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June 30, 2022

*Via email only turner@mvcommission.org; elvin@mvcommission.org*

Martha's Vineyard Commission  
P.O. Box 1447  
Oak Bluffs, MA 02557

**RE: 4 State Road, Tisbury, MA**

Dear Sir/Madam:

This office represents Xerxes Aghassipour, the applicant for a proposed mixed-use development project for property located at 4 State Road, Tisbury, MA ("the Project"). As you know, this matter is pending before the Martha's Vineyard Commission ("MVC") for review. I am writing to respond to and correct numerous inaccuracies in the June 16, 2022 letter submitted by Erik Hammarlund, attorney for 10 State Road Condo Trust ("10 State Road").

The dispute over the location of the easement stems from the fact that 10 State Road never fulfilled its obligation to construct the easement in accordance with the recorded documents as well as the plans which 10 State Road submitted to the MVC in 2012 (DRI # 622 Grillo / 10 State Road). Prior to the execution of the Easement, the existing physical access to the rear portion of 10 State Road was entirely on the Project's property, exactly where it is today. In fact, the MVC made note of the absence of legal access over 4 State Road's property when it noted in the DRI #622 file that "[t]he site has one access on site *and a cooperative agreement with Educomp which has two accesses on the neighboring property.*" (Emphasis added). See Exhibit 1 (Staff Report), ¶3. 10 State Road acknowledged its lack of legal access in the Easement agreement itself wherein the parties "agree that there is presently a driveway between the two properties, which is presently located on the [Project's Property]." The parties then agreed to "create an access easement between their respective properties" which is shown as being 6 feet on either side of the property line. Clearly the MVC required a more formal and recordable easement because 10 State Road had no legal access to the rear of its property which was necessary to its expansion. However, 10 State Road never constructed the easement as agreed.

Now is the time for the Parties to complete what should have been done almost a decade ago: the construction of the new and intended access easement serving both properties, and a new driveway entrance which will allow for a safer ingress into the properties. Admittedly, the Parties are dealing with an easement which contains ambiguities and inconsistencies. The

current easement also does not provide for egress.<sup>1</sup> In addition, it appears that 10 State Road constructed their building much closer to the property line (by approximately 4-5 feet) than depicted on the Exhibits to the Easement on record which further complicates and limits the space in which the Parties can leverage as an alternative location for the easement.<sup>2</sup> While Exhibit B clearly notes 10 State Road's new building to be 11ft from the property line, it was actually constructed 6'-7' feet away from the property line. We have provided numerous alternatives to 10 State Road which include removing parking spaces, shifting the location of the easement more on the Project's property, and allowing for existing and/or new landscaping too. Although the Applicant has met 10 State Road's most recent requests made in a revised plan sent to them, 10 State Road has now rejected all of these. 10 State Road has made it clear that it does not support the Project and will not make any agreements or concessions which even have the appearance of supporting the Project. Therefore, it appears that 10 State Road is refusing to agree to any one of the Applicant's numerous proposals in the hopes that this dispute with thwart the Project's approval. With that said we would like the record to reflect the inconsistencies and errors presented by 10 State Road in their letter to the Commission.

***1. Exhibits A and B are not mutually exclusive, and the Applicant's proposed plans for the entrance to the properties is consistent with Exhibit B which provides for an adequate turning radius.***

It is undisputed that the recorded easement references two exhibits, A and B. 10 State Road maintains that Exhibits A and B are mutually exclusive, and that Exhibit B governs the location of the entire easement between 4 and 10 State Road. This is incorrect: Exhibit A governs the width and location of the access easement *between* the properties, and Exhibit B governs the "new driveway entrance" which was supposed to be constructed at the entry point to the state highway, but was never built. See Exhibit 3 attached hereto (relevant sections highlighted in yellow). Currently, neither 4 nor 10 State Road have an adequate turning radius into the properties. Exhibit B – the plan endorsed by 10 State Road – provides for an adequate radius. In fact, in its recent submission, 10 State Road acknowledges that Exhibit B "DOES have an additional turning radius to the west, to allow trucks enough room to turn" into the properties (emphasis in original). The Applicant has always been prepared to honor Exhibit B as it relates to the new driveway entrance and construct the ingress access in accordance with that plan, or, alternatively, revise the entrance plan to accommodate 4 State Road as much as practicable.

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<sup>1</sup> 4 State Road has the ability to egress on the east of the building on its own property. 10 State Road has no legal egress other than from its own property. 4 State Road has indicated that it is willing to grant 10 State Road egress rights on its property subject to mutually agreeable terms.

<sup>2</sup> 10 State Road submitted a plan in DRI 622 which shows the distance between 10 State Road's proposed building and the property line as 11 feet. See Exhibit 2. In fact, the building as constructed, is approximately 6-7 feet away from the Property line which would place the easement much closer to the existing building than planned.



**2. *The Loading Zone parking space can be moved as previously presented to 10 State Road.***

10 State Road had no concerns with the location of the loading space in all our discussions to date. In fact, 10 State Road recently proposed adding a space to its left. However, in its letter to the Commission, 10 State Road has taken a contradictory stance. Thus, the Applicant is willing to move the Loading Zone. A copy of a revised plan with this change is attached hereto as Exhibit 4.

**3. *10 State Road's Contention that the easement only extends 3 feet onto its property is unsupported by any documentary evidence.***

The agreement describes the easement by referring to Exhibit A which in turn depicts the easement as 6 feet on each side of the property line. The location of the Easement described in Exhibit A is also reflected on Exhibit B. 10 State Road - without any supporting documentation - claims that the easement should only extend 3 feet onto its property, and maintains that the additional 3 feet is "designed to provide additional green space." There are no dimensions for the easement on Exhibit B, and no designation of green space. The only dimensions on the plan show 11 feet between the proposed building and the property line which, as previously stated, is not where the building is located. Furthermore, 10 State Road purports that the access easement on Exhibit B is 12 feet wide; however, the width of the access easement in Exhibit B when measured using Exhibit B's scale shows it is only 9'-10' wide. This falls short of the required 12 foot minimum to allow for access by fire apparatus. Once again, the Applicant has presented several options to 10 State Road in order to maintain as much greenspace as possible between the properties.

**4. *Removal of Trees within the Easement Area was noted in 10 State Road's DRI. The Applicant has offered to shift the driveway over so that constructing the easement in accordance with the Agreement may not require the removal of all trees so as to increase green space where possible.***

Throughout this process, the Applicant has been receptive to the Commission's concerns about impacting green space and mature trees during the construction which it shares in kind. Although the easement grants the Applicant the right to use 6 feet on either side of the property line for access, the Applicant has submitted several proposals to 10 State Road which would move the easement more to the east in order to maximize greenspace where existing trees are located. It should be noted that 10 State Road has recently removed several mature trees between the properties to construct its alternative access. Additionally, the trees which 10 State Road now seeks to "protect" as greenspace are the same trees 10 State Road proposed would be removed for purposes of "mak[ing] room for sidewalk along Educomp Building" in its 2012 DRI submission. Those trees were never removed, and the sidewalk was never constructed. The Applicant will continue to work towards maximizing greenspace wherever possible.

In sum, we want the MVC to note that we have been working for months with 10 State Road to resolve the easement dispute. Many of the proposals which the Applicant has submitted address these and other concerns raised by 10 State Road. However, as of this letter, 10 State Road is unwilling to



commit to a final resolution perhaps because they view that any agreement to resolve this dispute may be viewed as a tacit approval of the Project. Regardless of whether this easement dispute is resolved through continued negotiations or the courts, the final resolution will be a positive outcome of this project.

Very truly yours,

**Touchstone Law Offices**

Mary L. Cataudella

# **EXHIBIT 1**



BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453,  
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

## Martha's Vineyard Commission

**DRI # 622 Grillo/ 10 State Road**

**MVC Staff Report – 2012-10-19**

### 1. DESCRIPTION

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- 1.1 Applicant:** Joe Grillo; Delano Realty Trust
- 1.2 Project Location:** 10 State Road, Tisbury, Map 9-A Lot 5 (0.35 acre)
- 1.3 Proposal:** To build a new three-story 5,655 gsf mixed use building on a property in the B-1 District behind an existing 1,920 sf building on the same property.
- 1.4 Zoning:** B-1 Business; No minimum lot size; no front setback required; 2' side setback; 4' rear setback; 35' maximum height.
- 1.5 Local Permits:** Building Permit, Special Permit from Zoning Board of Appeals for mixed-use in B-1, Board of Health, Wastewater Commission to connect to the Wastewater Treatment Plant, Conservation Commission for wetlands.
- 1.6 Surrounding Land Uses:** Business and mixed-use.
- 1.7 Project History:**
- Archaeological evidence shows that there has been human habitation of this site since approximately 8,000 B.C. In 1965 William Ritchie, the author of [The Archaeology of Martha's Vineyard](#), did an extensive dig on the property next door and wrote a chapter about it in the book.
  - This property (Lot 5 in the book) was passed over because test pits "showed the virtual exhaustion of this part of the site".
  - When the site was cleared of trees in May 2005 someone dug some new holes in search of artifacts. This looting exposed some intact stratified layers of shell deposits. Mr. Grillo said that he had a shop on the property that burned down 20 years ago and that he was unaware of any archaeological significance of the site.
  - On November 5, 2005 the MVC voted that the clearing of trees and vegetation of 10 State Road did not constitute a Development of Regional Impact within specific limitations outlined in the non-concurrence letter including:
    - The applicant could only remove the tree stumps that had already been cut at the rear of the property, fill in the holes, cap the cleared area with clean fill three feet thick, and re-vegetate the area.
    - The applicant agreed to submit any possible future plans to the MVC including the possibility of creating a parking lot, extending the existing building, building a new building, or any other work that requires excavation or digging.
  - In 2007 the MVC approved a 2,200 gross square foot 3-story mixed-use building (900 sf footprint) with one office, a studio apartment and basement storage behind an existing two-unit commercial building on the neighboring property.
  - This project was referred in January 2010 and has been on hold after an archeological study was done.

## 1.8 Project Summary:

- To build a new three-story 5,655 gross square foot mixed use building on a property in the B-1 District behind an existing 1,920 sf building on the same property.
- **The 2010 proposal included and a new two-story 1,152 sf 2-bedroom cottage in the back which has been dropped from the proposal at this time.**
- The new mixed-use building would have a footprint of 1,885 square feet.
- The new mixed-use building would have 1-3 units for office/retail on the main level.
- The new mixed-use building would have two 2-bedroom apartments on the second floor.
- One residential unit would be 860 sf and the other would be 820 sf.
- The new mixed-use building would have 2 large storage areas in the basement for tenants

## 2. ADMINISTRATIVE SUMMARY

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**2.1 DRI Referral:** Tisbury Building Inspector; Received January 28, 2010

**2.2 DRI Trigger:** 3.301a and 3.301b.

**2.3 Pre-Application meeting with staff:** January 21, 2010; **October 18, 2012**

**2.4 LUPC:** February 1, 2010; **October 22, 2012.**

**2.5 Site visits:** T.B.D.

**2.6 Public Hearing: Tentatively on November 15, 2012**

## 3. PLANNING CONCERNS

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### 3.1 Some Key Issues

- Culture: This is a known archaeological site. A study has been done by PAL.
- Traffic: This is a very busy stretch of State Road.
- Intensity of Use: How much development should be on the parcels on this stretch of State Road?
- Size: The proposed building is almost three times the size of the existing building on the same lot on the street.

### 3.2 Environment

- **Vegetation:** The site was cleared of vegetation in May 2005. the
- **Habitat:** This is not designated as an NHESP habitat.
- **Archeological: An archeological study has been done by the Public Archeology Lab (PAL). According to the plans PAL reviewed in 2010 "the majority of the construction will not extend below the level of the overburden/fill layers and will not directly impact the intact/undisturbed archaeological deposits...If any construction related impacts are proposed below the level...then additional archaeological excavation may be necessary in these targeted areas."**
- **Landscaping:** The proposal maxes out the site with buildings and parking and very little landscaping.
- **Open Space:** The site looks out over Memorial Park but has no open space on site at all.

- **Lighting:** To be determined.
- **Noise:**
- **Energy/Sustainability:**
- **Wastewater / Stormwater:**
  - This area is near the watershed divide between Lagoon Pond that has a nitrogen issue and Vineyard Haven Harbor that has none. We show the property as being cut by the divide.
  - The Applicant has indicated that wastewater flow has been allocated for the property. This is important as it removes a potential source of added nitrogen to the Lagoon. Typically we request documentation of the award in the form of a copy of the minutes of the meeting at which it was awarded or as a letter from the Sewer Commissioners or DPW.

**Stormwater:**

- The property slopes toward Memorial Park in excess of 8% and stormwater management is necessary.
- The parking area will be gravel but at this slope it will still generate runoff at 60% or more of the precipitation.
- The Applicant indicated that a stormwater plan is in preparation. In general, they are planning a retaining wall at the lower end of the parking area that would have a gravel bed for infiltration.
- The soil type is Carver loamy coarse sand that has significant infiltration potential so that disposal of stormwater should not be difficult.
- Plans for the stormwater management design should be provided to staff at least a week before the public hearing to allow enough time to review the documents and the design.

**3.3 Transportation**

- **Access:** The site has one access on site and a cooperative agreement with Educomp which has two accesses on the neighboring property. The building on the other side of Educomp is owned by the same people who have granted an easement on each side to Educomp.
- **Parking:**
  - The site plan shows 14 parking spaces (2 of which are for handicapped)
  - The existing site accommodates approximately 6 parking spaces.
  - The parking surface would be sand fill and pea stone.
- **Traffic Summary:** MVC Staff is preparing a Traffic Scope for LUPC.

**3.4 Affordable Housing**

- According to the MVC Affordable Housing Policy, the recommended monetary mitigation for a proposal 5,655 sf. is \$3,650
- The applicant is willing to restrict the residential units from being rented for not less than a month.

- The applicant is considering renting or selling the residential units to year-round employee(s) within the school system or Hospital, but has not made an affordable housing offer at this time.

### **3.5 Economic Impact**

- All five spaces will be sold as condominium units or rented. The basement will be used for storage with possibility to convert the space in the future.
- The creation of commercial condominium units will provide business owners an opportunity to purchase commercial space.
- The hours of operation and number of employees is not known at this time.
- The proposed project will generate new tax revenue for the town of Tisbury.

### **3.6 Scenic Values**

- **Streetscape:** The building in front largely screens the back building from the street. However, this does continue the recent trend of building in the backs of the lots on State Road which used to offer broken views into Memorial Park. The proposed building would be very large and imposing when viewed from Memorial Park.
- **Building Massing:** This building is almost three times the size of the existing building on the same lot and more than twice the size of the building built in the back of the next door lot (DRI 593).
- **Architectural Detailing:** The building design is a large vineyard style building
- **A.D.A. Accessibility:** The building would be A.D.A. compliant.

### **Local Impact/Abutters**

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## **4. CORRESPONDENCE**

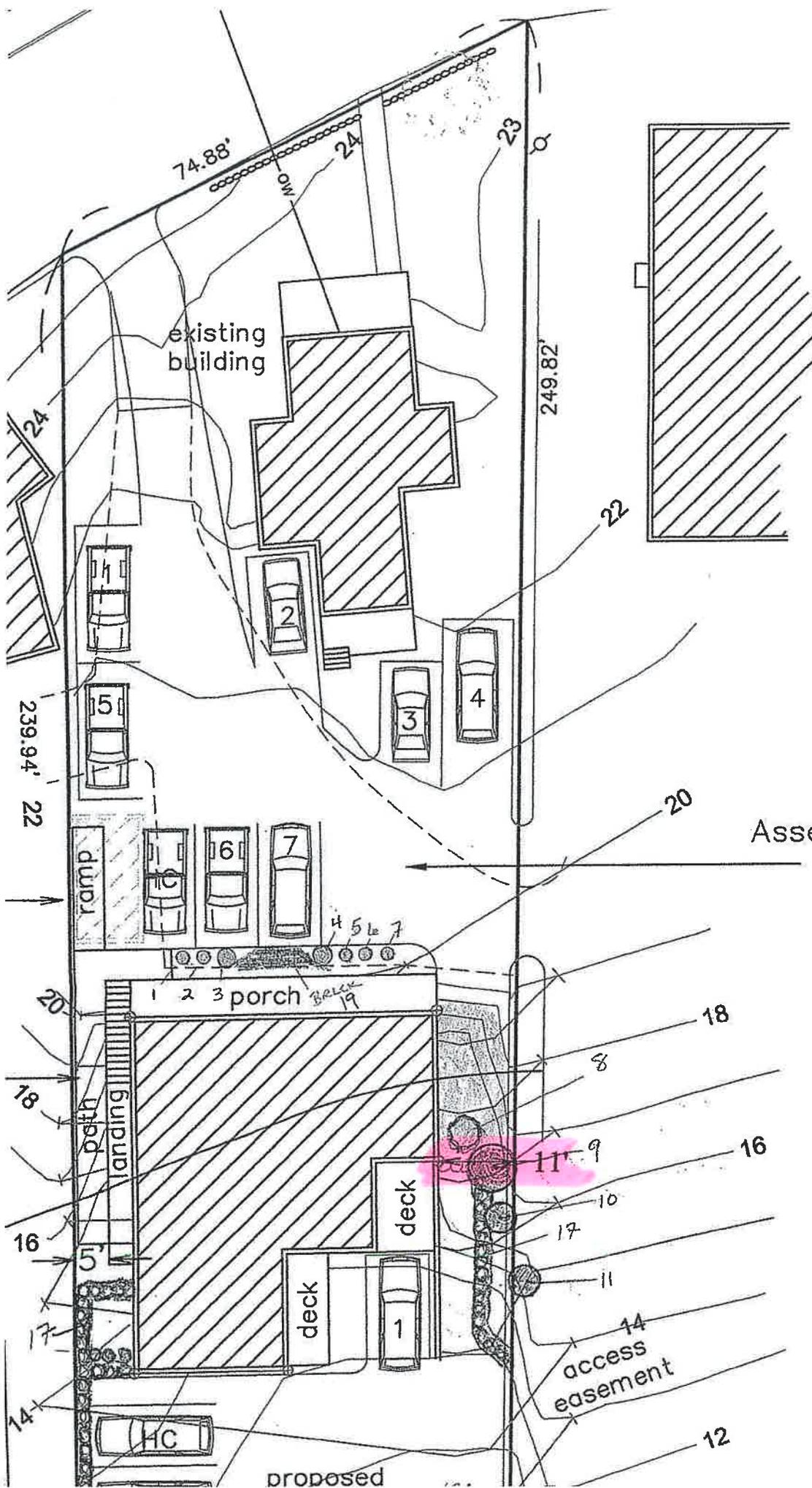
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### **4.1 Town Officials:**

### **4.2 Island Organizations:**

### **4.3 Public:**

# **EXHIBIT 2**

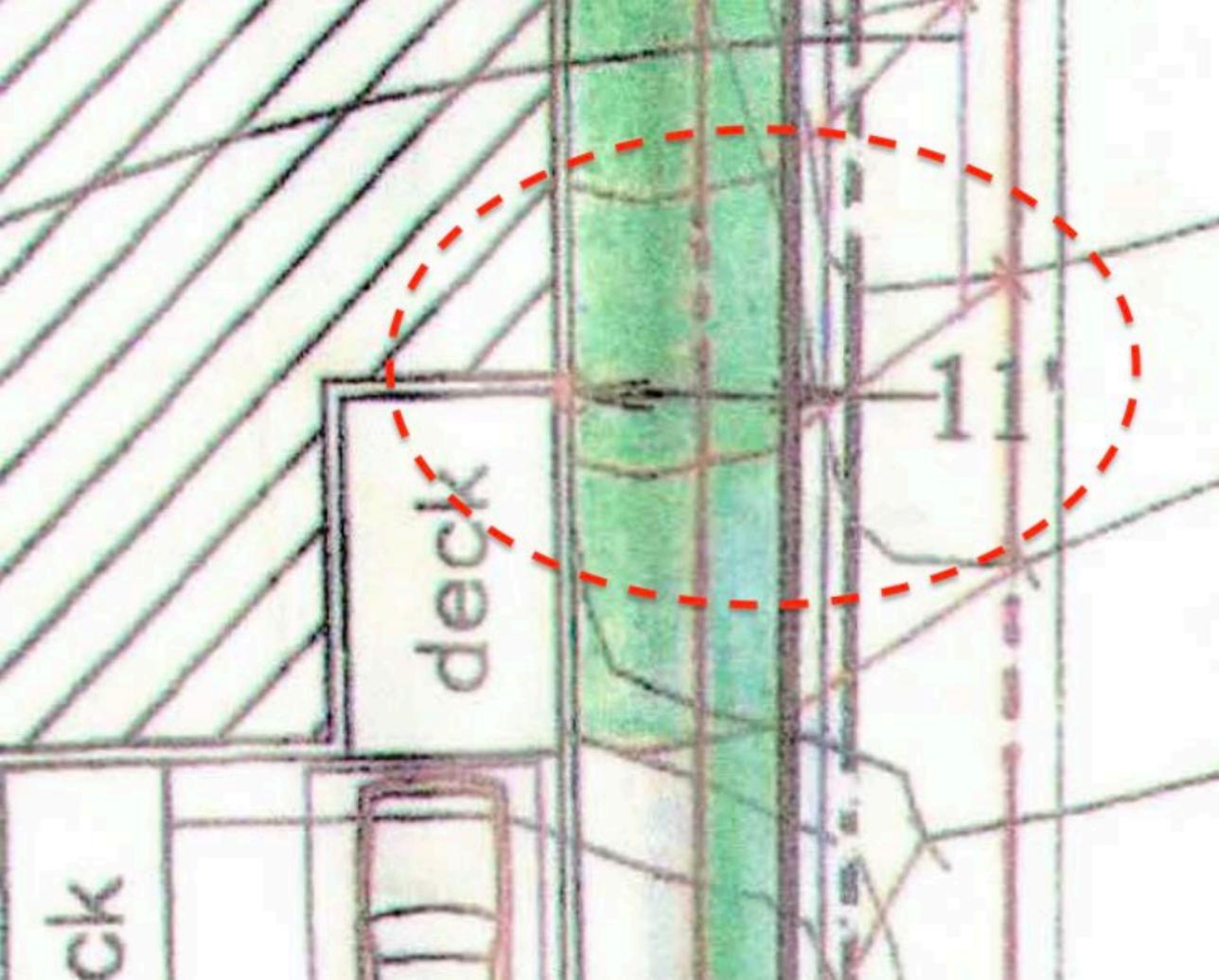


existing building  
 (Educomp)

KEY	
1	HYDRANT
2	HYDRANT
3	BOX WELL
4	BOX WELL
5	HYDRANT
6	HYDRANT
7	HYDRANT
8	LILAC
*	EXISTING

Tisbury  
 Assessor Parcel 9-A-5  
 15,660± sq ft

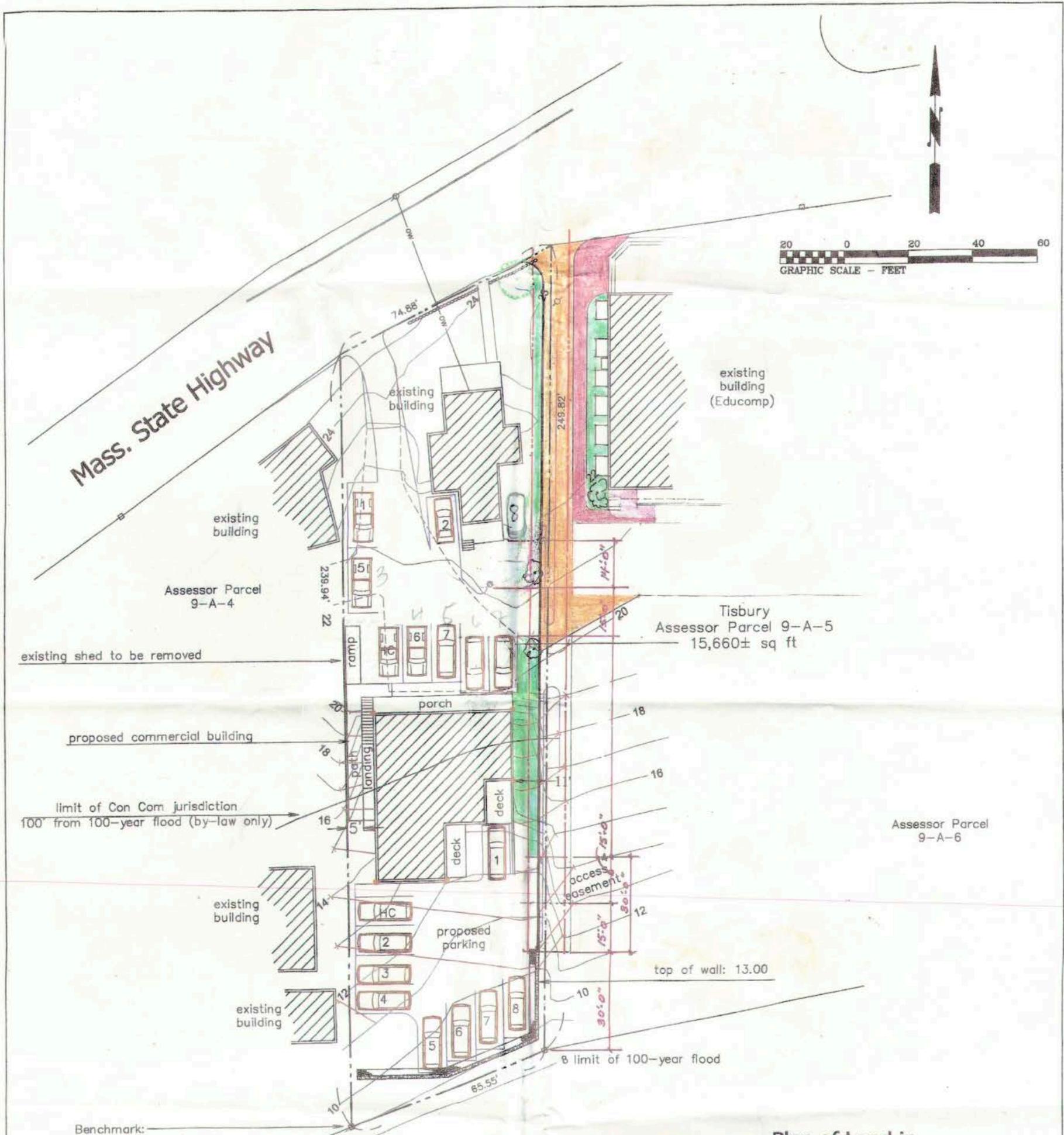
NOTE:  
 PLANT  
 SOON AS



deck

11'

ck



Memorial Park

Plan of Land in Tisbury, Mass.

Prepared For Joseph Grillo

Scale: 1" = 20' December 4, 2012

Schofield, Barbini & Hoehn Inc. Land Surveying & Civil Engineering

12 Surveyor's Lane, Box 339  
Vineyard Haven, Mass.  
508-693-2781  
www.sbhinc.net  
MV 6756

4-29-13 ANG calculation:  
 $(13.6+19.4+17.2+15.2+12.0) / 5 = 15.48$  (say 15.5)

- Notes:
1. Elevation are based on Mean Sea Level datum
  2. The 100-year flood elevation at locus is 8' MSL
  3. Locus lies within the B-1 zoning district

November 26, 2013

E.E.

# **EXHIBIT 3**

## COMMON DRIVEWAY EASEMENT

THIS AGREEMENT this 21<sup>st</sup> day of February 2014 by and between Katherine Grillo f/n/a Katherine R. Kinsman (hereinafter "Grillo") of 40 William Norton Road, Vineyard Haven, Massachusetts and Forty-One Main Street, Inc. (hereinafter "Forty-One Main Street, Inc.") of P.O. Box 2462, Vineyard Haven, Massachusetts.

WHEREAS, Grillo is the owner of real estate commonly known as and numbered 10 State Road in Tisbury (Vineyard Haven), Dukes County, Massachusetts as described in a deed recorded with the Dukes County Registry of Deeds in Book 482, Page 771, (hereinafter 10 State Road); and

WHEREAS, Forty-One Main Street, Inc. is the owner of real estate commonly known as and numbered 4 State Road in Tisbury (Vineyard Haven), Dukes County, Massachusetts as described in a deed recorded with the Dukes County Registry of Deeds in Book 489, Page 886, (hereinafter 4 State Road); and

WHEREAS, the parties agree that there is presently a driveway between the two properties, which is presently located on the property of Forty-One Main Street, Inc.; and

WHEREAS, the parties hereto wish to establish the rights and obligation with respect to said existing and future driveway, for themselves, their heirs, successors and assigns;

NOW THEREFORE, in consideration of these presents and mutual agreements set forth herein, the parties agree and covenant as follows:

1. The parties mutually agree that they wish to create an access easement between their respective properties, which is shown on an Easement Plan, attached hereto as Exhibit "A".

2. The parties hereby grant to each other the right to use the portion of said Access Easement located on their own properties, for all purposes for which Access Easements are used.

3. Forty-One Main Street, Inc. hereby gives Grillo and her assigns the right to use the existing driveway for vehicular and pedestrian access to her 10 State Road premises.

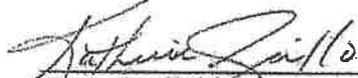
4. The parties mutually agree that a new driveway entrance is to be constructed as shown on a Plan by Schofield, Barbini and Hoehn, Inc. dated November 26, 2013, attached hereto as Exhibit "B". The location of said new entrance is shown in orange on said plan.

5. Grillo hereby grants to Forty-One Main Street, Inc., his/her/their heirs, successors and assigns, the perpetual right to use the portion of said new entrance way located upon her property, 10 State Road, as shown on the attached Exhibit "B", for the purposes of ingress and for the purposes of maintaining said driveway.

6. Forty-One Main Street, Inc., hereby grants to Grillo, her heirs, successors and assigns, the perpetual right to use the portion of said new entrance way located upon his/her/their property, 4 State Road, as shown on the attached Exhibit "B", for the purposes of ingress and for the purposes of maintaining said driveway.

7. Grillo and Forty-One Main Street, Inc. shall equally bear the responsibility and cost of maintenance, repairs, reconstruction and snow plowing of the common entrance way and path ways.

IN WITNESS WHEREOF, we hereunto set our hands effective as of the 21<sup>st</sup> day of February 2014.

  
Katherine Grillo  
F/n/a Katherine R. Kinsman

COMMONWEALTH OF MASSACHUSETTS

Dukes, ss.

On this 21<sup>st</sup> day of February 2014, before me, the undersigned notary public, personally appeared **Katherine Grillo, f/n/a Katherine R. Kinsman**, proved to me through satisfactory evidence of identification, which was pers. knowledge to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
Notary Public:

My commission expires: 9/4/20



IN WITNESS WHEREOF, we hereunto set our hands effective as of the 21<sup>st</sup> day of February 2014.

  
\_\_\_\_\_  
Jack Gray, Treasurer  
Forty-One Main Street, Inc.

COMMONWEALTH OF MASSACHUSETTS

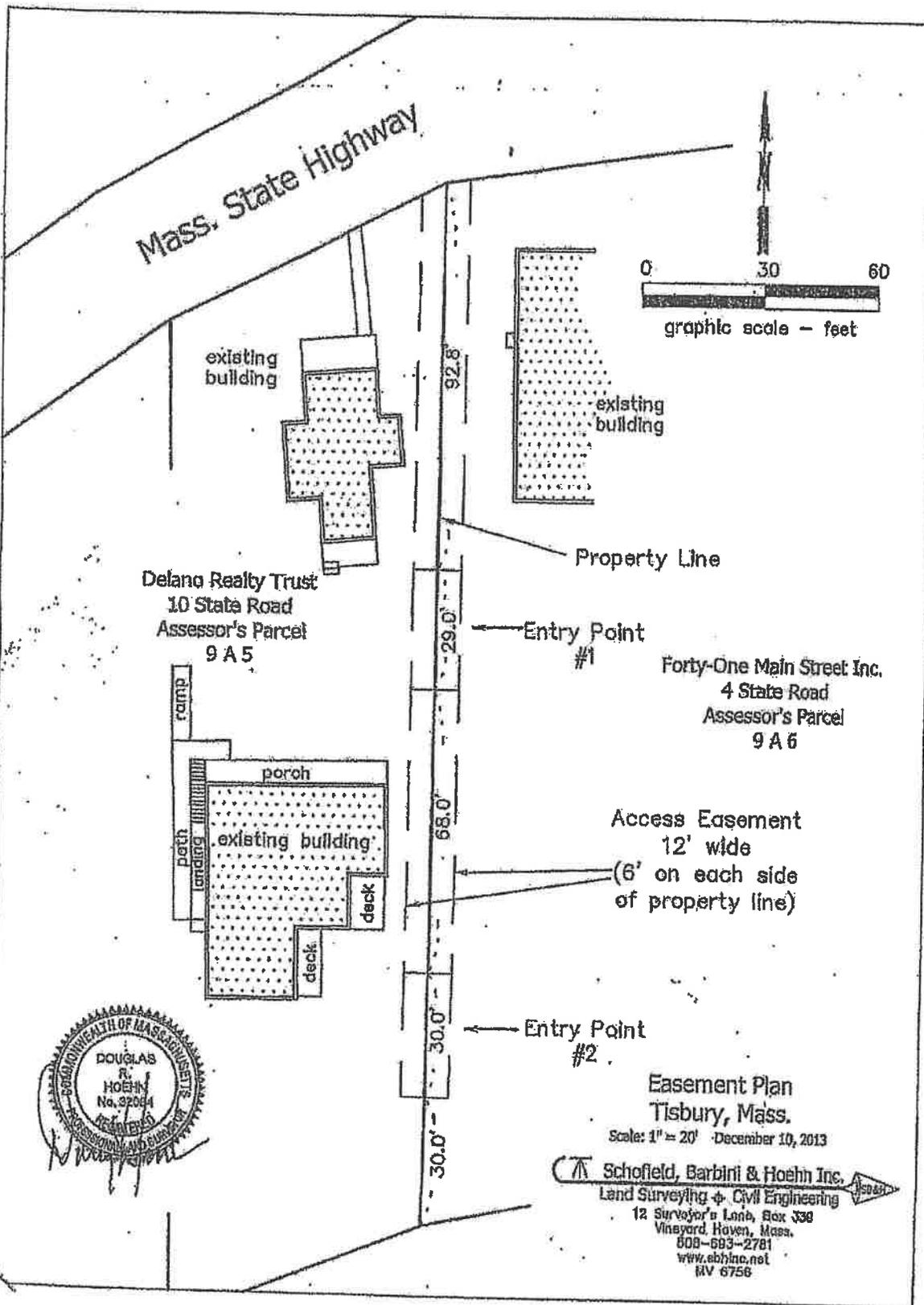
D. Skres, ss.

On this 21<sup>st</sup> day of February 2014, before me, the undersigned notary public, personally appeared Jack Gray, proved to me through satisfactory evidence of identification, which was per knowledge to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
\_\_\_\_\_  
Notary Public:  
My commission expires: 9/4/20



EXHIBIT A



Mass. State Highway

existing building

existing building

Delano Realty Trust  
10 State Road  
Assessor's Parcel  
9 A 5

Forty-One Main Street Inc.  
4 State Road  
Assessor's Parcel  
9 A 6

Property Line

Entry Point  
#1

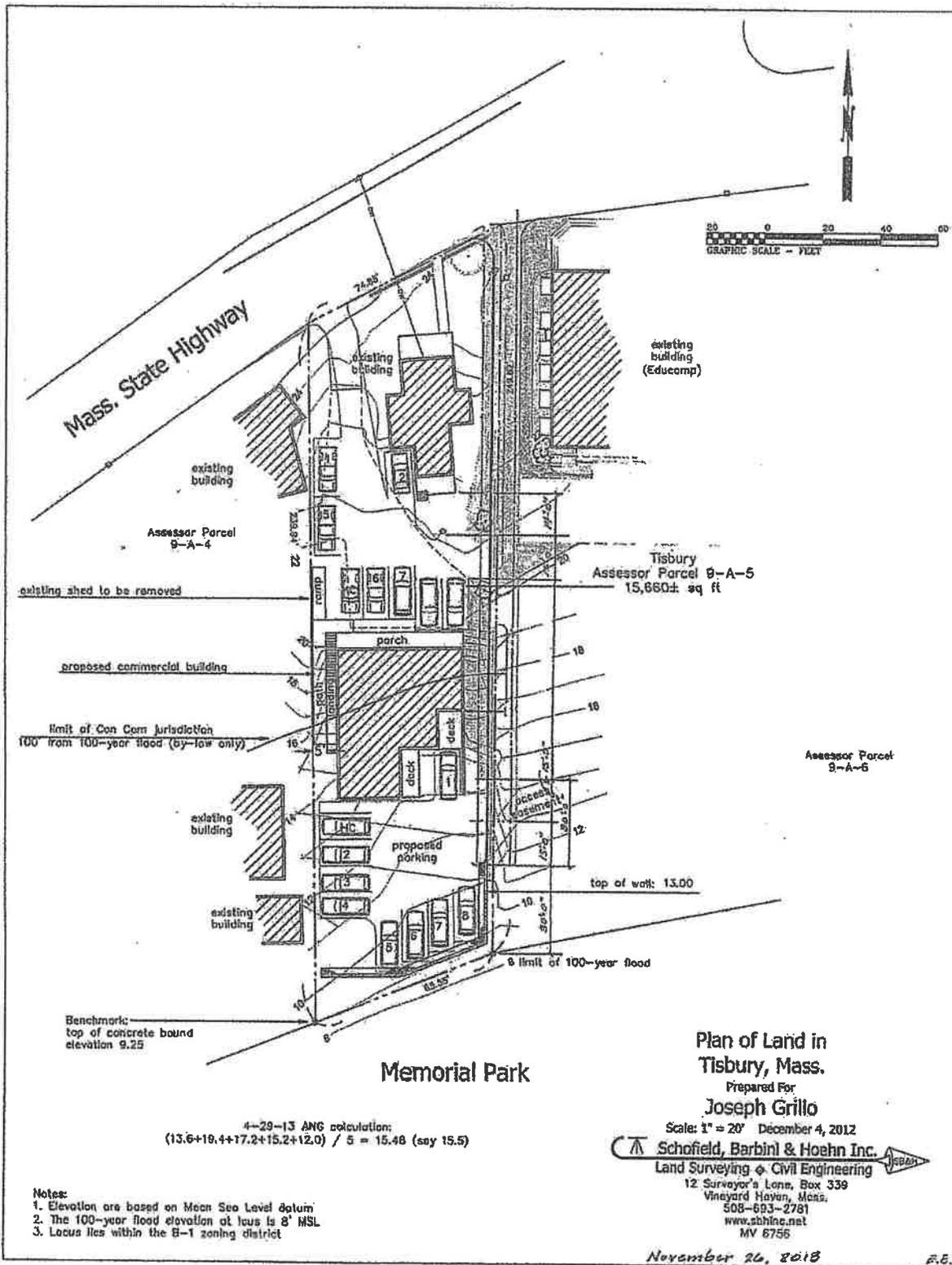
Access Easement  
12' wide  
(6' on each side  
of property line)

Entry Point  
#2



Easement Plan  
Tisbury, Mass.  
Scale: 1" = 20' December 10, 2013  
Schofield, Barbini & Hoehn Inc.  
Land Surveying & Civil Engineering  
12 Surveyor's Lane, Box 338  
Vineyard Haven, Mass.  
508-693-2781  
www.ebhinc.net  
NV 6756

EXHIBIT B



# **EXHIBIT 4**

