ordinance to the extent that what existed on the ground did not conform to the 16' x 20' requirement of the issued Permit.

Following the June 18th Selectboard meeting, by email from the Town's attorney, the Town indicated that it was inclined to grant the waiver and not require any further excavation of the embankment provided that the Manns complete three additional "minor modifications" and that a final determination would be made once the Manns completed these additional modifications. Based on this direction, the Manns focused on completing the three modifications requested by the Town and did not take any further steps to pursue further excavation. Unfortunately, something appears to have changed and after completing the minor modifications, the Town required that the Manns further excavate the embankment to achieve the full 16' x 20' access area depicted in the approved permit. If they had known that further excavation would be required, they could have pursued it at that time and would have delayed making the minor modifications that the Town requested - as that much of that work will need to be redone if there is further excavation.

The Manns plan to achieve a conforming 16' x 20' access area by shifting the southern boundary of the permitted driveway access south by approximately two to three feet and they are willing to do this to avoid further excavation of the northern bank. This southern shift should bring the non-conforming northeast corner of the 16' x 20' access area completely out of the embankment, meaning no further excavation would be required and no waiver of the 16' x 20' requirement from the Town's highway ordinance would be necessary.

The Manns intend to request that the Selectboard approve the shifting of the 16' x 20' box and, to the extent necessary, issue a waiver since the 16' by 20' access area will be in a slightly different location from the approved permit. In connection with this request, the Manns will be prepared to address why this waiver for the location of the access area would be appropriate and consistent with the waiver requirements in Section 5.2 of the Town's Highway Ordinance, which permits the Town to waive specific requirements after consideration of "public and private interests, topography, adequacy of highway design, ease of snow removal, drainage, and maintenance of safe conditions in all seasons for the traveling public."

As indicated above, the Manns request an extension until the Selectboard meeting on August 21, 2024, or another later time to be determined by the Selectboard, so that they are able to prepare their presentation for the Board and can be assisted by their legal counsel in this matter at the meeting. The Manns' legal counsel will be travelling out of the state from August 6 to August 14 and will be unable to assist the Manns in presenting these arguments at a Selectboard meeting on August 7th.

August 1, 2024
Page 3 of 3

Please let me know if you have any questions or wish to further discuss the requested extension or anything else raised above and I look forward to hearing back on the requested extension.
My very bests,

MEUB ASSOCIATES, PLC



Andrew J. Snow, Esq.

AJS:mp

cc: Client
Jason Crance, Esq.

EXHIBIT I

August 2024 Memo from Applicant's Counsel
in Support of Approving the Permit

Attached.

Memorandum in Support of Approval of Permitted Work

Submitted August 20, 2024

This Memorandum is submitted on behalf of Andrew and Kathy Mann ahead of the Selectboard Meeting scheduled for August 21, 2024. For the reasons discussed below, the Manns respectfully request that the Selectboard approve the work performed pursuant to the Driveway Access Permit dated October 13, 2023 (the “Permit”).

a. Legal Standard

The Selectboard’s jurisdiction in this matter is to determine whether the work performed under the approved Permit reasonably complies with the Permit’s conditions, including the applicable Town ordinances and regulations, specifically in this case, Section 5.3(k) of the Town of Pomfret’s Highway Ordinance, adopted July 1, 2023 (hereinafter the “Ordinance”). The Selectboard’s jurisdiction is limited to determining compliance with the requirements of the Permit and Ordinance.

The Manns acknowledge that these proceedings have unfortunately become a point of contention and dispute between them and their neighbors further up Dinsmoor Road and sincerely regret the time and energy this matter continues to take from the Selectboard. While this has created a lot of noise and resistance by the neighbors to the permitted work, the disputes between the Manns and their neighbors primarily relate to their private property rights, which are beyond the scope of the Selectboard’s approval. Interpretations of deeded easements and disputes regarding private rights-of-way are irrelevant to the issue of permit approval. Those issues can only be adjudicated between the neighbors in superior court.¹

b. Permit Requirements

The memorandum of decision dated October 13, 2023, placed several conditions for the final permitted work.²

1. Condition B requires that the improved Driveway conform in all material respects to the permit application, revised site plan, and testimony of the witnesses.

¹ The lack of jurisdiction by a municipal entity over private property disputes, including easements, is well established by the Vermont Environmental Court. *See e.g. In re Denizot*, Docket No. 76-5-99 Vtec, Environmental Court Decision ENC 1999-102, October 20, 1999; *Appeal of Champlin and Broughton*, Docket No. 283-12-02 Vtec, Environmental Court Decision ENC 2003-025, (Decision and Order on Motion for Summary Judgment, April 23, 2003) (“The issue of where the correct boundary is located is beyond the jurisdiction of this Court, just as it is beyond the jurisdiction of the [municipal body] to adjudicate a boundary dispute. The boundary dispute can be adjudicated in Superior Court.”); *Appeal of Bowman*, Docket No. 70-5-96 Vtec, Environmental Court Decision ENC 2005-058 (Decision and Order on Pending Motions, June 21, 2005) (Explaining jurisdiction is limited to “whether a permit applicant has met all the requirements of the zoning ordinance ... it does not have jurisdiction to determine the underlying property rights of the affected parties”).

² Only those conditions related to the final work are discussed, Conditions A, D, I, and J are not discussed because those conditions do not relate to the final work.

2. Condition C requires that the first 20 feet of the driveway conform to the standards of Section 5.3(k) of the Ordinance.
3. Condition E requires that any excavation work be performed in “accordance with applicable standards contained in Section 203 of the VTrans Standard Specifications for Construction.”
4. Condition F requires that the existing culvert at the bottom of the driveway be extended north if necessary to capture anticipated runoff from the improved Driveway.
5. Condition G requires that the area south of the improved Driveway be restored to a permeable surface and kept open to allow for placement of snow removed from the improved Driveway.
6. Condition H requires that the Manns provide an easement to their neighbors for the improved Driveway.

c. Compliance with Permit Conditions

1. Conditions B and C - Section 5.3(k) of the Ordinance

Conditions B and C are addressed together because there is significant overlap between these conditions because the work proposed in the application was based on the requirements of Section 5.3(k) of the Ordinance. Section 5.3(k) establishes the applicable “[s]tandards to guide the design and construction” of any new or improved driveway access. Section 5.3(k) of the Ordinance requires that:

1. The driveway shall be constructed at a 90-degree angle to such highway.
2. Sight distances shall be 155 feet in both directions when viewed from a height of 3.5 feet, 10 feet back from the edge of the travelled way.³
3. The driveway shall be 16 feet wide for the first 20 feet back from the edge of the Town highway.
4. The driveway shall be graded and sloped such that water from the driveway does not enter the Town highway.
5. If necessary, culverts shall be installed and shall conform to standards for culverts stated in Section 5.3(h).

Compliance with each of the above requirements is discussed below.

A. The driveway shall be constructed at a 90-degree angle to such highway.

The Driveway now intersects with the Town Highway at a 90-degree angle, or as close to a 90-degree angle as is possible given that the Town Highway curves slightly in this area. This 90-degree intersection is a significant improvement over the acute “skew” angle of approximately

³ Based on table 5.3(k) from the Ordinance.

35 to 40 degrees that had previously existed at this intersection prior to the Manns performing the permitted work. The 90-degree angles at the intersection with the Town Highway are highlighted with white paint on the attached Exhibit 1.

B. Sight distances shall be 155 feet in both directions when viewed from a height of 3.5 feet, 10 feet back from the edge of the travelled way.

The Manns believe the improved Driveway complies with this requirement and that the sight distances are the same or better than what they were in the previous driveway.

C. The driveway shall be 16 feet wide for the first 20 feet back from the edge of the Town highway.

As shown in the attached Exhibit 2 (marked up copies of Exhibit 1), the improved Driveway now includes a full 16-foot-wide by 20-foot-deep access area: the distance from point A to point B is 16 feet and the distance from point B to point C is 20 feet. The Manns were able to achieve a full 16' wide by 20' deep box by shifting the entire area south approximately 3 feet from where they had originally located it in order to bring the back corner out of the embankment. Therefore, there is no longer any need for a waiver related to the back corner of the 16' by 20' area.

It should be also noted that while the improved Driveway includes the 16' by 20' access area required by the Ordinance, the actual intersection between the improved Driveway and the Town highway (point A to point D on Exhibit 2) is now a total of 23 feet wide – which is significantly wider than what is required by the Ordinance and wider than what had previously existed. The improved Driveway travelled way includes this additional travel space on the northside of the driveway beyond the 16' by 20' area required by the Ordinance.

D. The driveway shall be graded and sloped such that water from the driveway does not enter the Town highway.

The improved Driveway has been graded and sloped such that water draining from the driveway does not enter the Town highway. The improved Driveway is graded so that water runs off the side of the driveway to avoid puddling and prevent it from entering the Town highway. Additionally, and as requested by the Town, a shallow ditch was constructed along the embankment on the north side of the improved Driveway to capture runoff from the embankment so that it does not run onto the improved Driveway or the Town highway. Below, the Manns have included links to two videos taken during a recent rainstorm to show how the improved Driveway drains and that water from the Driveway does not drain onto the Town highway. Those videos can be accessed via the links below:

Video 1: <https://www.dropbox.com/scl/fi/ht5utijf8yrpcxdpcqn4n/Drainage.2024-08-18.1.mp4?rlkey=16y1ebajsnqwov1aupv2ougnl&st=8bd2zflr&dl=0>

Video 2: <https://www.dropbox.com/scl/fi/tpld23q99c5qzbhsycv0o/Drainage.2024-08-18.2.mp4?rlkey=b9wx8o9yldrve22jm0phykvt0&st=gb2sb0cb&dl=0>

As it relates to the slope of a driveway, Section 5.3(k) recommends, but does not require, that a driveway have a negative slope of six inches over the first 10 feet from the Town Highway. Similarly, the Manns Permit Application also proposed that the improved Driveway would have a 1-foot drop over the first 20 feet. Unfortunately, this is one element that the Manns were unable to accomplish. Upon beginning the work, it became clear that to achieve even a 6” drop within the first 10 feet would require creating a much steeper slope further up the driveway – which would be counterproductive and only make the entire driveway access less safe. While the proposed negative slope away from the Town highway was not fully achieved, the slope over the first 20 feet of the improved Driveway does have more of a negative slope away from the Town highway than it previously did. Overall, the slope of the improved Driveway is in a significantly better and improved condition than it was before any of the permitted work was performed.

It should also be noted that, unlike the other requirements of Section 5.3(k), a negative slope of 6” over the first 10 feet is not a *requirement* but is only a *recommendation*. Because the slope recommendation is not a requirement under the Ordinance, it should not require a formal waiver under Section 5.2 of the Ordinance.

E. If necessary, culverts shall be installed and shall conform to standards for culverts stated in Section 5.3(h).

In 2022, and with the Town’s permission, the Manns extended the culvert at the bottom of the Dinsmoor Road several feet to the north. Due to the improvements made to the culvert at the bottom of the driveway in 2022, no further addition or modification of the culvert was necessary in connection with the permitted work.

2. Condition E

Condition E required that any excavation work be performed in “accordance with applicable standards contained in Section 203 of the VTrans Standard Specifications for Construction.” The Manns understand that their contractor performed the necessary excavation work in accordance with Section 203 of the VTrans Standard Specifications for Construction, to the extent they were applicable. In addition, the Manns have also stabilized the embankment to the north of the improved Driveway with mulch matting based on the Town’s earlier request. In the attached Exhibits, one can already see that grass and vegetation are beginning to regrow on the embankment through the mulch matting.

3. Condition F

Condition F required that the existing culvert at the bottom of the driveway be extended north if necessary to capture anticipated runoff from the improved Driveway. As discussed above, due to the improvements made to the culvert in 2022, no further addition or modification of the culvert is necessary to capture the runoff from the improved Driveway.

4. Condition G

Condition G required that the area south of the improved Driveway shall be restored to a permeable surface sufficient and kept open to allow for placement of snow removed from the improved Driveway. The area south of the improved Driveway has been returned to a permeable surface (1.5' stone). The south area is not to be part of the travelled way and will be kept clear for the placement of snow in the winter.

5. Condition H

Condition H required that the Manns provide an easement to their neighbors for the improved Driveway. A revised Easement Deed conveying all of the improved Driveway is enclosed herein as Exhibit 3. Consistent with the approved permit, the Easement Deed conveys an easement over all improvements made under the Permit and does not limit or in any way reduce the neighbors' rights under the current 1987 Easement Deed.

It is the Manns understanding that all involved parties agree that no easement deed should be finalized, executed, or recorded until a final decision is made by the Selectboard regarding approval of the permitted work.

6. Additional Comments - Section 5.2 Waivers

Section 5.2 of the Highway Ordinance permits the Selectboard to waive or vary the specific requirements of Section 5.3, including the requirements in Section 5.3(k), after consideration of public and private interests, topography, adequacy of highway design, ease of snow removal, drainage, and maintenance of safe conditions in all seasons for the travelling public. While a waiver under 5.2 had previously been requested, based on the Manns decision to shift the driveway access point 3 feet further south, the improved Driveway reasonably complies with the requirements of Section 5.3(k) of the Ordinance and no formal waiver of the requirements of the Ordinance will be necessary in order for the Town to approve the work.

CONCLUSION

Prior to performing this work, the Selectboard recognized that the Dinsmoor Road driveway intersected with the Town highway at a "skew angle requiring most users to make sharp turns when approaching from and departing to the south" and was "moderately graded uphill from the town highway" resulting in the driveway being "challenging to navigate, particularly in winter conditions."⁴ Based on the above discussion, the Manns believe that the permitted work, as performed, has resulted in a significantly improved driveway access and satisfies all of the specific requirements of Section 5.3(k) of the Town's Highway Ordinance.

The Manns respectfully request the Town approve the permitted work as it exists on the ground.

⁴ Quoting the Selectboard's *Memorandum of Decision*, *2

EXHIBIT 1

Memorandum in Support of Approval of Permitted Work







EXHIBIT 2

Memorandum in Support of Approval of Permitted Work







EXHIBIT 3

Memorandum in Support of Approval of Permitted Work

EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS THAT WE, ANDREW A. MANN and KATHY JEAN MANN, husband and wife, of the Town of Pomfret, County of Windsor, and State of Vermont, GRANTORS, in consideration of One Dollar (\$1.00) and other good and valuable consideration, paid to their full satisfaction by PHILIP DECHERT Jr. and HILLARY WHITE, of Pomfret, Vermont, and ALISON SANDER, of Cambridge, Massachusetts, GRANTEES, the receipt of which is hereby acknowledged, do hereby GIVE, GRANT, BARGAIN, SELL and CONVEY unto the GRANTEES, their heirs and assigns, the perpetual right and easement described as follows:

Being an easement and right of way in common with GRANTORS, their heirs and assigns, for ingress and egress to the land and premises of said GRANTEESS, across land and premises conveyed to the GRANTORS by the following deeds:

1. Warranty Deed of Raymond L. Collamore and Alice G. Collamore dated November 26, 1984 and recorded in Book 34 Page 281 of the Town of Pomfret Land Records; and
2. Warranty Deed of Kurt A. Vreeland and Patricia A. Vreeland dated November 12, 1984 and recorded in Book 34 Page 282 of the Town of Pomfret Land Records.

Reference is made to the Quitclaim Deed of Andrew A. Mann and Kathy Jean Mann to Philip Dechert, Jr. and Hillary W. Dechert (now "Hillary White") dated June 12, 1987, and recorded in Book 36 Page 137 of the Town of Pomfret Land Records (the "1987 Easement"). All rights conveyed in the 1987 Easement are incorporated herein by reference and made part of this deed and nothing in this Easement Deed shall extinguish, modify, or otherwise impact the parties' rights under the 1987 Easement.

It is the intent of this easement deed to grant a right for ingress and egress to the GRANTEES for the portions of a shared driveway known as Dinsmoor Road that were improved and modified by the GRANTORS pursuant to a Town Highway Access Road Permit issued to the GRANTORS dated October 13, 2023, and, for clarity sake, the location of this easement and right of way is depicted on a drawing prepared by GRANTORS dated August 20, 2024, and attached hereto as Exhibit 1 for reference (hereinafter the "Drawing"), and described as follows:

Commencing at a pin set in the ground at the southwest corner of the 1987 Easement (Pin "No. 10" as shown on the Drawing) and running in a northerly direction in a straight line to a pin set in the ground ("Pin A" on the Drawing); thence travelling westerly in a

straight line to the travelled way for Bartlett Brook Road and intersecting with Bartlett Brook Road at a 90° angle; thence proceeding northerly along the travelled way of Bartlett Brook Road for 23'; thence proceeding at a 90° angle away from Bartlett Brook Road in a southeasterly direction in a straight line until reaching an embankment; thence running along the embankment in a southerly direction until reaching the northerly boundary of the 1987 Easement (just below the culvert that runs across the driveway at that point); thence running along the border of the 1987 Easement in a straight line in a northerly direction to a pin set in the ground (Pin "No. 1" on the Drawing); thence running southerly in a straight line to a pin in set in the ground (Pin "No. 10" on the Drawing), being the place of beginning.

The GRANTORS agree that they have a duty to share in the costs associated with any portion of the granted easement that GRANTORS also use to access their own lands and premises.

Reference is made to the above-mentioned deeds and plans and to all prior deeds in the Town of Pomfret Land Records for a more particular description of the rights herein conveyed.

Grantees, their heirs and assigns, are further conveyed a reasonable right, if necessary, to repair and maintain the portion of Dinsmoor Road that is covered by this herein-conveyed easement, and for such specific purpose may exceed the bounds of the herein-conveyed easement only with Grantors' permission, such permission not to be unreasonably withheld. Any damage thereby caused to the Grantors' premises or property shall be repaired and the premises or property restored its original condition at the Grantees expense.

TO HAVE AND TO HOLD the aforesaid rights and easements, with all privileges and appurtenances, thereunto belonging, unto and to the use of the said GRANTEES and their heirs and assigns forever and the GRANTORS do hereby covenant with the GRANTEES and their heirs and assigns, that they are lawfully seized in fee simple of the granted premises.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the GRANTORS hereunto set their hand and seal this ____ day of August 2024.

Andrew A. Mann

Kathy Jean Mann

STATE OF VERMONT
COUNTY OF WINDSOR, SS.

On this ____ day of August 2024, before me personally appeared ANDREW A. MANN and KATHY JEAN MANN, to me known to be the persons whose names are subscribed to the within instrument, and acknowledged this instrument by themselves sealed and subscribed to be their free act and deed.

Before me,

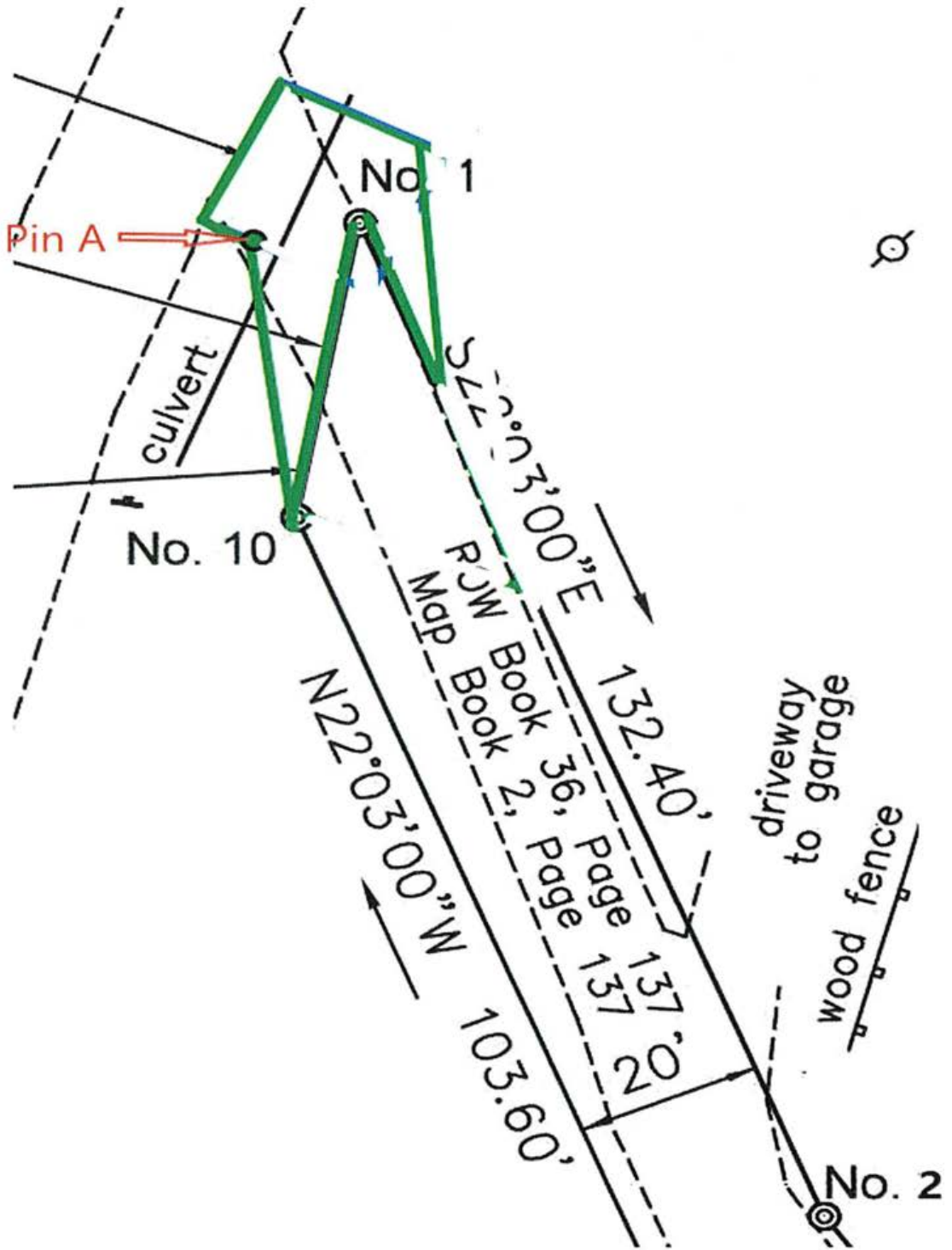
Notary Public – State of Vermont

Print Name: _____

License No.: _____

My Commission Expires: _____

EXHIBIT 1
Drawing of Easement dated August 20, 2024
 (Based on a portion of the Rockwood Survey #1027-1 June 19, 2023)



Pin A will be set 5' from the southwestern corner along the southern side of the 16' wide x 20' deep rectangle designated in the Mann Driveway Access Permit approved Oct 13, 2023.

EXHIBIT J

August 2024 Memo from White's Counsel
in Opposition to Approving the Permit

Attached.

PRE-HEARING MEMORANDUM
IN SUPPORT OF DENYING THE MANN PERMIT

Dear Members of the SB:

As you are aware, Dr. White's position with regard to this Permit has already been communicated through correspondence to Joe McLean, Esq., on or about June 25, 2024, and again to Beriah Smith, Esq. Ben Brickner, and Andrew Snow, Esq., on or about August 2, 2024, both of which Dr. White understands the SB has reviewed. Those arguments regarding whether or not Mr. Mann's work complies with the Permit remain Dr. White's position as of the date of this Memorandum and are again incorporated herein by reference.

This Memorandum is submitted in anticipation of the SB meeting on August 21, 2024 and to further summarize Dr. White's position as to whether or not Mr. Mann should be granted his requested waiver and whether or not he is in compliance with the remainder of the Permit's conditions and requirements of Town's Highway Ordinance as requested in Ben Brickner's August 5, 2024, correspondence.

I. BACKGROUND FACTS

On or about May 28, 2024, Mr. Mann emailed Ben Brickner and Attorney McLean indicating that: (1) his work was complete; and (2) that he had not completed the excavation of the north bank as he had proposed and which had been approved in the Permit citing his opinions regarding use of that area by the general public, and trees on his property that he did not want to take down to complete the excavation.¹

The SB scheduled a site visit and a quasi-judicial hearing on June 18, 2024, to review Mr. Mann's work and determine whether he was in compliance with his Permit (although he admitted in his May 28, 2024 email that he was not). At the site visit and again at the quasi-judicial hearing, the SB heard sworn testimony from Tim Ulman and Mary Ellen Parkman regarding how Mr. Mann constructed the south apron and the materials he used and, more importantly for the purposes of the SB's decision tonight, what work would be necessary (and its feasibility) to comply with what Mr. Mann proposed to do in the approved Permit (i.e., excavate the bank and create a driveway entrance compliant with the Town's Highway Ordinance, ensure proper drainage, and the turning radius contemplated by the Permit).

¹ Absent from that correspondence was any reference to a stone/ledge or a dangerous condition related to further excavation of the North Bank.

Following that hearing the SB made preliminary recommendations through Attorney McLean that Mr. Mann:

1. Finish grade to allow water to shed to either side of the driveway and eliminate puddling;
2. Add a shallow ditch to the north side of the driveway to capture runoff from the excavated bank; and
3. Stabilize the excavated bank with mulch matting.

As to the area of the bank which Mr. Mann has requested he be excused from excavating at tonight's hearing Attorney McLean indicated that:

“Practically speaking, the Board's waiver would be for the ~ 3' x 4' triangle that was not excavated, resulting in a corner missing from the required 16-foot wide by 20-foot-deep entry area.

Subsequent to that email, Mr. Mann did some additional work in the ROW which purportedly addressed the three preliminary recommendations made by Attorney McLean.

The SB held another hearing on July 17, 2024. The Town's agenda indicated that the SB would address “Highway Access Permit Approval (Dinsmoor Road).” At that July 17 hearing there was a discussion about the subsequent work done by Mr. Mann and about the driveway's accessibility without the bank being further excavated. Meg Emmons specifically referenced the fact that it was a tight turn as constructed. Ultimately, the SB voted to require Mr. Mann to complete the excavation called for in his Permit.

During the SB's deliberations, there was some discussion regarding a compromise of moving the entrance to the driveway further south. However, the SB ultimately rejected that compromise instead requiring Mr. Mann to complete the excavation called for in the approved Permit.

Following the hearing, counsel for Mr. Mann and Dr. White attempted to reach a compromise that would allow both parties to come back to the SB with an agreement. Those negotiations were, unfortunately, unfruitful.

On August 1, 2024, Attorney Snow submitted a letter to the SB on behalf of Mr. Mann stating that the Manns do not plan to complete the additional excavation work which the Permit requires (and which the SB voted was necessary to complete at the July 17 hearing). In the correspondence, the Mann's indicate that Mr. Mann's excavator had discovered a rock of unknown size and that further excavation would create additional problems and issues with the embankment – although those problems and issues have never been articulated over the course of the four (4) months that Mr. Mann

and his excavator have been doing work on the bank. The Manns therefore requested a waiver of the requirement that they excavate the bank as required by the Permit (despite the fact that the SB had previously voted not to waive that requirement), and an offer to shift the 16 x 20 box 2-3 feet to the south.

After reviewing Dr. White's August 2, 2024, objection to the Mann's request, on August 5, 2024, Ben Brickner stated that:

The Selectboard still intends to finally approve (or affirmatively decline to finally approve) Mr. Mann's highway access permit at the next meeting. To that end, on August 21, the Selectboard will consider Mr. Mann's request to adjust the driveway opening south and whether the driveway (with the adjustment, if approved) complies with the town's Highway Ordinance and the terms of Mr. Mann's permit.

As the proposed adjustment is expected to avoid the need for further excavation, Andrew, please ensure the driveway is otherwise compliant with the town's Highway Ordinance and Mr. Mann's permit on or before August 21 so that the Selectboard may make a final decision on that date. The driveway should continue to incorporate the adjustments (mulch matting, ditching, grading, etc.) requested to date.

II. STANDARD OF REVIEW

As referenced in the Permit and provided for in 19 V.S.A. § 1111, “[a]s a condition of any such [driveway] permit, compliance with all local ordinances and regulations relating to highways and land use *shall* be required. *Emphasis added. See Richards v. Nowicki*, 772 A.2d 510 (2001) *citing Brennan v. Town of Colchester*, 169 Vt. 175, 178, 730 A.2d 601, 604 (1999) (unambiguous statute must be construed according to its terms and express meaning). The requirement that Mr. Mann shall comply with all local ordinances and regulations is not a subjective standard. Either Mr. Mann's Permit complies with what the SB has required in its Permit and Town highway ordinance or it does not. If it does not, the Permit must be denied.

III. DISCUSSION

Although the August 5, 2024, email from Ben Brickner addresses a request to adjust the driveway opening to the south (which suggests a physical adjustment to the location of the south apron), it appears that Mr. Mann simply intends on spray painting another box within the existing travelled way and call that his driveway entrance.²

² This is consistent with Mr. Mann's stated position at the June 18 site visit that he was NOT willing to physically move the driveway opening any further south and what Dr. White understood in her settlement negotiations with Mr. Mann.

It goes without saying that if Mr. Mann is proposing to do nothing on the ground except to say that his 16 x 20 foot box starts at point B instead of point A (and mark it with spray paint), his request for a waiver does not change any of the existing physical conditions on the ground and which the SB discussed and addressed in its decision to require Mr. Mann to complete the excavation required by the Permit on July 17.

It is also important to note that nothing in Mr. Mann's Permit entitles him to block, impede and/or change the existing Dinsmoor Road travelled way (existing wholly within the Town Right of Way) as set forth and identified as the blue lines in his approved Revised Site Plan. As has been previously noted, the existence of the location of the Dinsmoor Road travelled way and the location of the proposed driveway entrance in the Revised Site Plan (which is attached as Exhibit 1, and which was relied upon in determining that those proposed locations would provide a sufficient turning radius for Dr. White and her invitees) contributed to Dr. White's decision not to appeal the SB's original approval of the Mann Permit.

Moreover, the August 5 email from Ben Brickner requests Attorney Snow ensure that the driveway as constructed is otherwise compliant with the Permit and the Town's Highway Ordinance. It is not in two significant ways.

The Town's Highway Ordinance States:

For the first 20 feet back from the edge of the Town Highway, the driveway or access road shall be 16 feet wide and graded and sloped such that water from the driveway or access road does not either the Town Highway...and that...it is recommended that the driveway or access road have a grade dropping six inches in 10 feet before extending either up or down slope.

Mr. Mann's driveway does neither. Attached as Exhibit 2 to this memorandum is a letter from Northwoods Construction following a visit by Northwoods to Dinsmoor Road on or about August 20, 2024. As Northwoods' correspondence points out, it is their professional opinion that -- as constructed -- rainwater will continue to flow into Bartlett Brook Road in warmer weather, with the potential of ice forming at the bottom of Dinsmoor road and into Bartlett Brook Road in the winter.³

Mr. Mann argues that it is unreasonable for him to excavate the bank but provides no evidence in support of the same except for a vague comment that it will cause issues and problems (without defining what those issues are). In contrast, Northwoods, which has now been to the site multiple times and provided sworn

³ Mr. Mann has submitted videos in support of his contention that rain water and storm water runoff do not flow into Bartlett Brook Road's travelled way. Notwithstanding the fact that two videos from a single *light* rainstorm event cannot prove his point, at the end of Video 2, it plainly shows runoff exiting Dinsmoor Road onto Bartlett Brook Road, and then flowing around the entirety of the area of pervious stone constructed by Mr. Mann in the south apron.

testimony to the SB has indicated that it is very easy to accomplish the requirements of the Permit (including compliance with the requirement under Section 5.3(k)) that water shall not enter the Town Highway and its recommended slope away from Bartlett Brook Road.

More importantly, nothing in Section 5.3(k) conditions the requirements of compliance on reasonable efforts. As set forth above, unambiguous ordinances must be construed according to its terms and express meaning. *Richards*, 772 A.2d at 515. If it were in fact true that Mr. Mann's compliance with Section 5.3(k) only be reasonable, then section 5.3(k) would indicate that all the applicant has to do is make "reasonable efforts" to ensure that the driveway is graded and sloped such that water does not access the Town highway. It does not, and Mr. Mann's waiver request does nothing to address this non-compliance with the Permit or the Town's highway ordinance except to identify some unknown issue problems and assert it is unreasonable to require him to do what he promised he would do. As a result, even if the SB believed Mr. Mann's compliance need only be reasonable, he has not demonstrated that here.

In addition, Condition H of the Permit requires:

Applicants shall grant to the record owners of the White Parcel and the Sander Parcel, and to their respective heirs and assigns (collectively, "Grantees"), an easement and right-of-way (the "New Easement") on terms no less favorable to Grantees as are granted in that certain Quit Claim Deed dated June 12, 1987, by and between Applicant, as grantor, and Hillary W. Dechert and Philip Dechert, Jr., as grantees, recorded June 12, 1987, in Book 36 Pages 137-139 of the Pomfret Land Records, and attached hereto as Exhibit D. The New Easement shall include all of the lands and premises within the red circles depicted on the Revised Site Plan (to the extent the same are not already included in the Existing Easement), shall not purport to extinguish any prior easements or rights-of-way of record, and shall be prepared at Applicant's sole cost and expense.

The SB's requirement could not be more clear. Mr. Mann is to provide the White and Sander parcels easement rights no less than what they already have in their existing Quite Claim deed. Those easement rights are for ingress and egress and although counsel for Mr. Mann has suggested that it is for the Court to decide what those rights are, the reality is that we before the SB addressing a driveway permit for vehicles to as they enter and exit Dinsmoor Road. Thus, the Sander and White parcels must have ingress and egress rights for vehicular access within the red circles depicted on the Revised Site Plan. The location of the red circles are not moving targets. Mr. Mann's site plan was drawn to scale using CAD software and therefore the location of the red circles in the bank are easily ascertainable and do not move. In either event, if Mr. Mann is proposing that he not have to excavate a portion of the north bank

contemplated as part of the driveway entrance in his Revised Site Plan, then he is by definition proposing that he not excavate to the red circle in the back corner of the north bank [to provide the Sander and White parcels an easement to that point] as Required by the Permit. That in and of itself makes it impossible for him to comply with Condition H.

IV. CONCLUSION

For the reasons outlined in this memorandum and as set forth in prior communications dated June 25, 2024 and August 2, 2024, Mr. Mann cannot demonstrate nor ensure that he is otherwise complaint with his Permit requirements and/or the Town's Highway Ordinance. As a result his Permit should be revoked.

Respectfully Submitted,
HILLARY WHITE, and
PHIL DECHERT
By their Attorney,

Date: August 20, 2024

/s/ Jason R. Crance, Esq. _____
Jason R. Crance, Esq.
Law Office of Jason R. Crance
65 Dartmouth College Highway
Lyme, New Hampshire, 03768
(603)643-8801
jcrance@crancelaw.com
VT Bar No. 4877

3UND
113.21

EDGE OF BARTLETT BROOK RD

18"Ø HDPE CULVERT
INVERT IN ELEV.: 610.8

0+00

0+25

0+50

0+75

1+00

1+19

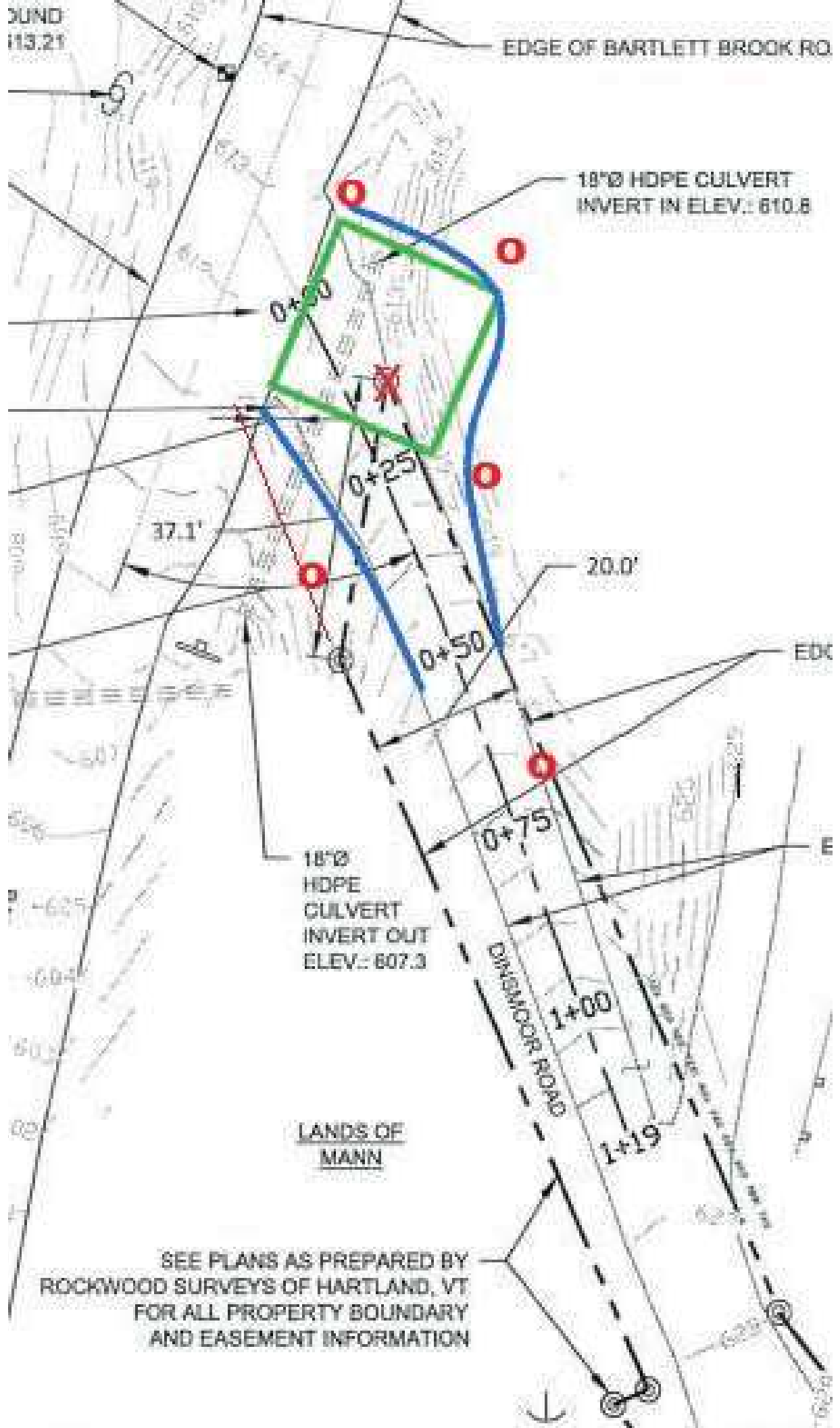
37.1'

20.0'

18"Ø
HDPE
CULVERT
INVERT OUT
ELEV.: 607.3

LANDS OF
MANN

SEE PLANS AS PREPARED BY
ROCKWOOD SURVEYS OF HARTLAND, VT
FOR ALL PROPERTY BOUNDARY
AND EASEMENT INFORMATION



northwoods
EXCAVATING INC.
289 Ulman Road
Thetford Center, VT 05075

Jason R. Crance
65 Dartmouth College Highway
Lyme, NH 03769

Dear Jason,

Mary Ellen Parkman and Tim Ulman visited Dinsmoor road on August 19, 2024 to inspect the current conditions of the intersection of Bartlett Brook Road and Dinsmoor Road.

There was no large rock visible in the slope making it difficult to discern what Mr. Mann's excavator is referring to in terms of limitation of excavation. With proper equipment, large boulders can easily be moved with an excavator and actual ledge can be hammered with just a few hours of excavator time. Continued excavation of the bank would require reinstalling the erosion matting and seeding and mulching, but this is a minor item.

The Town of Pomfret's Highway Ordinance as adopted as amended on June 21, 2022, requires that:

"For the first 20 feet back from edge of Town Highway, the driveway or access road shall 16 feet wide and graded and sloped such that water from the driveway or access road shall be 16 feet wide and graded and sloped such that water from the driveway or access road does not enter the Town Highway" and that "It is recommended that the driveway or access road have a grade dropping six inches in 10 feet before extending either up or down slope."

From our site visit is clear that the slope of the "driveway" as it enters the Town Highway is not away from intersection, it does not drop six inches in 10 feet before extending up hill to the homes. The road also doesn't have a crown to facilitate drainage into the newly created ditch. VTRANS Road and Bridge Standards recommends $\frac{1}{4}$ " to $\frac{1}{2}$ " crown per ft of roadway width or 2%-4%. In a heavy rainstorm water flowing down Dinsmoor Road will flow directly into Bartlett Brook Road.

To meet both the crown recommendations and the requirement to slope the drive away from the road, the access road should tilt down before extending uphill which creates a change of slope that will direct any water flowing down the access road to the Southern ditch before the water enters Bartlett Brook Road. The access road in its entirety should be crowned in the center until

it meets this grade change to direct water off the surface to prevent sheet flow across the road surface which will cause ice build up and slippery conditions in the winter, with potential ice forming at the bottom of Dinsmoor Road and into Bartlett Brook Road..

VTRANS standard detail 71A shows a detail for a crown and in their case a 5" depression to create the change in elevation to facilitate drainage off the drive before entering the Town Highway.

It is our professional opinion that moving the rectangle is not necessary as excavation of the bank is easily accomplished with the proper equipment. There is also a lack of crown and appropriate grade change to create a depression to manage the surface water drainage resulting in potential dangerous conditions.

If Northwoods was engaged to make there improvements we assume it will take a day (even if there is a large rock or ledge) with an excavator, dump truck, roller, laborer and a load of hardpack. The fee would be approximately \$6,945.00 assuming no hammer is required for ledge removal.

Please let me know if you need further information or have any questions.

Sincerely,



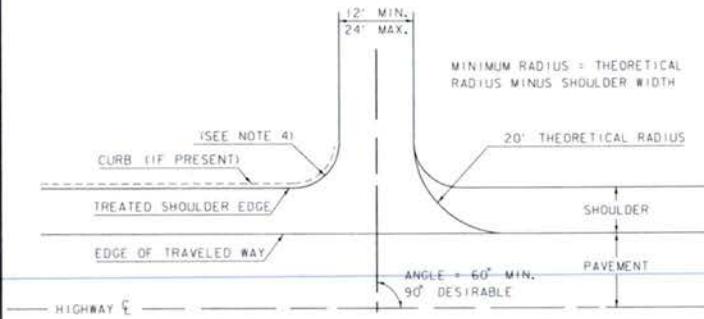
Timothy Ulman, President



Mary Ellen Parkman, PE

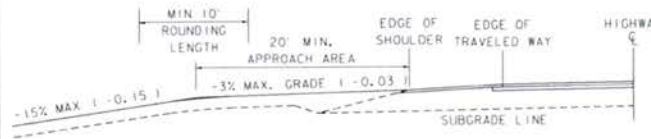
DETAIL A

RESIDENTIAL DRIVE



DETAIL B

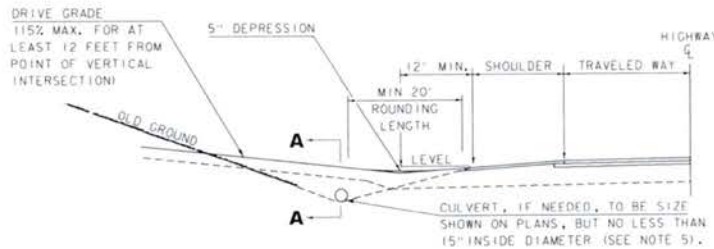
PROFILE OF DRIVE INTERSECTION
(FILL SECTION)



- THIS SHEET IS INTENDED FOR USE BY DESIGNERS ON HIGHWAY PROJECTS AND IN CONJUNCTION WITH A PERMIT FOR WORK WITHIN HIGHWAY RIGHTS OF WAY. ALL CONSTRUCTION REQUIRED BY THE PERMIT AND INDICATED ON THIS SHEET SHALL BE THE RESPONSIBILITY OF THE APPLICANT AND IS SUBJECT TO THE APPROVAL OF THE VERMONT AGENCY OF TRANSPORTATION. WHEN USED WITH THE PLANS FOR A HIGHWAY CONSTRUCTION PROJECT, THIS SHEET IS INTENDED TO BE A GUIDE FOR THE DESIGNER CONCERNING DRIVE WIDTHS, HORIZONTAL, VERTICAL AND GEOMETRIC CHARACTERISTICS.
- DEPTH OF SUBBASE AND PAVEMENT TO BE THE SAME AS HIGHWAY OR AS SHOWN IN DETAIL D WITHIN THE LIMITS OF THE HIGHWAY RIGHT-OF-WAY.
- VEHICULAR ACCESS FROM PARKING AREAS TO THE RIGHT-OF-WAY AT OTHER THAN APPROVED ACCESS POINTS WILL BE PREVENTED BY THE CONSTRUCTION OF CURBING OR OTHER SUITABLE PHYSICAL BARRIER.
- IF CURB IS PRESENT, SEE APPROPRIATE CURB DETAIL STANDARD.
- CIRCULAR DRAINAGE CULVERTS UNDER DRIVES SHALL HAVE A MINIMUM INSIDE DIAMETER (I.D.) OF 15" OR AS OTHERWISE SHOWN ON THE PLANS. PIPE ARCHES USED UNDER DRIVES SHALL HAVE A MINIMUM INSIDE CROSS-SECTIONAL AREA EQUIVALENT TO THAT PROVIDED BY A 15" CIRCULAR PIPE. IF A CULVERT LARGER THAN 15" IS LOCATED UPSTREAM OF THE PROPOSED CULVERT THEN THE NEW CULVERT SHALL, AT A MINIMUM, MATCH THE SIZE OF THE UPSTREAM CULVERT.
- THE OFFSET BETWEEN THE PROPERTY LINE AND THE EDGE OF THE DRIVEWAY MAY BE COVERED BY LOCAL ZONING LAWS. DRIVEWAY WIDTH RESTRICTIONS SHOWN PERTAIN ONLY TO THE AREA WITHIN THE HIGHWAY R.O.W. OR THE END OF THE TURNING RADIUS WHICHEVER IS GREATEST.
- DRIVEWAY GRADES STEEPER THAN THOSE SHOWN MAY BE ALLOWED AS LONG AS A 20' APPROACH AREA IS ACHIEVED FOR THE VEHICLE TO PAUSE BEFORE ENTERING THE HIGHWAY.
- THIS STANDARD APPLIES TO FIELD DRIVES, LOGGING DRIVES, AND RESIDENTIAL ACCESSES SERVING UP TO TWO SINGLE FAMILY HOMES OR A DUPLEX. FOR LARGER RESIDENTIAL DEVELOPMENTS, SUBDIVISIONS AND OTHER COMMERCIAL ACCESSES SEE VTRANS STANDARD B-71B.
- INTERSECTION SIGHT DISTANCES, AND STOPPING SIGHT DISTANCE, EQUAL TO OR GREATER THAN THOSE SHOWN BELOW, SHOULD BE PROVIDED IN BOTH DIRECTIONS FOR ALL DRIVES ENTERING ON PUBLIC HIGHWAYS, UNLESS OTHERWISE APPROVED BY THE AGENCY OF TRANSPORTATION. INTERSECTION SIGHT DISTANCE IS MEASURED FROM A POINT ON THE DRIVE AT LEAST 15 FEET FROM THE EDGE OF TRAVELED WAY OF THE ADJACENT ROADWAY AND MEASURED FROM A HEIGHT OF EYE OF 3.5 FEET ON THE DRIVE TO A HEIGHT OF 3.5 FEET ON THE ROADWAY. STOPPING SIGHT DISTANCE IS MEASURED FROM AN EYE HEIGHT OF 3.5 FEET TO AN OBJECT HEIGHT OF 2.0 FEET ON THE ROADWAY.
- FOR DRIVEWAY AND INTERSECTION SPACING DISTANCES REFER TO THE "VERMONT AGENCY OF TRANSPORTATION ACCESS MANAGEMENT PROGRAM GUIDELINES" LATEST REVISION.

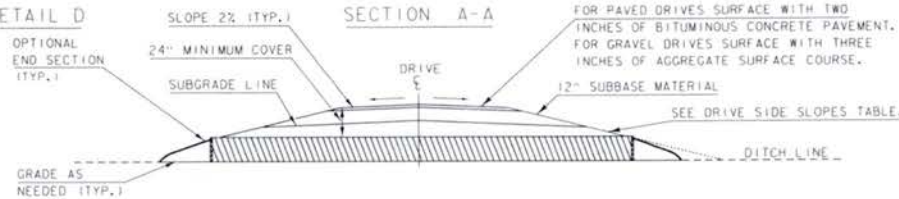
DETAIL C

PROFILE OF DRIVE INTERSECTION
SHOWING 5" DEPRESSION (CUT SECTION)



DETAIL D

SECTION A-A



DRIVE SIDE SLOPES TABLE

LOCATION OF SLOPE	SLOPE RATE
DESIGN SPEED > 40 MPH	1:6 OR FLATTER
URBAN AREAS, OR DESIGN SPEED < 40 MPH	1:4 DESIRABLE 1:2 ALLOWABLE
OUTSIDE CLEAR ZONE	1:2 OR FLATTER

POSTED SPEED OR DESIGN SPEED (MPH)	MINIMUM STOPPING SIGHT DISTANCE (FT)	MINIMUM INTERSECTION SIGHT DISTANCE (FT)
25	155	280
30	200	335
35	250	390
40	305	445
45	360	500
50	425	555
55	495	610

THE ABOVE VALUES ARE TAKEN FROM THE 2011 AASHTO "A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS & STREETS."

REV.	DATE	DESCRIPTION
0	JUL. 1, 2019	ORIGINAL APPROVAL
OTHER STANDARDS REQUIRED:		

RESIDENTIAL DRIVES

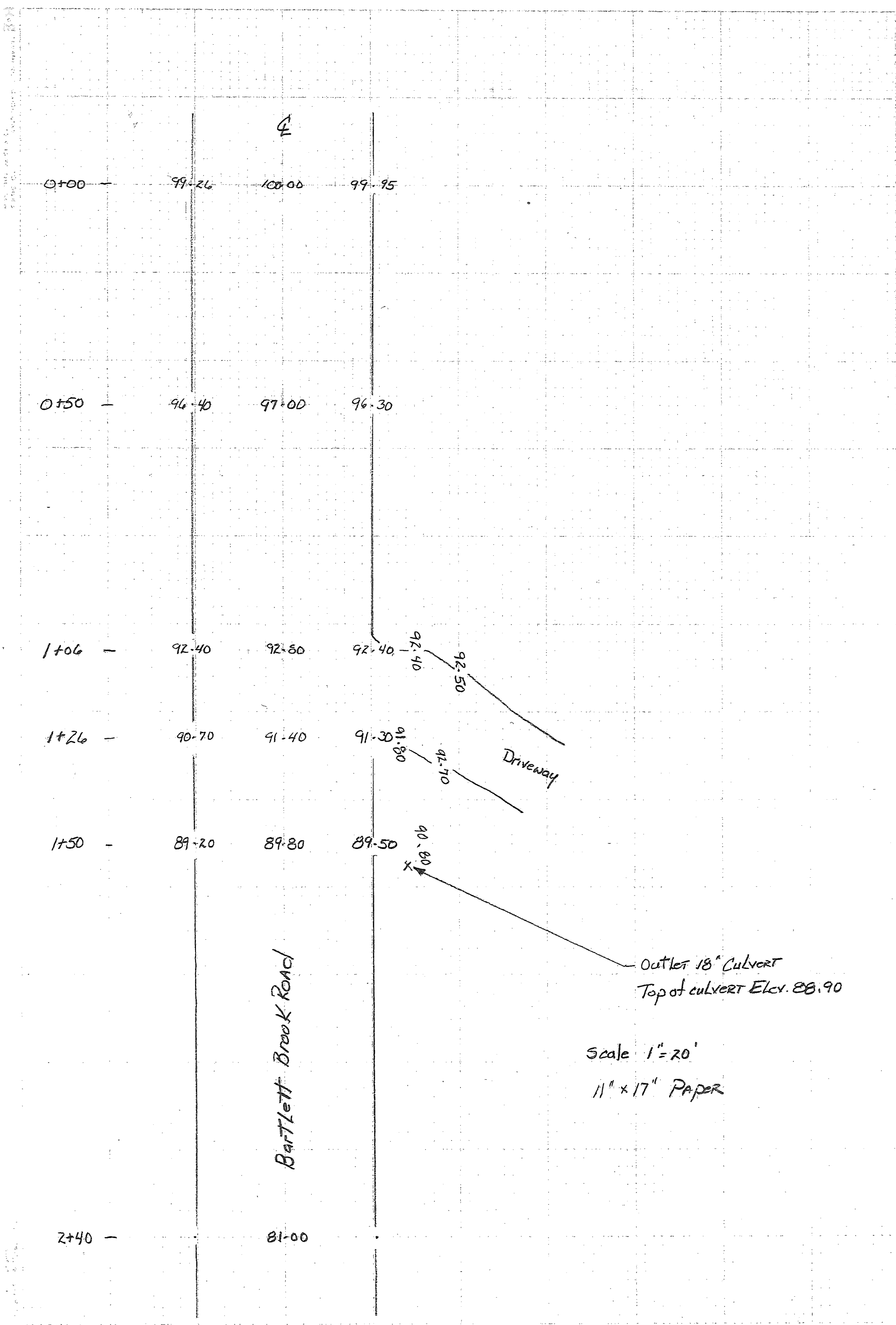


STANDARD
B-71A

EXHIBIT K

Gurney Plans

Attached.



4

0+00 - 99-26 100-00 99-95

0+50 - 96-40 97-00 96-30

1+06 - 92-40 92-80 92-40 92-40 92-50

1+26 - 90-70 91-40 91-30 91-80 92-70

1+50 - 89-20 89-80 89-50 90-80

Bartlett Brook Road

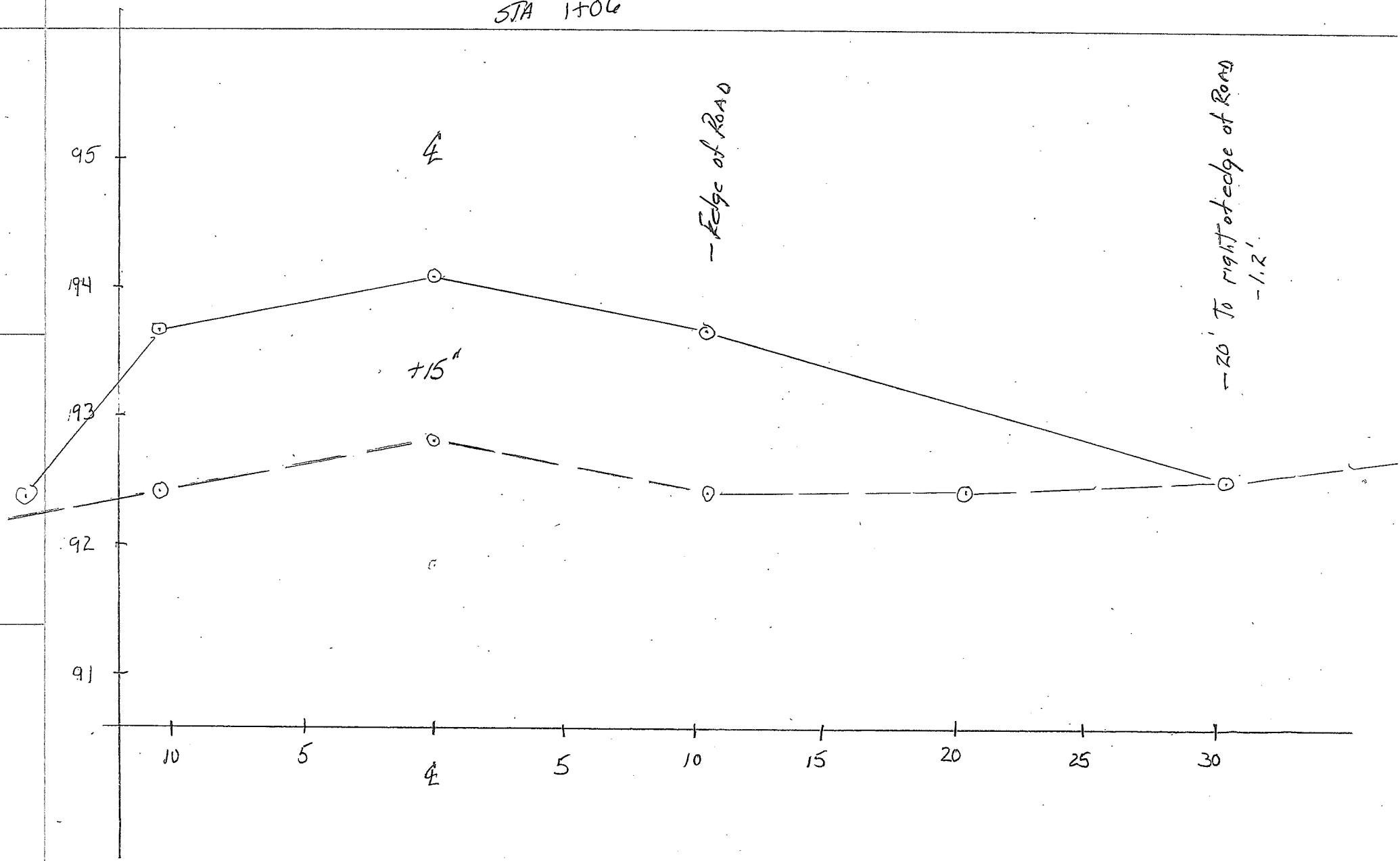
Driveway

Outlet 18" Culvert
Top of culvert Elev. 88.90

Scale 1" = 20'
11" x 17" Paper

2+40 - 81-00

STA 1+06



4

+15"

Edge of ROAD

20' To right of edge of ROAD
- 1.2'

STA 1+26

Edge of Road

Edge of Road

10' Right - 6" drop

+15"

93

92

91

90

89

-10

-5

0

5

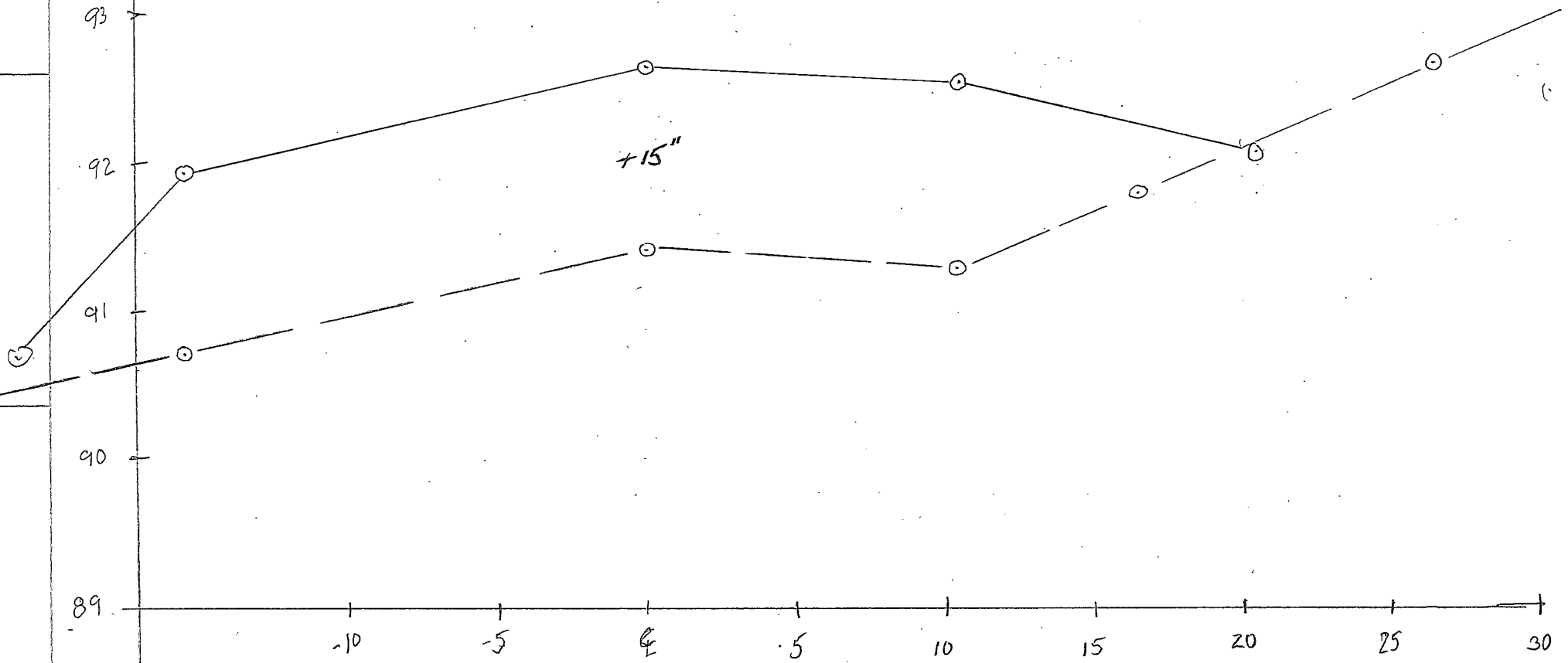
10

15

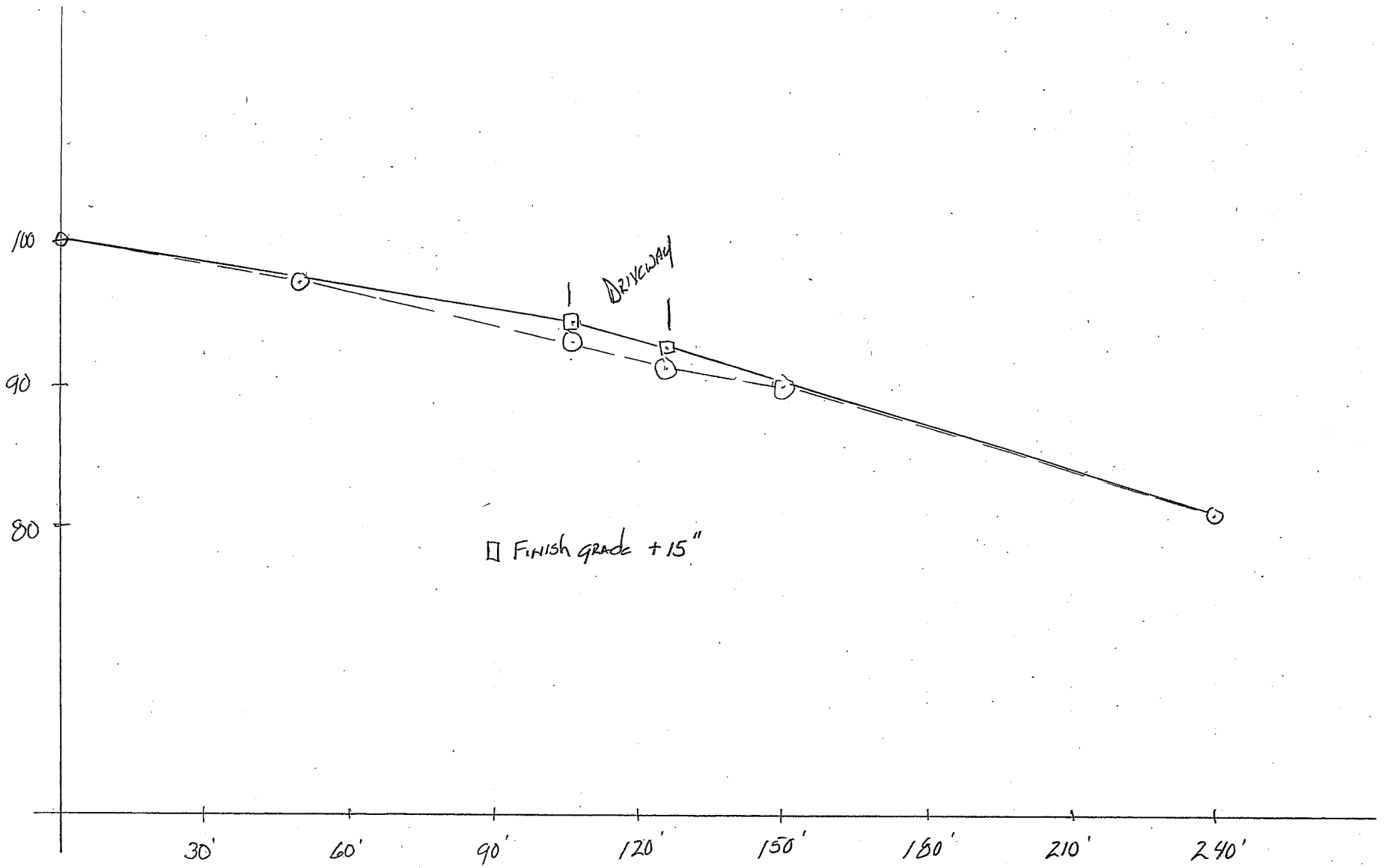
20

25

30



1" = 10'



DRIVEWAY

□ FINISH grade + 15"

1" = 30'

EXHIBIT L

Gurney Questions

Attached.

From: Jason Crance <Jason@crancelaw.com>

Sent: Friday, December 6, 2024 9:29 AM

To: Beriah Smith <bsmith@firmspf.com>; Andrew Snow <snow@yourvtlawyer.com>; Richard Windish <rwindish@primmer.com>

Subject: RE: Gurney Drawings

Hi Beriah,

Thank you again for providing the drawings prepared by Gurney Brothers. My client has the following follow up questions for Mr. Gurney based on his drawings:

1. The Plan showing the existing elevations and stationing (Town of Pomfret--Bartlett Road – Site Plan.pdf) is set to 1"=20' scale. The Plan showing the finish grade of +15" (Town of Pomfret – Bartlett Road—Profile of Road.pdf) is set to 1"=30' scale. Mr. Gurney indicated that the scale is set on 11 X 17 paper. If you print out the copies on 11 X 17 and follow Mr. Gurney's scale, the driveway entrance width at the intersection with Bartlett Brook Road scales at 20' on the Site Plan PDF, but at 22.5 ft on the Profile of Road PDF. Please have Mr. Gurney clarify the proposed width.
2. The Plans do not depict the drainage ditch on the north side of the driveway along the steep bank and extending up hill. Is the portion lying solely within the Town ROW remaining "as is" or will it be modified? If so, how?

3. Relatedly, in the Town of Pomfret – Bartlett Road – cross sections @ Driveway PDF, the section for Station 1+06 shows a 1.2' drop and the section for Station 1+26 shows a .5' drop with finished elevations of 92.50 and 90.80. The driveway is currently crowned in the center. Where does the transition to cross-slope occur for drainage purposes or does Gurney Brothers intend that all drainage flow to the north side?
4. Does Gurney Brothers plan to follow VTRANS standard A-76, "Standards for Town and Development roads" (and specifically what is required for constructing an intersection of a through road and a side road)?
5. What is the proposed material that will be used to blend Bartlett Brook Road and the shoulder in the transition between the new road surface and the existing grades as indicated on the Profile of Road PDF?
6. Per Question 3, it appears that drainage from Dinsmoor Road will be directed to the existing ditch on the north side of the road given the proposed finished elevations. If that is the case, what does Gurney Brothers intend to do with the three-quarter inch stone sloping away from Dinsmoor Road to the south?

I will look forward to receiving Mr. Gurney's responses.

Please thank him again for his efforts to get us drawings as soon as possible (especially given his personal commitments).

Regards,

Jason

Jason R. Crance

Law Office of Jason R. Crance

65 Dartmouth College Highway

Lyme, NH 03768

Phone: 603-643-8801

Fax: 603-643-5297

www.crancelaw.com

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