

District 1, 2

**CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2013**

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2013 to:
Vermont Agency of Transportation, Division of Policy, Planning and Intermodal Development,
One National Life Drive, Montpelier, VT 05633.

Received

FEB 22 2013

Policy, Planning & Intermodal
Development Division

We, the members of the legislative body of HALIFAX

in WINDHAM

on an oath state that the mileage of highways, according to Vermont Statutes Annotated, Title 19, Section 305, added 1985, is as follows:

PART I - CHANGES TOTALS - Please fill in and calculate totals.

Town Highways	Previous Mileage	Added Mileage	Subtracted Mileage	Total	Scenic Highways
Class 1	0.000				0.000
Class 2	16.800				0.000
Class 3	47.48				0.000
State Highway	5.846				0.000
Total	70.126				0.000
* Class 1 Lane	0.000				0.000
* Class 4	6.84	0.10		6.94	
* Legal Trail	8.77				
* Unidentified Corridor	0.00				

* Mileage for Class 1 Lane, Class 4, Legal Trail, and Unidentified Corridor classifications are NOT included in total.

PART II - INFORMATION AND DESCRIPTION OF CHANGES SHOWN ABOVE.

1. NEW HIGHWAYS: Please attach Selectmen's "Certificate of Completion and Opening".

Summer Farm Rd. 0.040 — TH-62
Weir Rd 0.060 — TH-63

2. DISCONTINUED: Please attach SIGNED copy of proceedings (minutes of meeting).

3. RECLASSIFIED/REMEASURED: Please attach SIGNED copy of proceedings (minutes of meeting).

4. SCENIC HIGHWAYS: Please attach a copy of order designating/discontinuing Scenic Highways.

IF THERE ARE NO CHANGES IN MILEAGE: Check box and sign below. []

PART III - SIGNATURES - PLEASE SIGN.

Selectmen/ Aldermen/ Trustees Signatures:

Lewis L. Sumner
Earl B. Delp
Edie L. Edwards

T/C/V Clerk Signature: Patricia Drew Date Filed: _____

Please sign ORIGINAL and return it for Transportation signature.

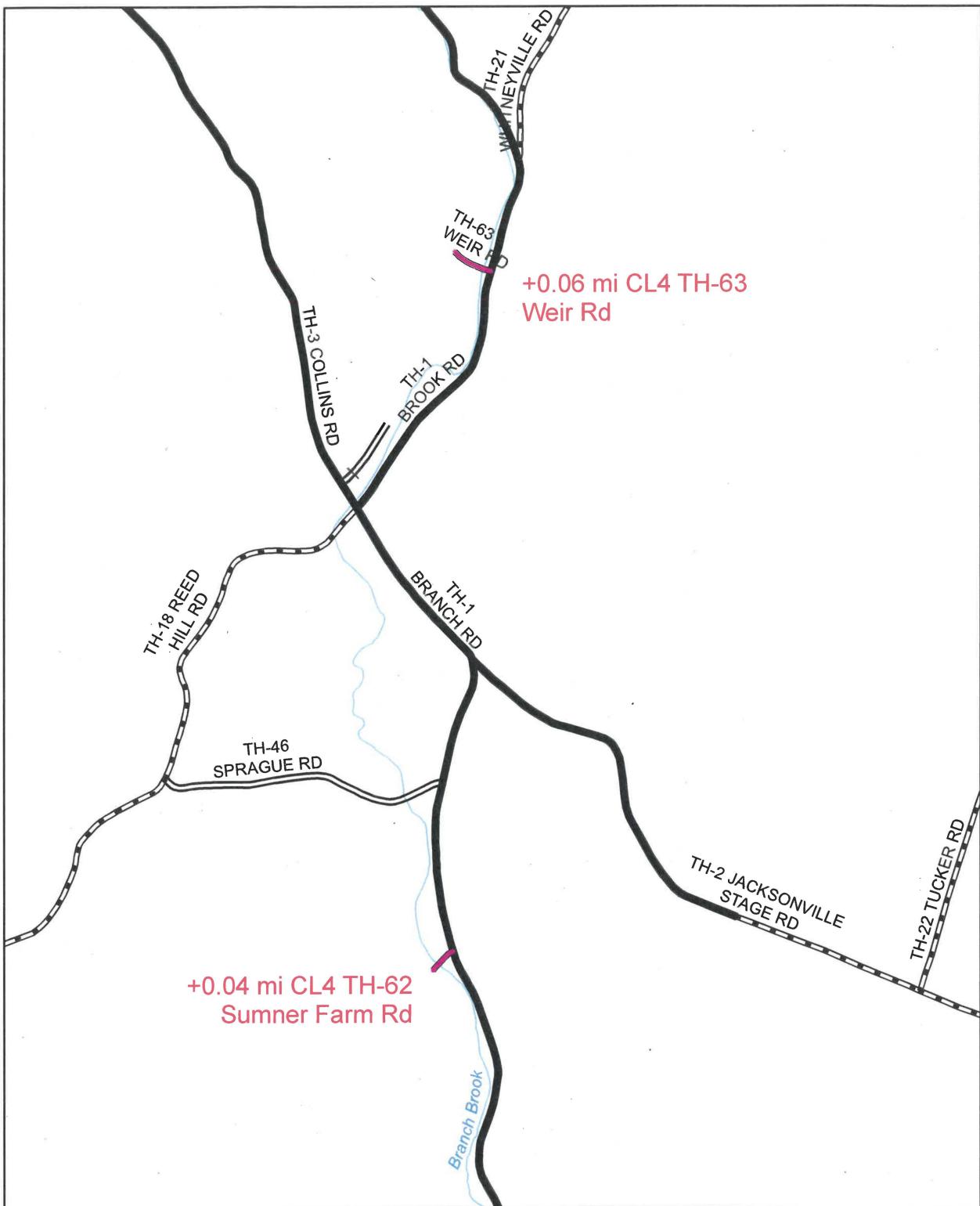
AGENCY OF TRANSPORTATION APPROVAL: Signed copy will be returned to T/C/V Clerk.

APPROVED:

Representative, Agency of Transportation

DATE:

6/6/2013



**Mileage Certificate Change 2013
HALIFAX**

Mapping Unit

Division of Policy and Planning

Vermont Agency of Transportation -- April 2013



0 Miles 0.2

**SELECTBOARD
TOWN OF HAIFAX
P.O. BOX 127
WEST HALIFAX, VERMONT 05358**
Phone: 802-368-7390

February 20, 2013

Vermont Agency of Transportation
Div. of Policy, Planning & Intermodal
Development — Mapping Unit
Attn: Ms. Sara Moulton
1 National Life Drive
Montpelier, VT 05633-5001

Re: 2013 Certificate of Highway Mileage

Dear Ms. Moulton:

Enclosed please find the 2013 Certificate of Highway Mileage which has been signed by the Halifax Selectboard and the Town Clerk.

Also enclosed are the emails and correspondences documenting the status of the two Class 4 roads which should be added to the Halifax Highway Map:

Sumner Farm Road	0.040
Weir Road	0.010

If further documentation is necessary, please don't hesitate to call 368-7390 (Town Office) or 368-2824 (home).

Sincerely,



Lewis L. Sumner
Chairman, Halifax Selectboard

enc. Certificate of Highway Mileage year ending Feb. 10, 2013
Email from Sara Moulton to Earl Holtz dated 2/6/13
Email from Johnathan Croft to 'markandedee' dated 5/8/12
Email from Sara Moulton to Johnathan Croft dated 5/8/12
Email from Edee Edwards to Sara ouldton and Johnathan Croft dated 5/3/12
Letter from Robert M. Fisher, Esq. To Tim Barnett, FEMA dated 7/2/12

 Webmail[Print](#)**subject: RE: FW: Halifax Mileage Certificate Follow Up****from: Edee Edwards<edee.edwards@hughes.net>****date: Mon, Feb 18 2013 at 7:48 AM****to: 'Earl Holtz'<halifaxvt@gmail.com>,'Jessica****Bruno'<halifaxsecretary@gmail.com>,'Lewis Sumner'<townclerk@halifaxvermont.com>**

FYI and FWIW (for what it is worth), I attach the two email messages from last year.

Edee

From: Earl Holtz [mailto:halifaxvt@gmail.com]

Sent: Wednesday, February 06, 2013 5:16 PM

To: Edee Edwards; Jessica Bruno; Lewis Sumner

Subject: Fwd: FW: Halifax Mileage Certificate Follow Up

All,

FYI, I will read and comment on this!

Earl

----- Forwarded message -----

From: **Moulton, Sara <Sara.Moulton@state.vt.us>**

Date: Wed, Feb 6, 2013 at 3:42 PM

Subject: FW: Halifax Mileage Certificate Follow Up

To: "halifaxvt@gmail.com" <halifaxvt@gmail.com>

Cc: "Croft, Johnathan" <Johnathan.Croft@state.vt.us>

To: Earl Holtz, Town of Halifax Selectperson

I would like to follow up on our telephone conversation earlier today in which you asked about how Sumner Farm Rd and Weir Bridge Rd can be added to the Town Highway Map. We received a similar request from Edee Edwards in May 2012. If the Town wants to add the highways based on existing town records, Johnathan Croft provided some guidance and detailed the documentation needed in the email below.

If the Town does not have this documentation regarding the legal establishment, the Town can add the roads through the laying out process as defined in V.S.A. Title 19, Chapter 7 Laying out, discontinuing, and reclassifying highways, available online at: <http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=19&Chapter=007>.

Another resource for guidance about the process is "The 'Orange Book' a Handbook for Local Officials" available online at http://www.aot.state.vt.us/ops/documents/AOT-OPS_OrangeBook.pdf.

Please let me know if you have further questions about this or other mapping issues.

Sara Moulton, GISP
Mapping & GIS Specialist, Mapping Unit

Division of Policy and Planning
Vermont Agency of Transportation (VTrans)
Tel: 802-828-2109

From: Croft, Johnathan
Sent: Tuesday, May 08, 2012 4:34 PM
To: [markandedee@hughes.net'](mailto:markandedee@hughes.net)
Cc: townclerk@halifaxvermont.com; Moulton, Sara
Subject: FW: Halifax Mileage Certificate Follow Up

Good afternoon,

We have researched the records at VTrans and have located the mileage certificates related to the 1981 map with the lettered notations. Please find the mileage certificates from 1970 to 1984 attached. Sara has reviewed the documents and added her findings below. Based on this review, Wineburg Road, noted as Provisional on the 1981 map as noted for addition provided the town supplied documentation. The AOT didn't receive the requested documentation and the addition was not made at that time. The subsequent Mileage Certificates and Town Highway Maps don't include this section of highway.

This does not necessarily make this road private or define it as public, this just shows that section was identified as "provisional" and there was no action through the Mileage Certificate process to add the highway.

Ultimately, town highways are under the authority of the Selectboard, who can lay out, alter, reclassify or discontinue them. If this road has been legally established as a town highway, either through the formal laying out process or through "dedication and acceptance," please forward any of the documentation to VTrans and we will add this to the pending file for the 2013 Mileage Certificates. It should be noted that town highways are established at the town level and following the local proceedings, not when the mileage is added to the Mileage Certificate or when the highway is added to the Town Highway Map. Based on the VT Supreme Court case, Austin vs. the Town of Middlesex, the bar has been significantly raised regarding the document to support legal establishment. We would like to receive any laying out documents, deeds referencing the town highway, selectboard minutes, orders and action related to the town highway, expenditures related to the highway or bridge maintenance or related documentation from the Town of Halifax.

Please feel free to contact me with any questions or comments regarding the methods for legal establishment of a highway, or town highway mapping in general.

Johnathan Croft
VTrans Mapping Unit
(802) 828-2600

From: Moulton, Sara
Sent: Tuesday, May 08, 2012 1:47 PM
To: Croft, Johnathan
Subject: RE: Halifax Mileage Certificate Follow Up

Attached is a copy of the Halifax Mileage Certificates retrieved from the AOT Records Management department. The Certificates cover the years 1971 to 1984.

As part of the 1981 Certificate process, the Vermont Agency of Transportation issued a letter to the Halifax Selectmen itemizing several changes prompted by the road inventory that had occurred in 1980 (see attached pages 13-15). Among the roads listed were

Map ID #	Town Highway #	Mileage Added	Explanation
E	55 Prov.	0.040	Old Town Highway – Sumner Farm Rd
G	57 Prov.	0.060	Wineburg Road*

* I am assuming this is also known as Weir Rd

(The list appears to be coordinated with the Halifax_Revisions_1981.tif map referenced in the email below.)

On the page with this list was the statement:

"Before we can include these roads in your system, it will be necessary for you to submit a Certificate signed by the entire Board of Selectmen that these roads have been considered and maintained as public highways for 'X' number of years.";

Moving forward, on page 11, the "J" change is circled with the note "Only change J", and on the Certificate itself (page 9) it looks like the only change incorporated from the list was "J". Changes "E" and "G" were dropped and not incorporated. And, the provisional status of Wineburg/Wier Rd appears to have not been upgraded in the 30 years since.

You might want to note that this year's Certificate process closed on April 13, but we can work with the town to help get the documentation in line for next year's Certificate process.

Sara Moulton, GISP
 Mapping & GIS Specialist, Mapping Unit
 Division of Policy and Planning
 Vermont Agency of Transportation (VTrans)
 Tel: 802-828-2109

From: Mark Halverson and Edee Edwards [mailto:markandedee@hughes.net] **On Behalf Of** Edee Edwards
Sent: Thursday, May 03, 2012 8:09 AM
To: Moulton, Sara; Croft, Johnathan
Cc: townclerk@halifaxvermont.com; 'Earl Holtz'; 'Christina Moore'
Subject: Halifax Mileage Certificate Follow Up

Dear Jonathan Croft and Sara Moulton:

As a member of the Halifax Selectboard, I request your patience and assistance as I outline our documentation of the town asset, and legal responsibility for the repair, of a bridge on Weir Road, a Class IV road.

First, I apologize for any and all delays in our response. The Town of Halifax has 728 residents, an \$850,000 annual budget, approximately \$4.5M worth of damage from Tropical Storm Irene, a 3-person Selectboard, and no Town Administrator. We also have recently had our Selectboard Secretary of 6 years resign, and we also have had a change in that our Chairman of 4 years chose not to run for office again. While we have hired a project manager specifically to work on FEMA paperwork, and have made good use of help from our recently retired 42-year-long town clerk, we have clearly not been able to keep up with a full accounting of all of our projects. Despite having

regular and special meetings at least weekly, and often 2 to 3 times per week, we have had to prioritize our town's many needs at this time. And we have been continuously striving to try to resolve this issue since last fall. If we have somehow failed to provide a complete picture, I attempt again to do so now.

I'd like to address recent history in this letter.

The State and the Town have had several discussions about the ownership of the bridge on Weir Road. One concern noted by the state most recently is that we failed to add this town mileage to our 2012 Highway mileage statement. As the most junior member of the Selectboard at that time, I did not do the research on the specific road changes we needed, but I believed information pertaining to the addition of Weir Road and Sumner Farm Road were being submitted to the state when I signed the form, along with the handwritten notes and research documentation provided by my colleagues on the Selectboard to be included. In fact, we discussed this during our February 7, 2012 meeting, with several minutes of discussion about the total mileage changes, the specific roads to be added, and our expectation that there would be some questions back to us. If you wish, we can provide you with the audio recording of that meeting, including the specific points where Weir Bridge was discussed. (Note: As the recording is a .wav file of 83 MB, I fear trying to send this over my slow satellite internet, but we could burn it to a CD or send it from the public library at your request.) This level of detail is not in our meeting minutes, but I could also get these sections transcribed if you would find that helpful. As I did not directly manage the mailing or fax delivery, I cannot speak to how that information failed to be included. I can only apologize.

To rectify this, I am now enclosing a copy of the original information I expected we would include with our 2012 Highway mileage statement. To summarize, we were and are requesting that the following past oversights be corrected:

- ; Weir Rd, 0.15 miles added. Should be a Class IV Road.
- ; Sumner Farmhouse Rd. 0.10 miles added. Should be a Class IV Road.

According to information we found in our Town vault on 4/25/2012, we appear to have historically requested that these items be added to a highway map in 1981. We have copies of a map stating "Addition"--"G" -- T-57 Provisional, 0.06, in the location of Weir Rd. We also have noted T-55 Provisional, 0.04 (E) for Sumner Farmhouse Rd. At that time, they were marked as Provisional on the maps, but the map legend also uses "Prov." not "Private." (Map attached, but also available at: ftp://vtransmap.aot.state.vt.us/Maps/TownMapSeries/Windham_Co/HALIFAX/Halifax_Revisions_1981.tif.)

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Earlier research found no evidence in the Selectboard minutes between 1981 and the present that this road or bridge was formally disclaimed by the town. Also, at this point we do not have any evidence whether the Town or State took further definitive action after the 1981 provisional note, but the bridge, marked P (Provisional?) is on maps through 2002.

While we can continue to look for additional historic evidence about town ownership, I would like to get this more recent past information off to you in as timely a fashion as I can.

Would it be possible for us to schedule a brief follow up call for me to better understand any additional documentation you may need from us? While I work a full-time job M-F generally 7:30-4:30 pm, I do work from home and have a fair amount of flexibility in my schedule.

Sincerely,

Edee Edwards, Halifax Selectboard Vice Chair, 802-368-7063, edee.edwards@hughes.net

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Sincerely,

Edee Edwards, Halifax Selectboard Vice Chair, 802-368-7063, edee.edwards@hughes.net

FISHER & FISHER

ROBERT M. FISHER

JODI P. FRENCH

**KENNETH V. FISHER, JR.,
(1936 – 2010)**

LAW OFFICES, P.C.

114 MAIN STREET

P.O. BOX 621

BRATTLEBORO, VERMONT 05302-0621

(802)254-4488

(802)254-6148 fax

Dover Office:

118 Route 100 North

P.O. Box 1708

West Dover, VT 05356-1708

(802)464-3276

(802)464-3187 fax

rmfisher@sover.net

July 2, 2012

Tim Barnett
Federal Emergency Management Agency
99 High St., 5th Floor
Boston, MA 02110

Re: Town of Halifax: Weir Road and its' damaged bridge
FEMA-4022-DR-VT

Dear Mr. Barnett:

The Town of Halifax ("Town"), by and through its attorney, Robert M. Fisher, writes to address the issue of reimbursement rebuilding the bridge on the Weir Road, a class IV Town-maintained road. There has been some back-and-forth between the Town and the State of Vermont regarding the classification of Weir Road. Based on our research, Weir Road has all the incidents of a public, Town-maintained, Class IV roadway.

In Vermont a road may be established in one of two ways. First, a road may be established by statutory means. In such event, a town's selectboard must have substantially complied with the statutory procedures in effect at the time of establishment of the highway. Benson v. Hodgdon, 2010 VT 11, ¶ 11, n.4. Generally, this means that a survey should be performed, the highway should be 'laid out' and the officially opened, by recording in the land records.

The second way that a highway may be established in Vermont is by dedication and acceptance. Another way to think about this means of highway/road creation is as acquiescence, as the dedication and acceptance need not be formal acts. For example, the offer to dedicate need not come in the form of a writing or an affirmative act by the owner. Druke v. Town of Newfane, 137 Vt. 571, 574, 409 A.2d 994, 995 (Vt. 1979). "[I]f the attending circumstances clearly indicate an intent by the owner to devote the land to public use, is evidence upon which a dedication may be predicated. The allowance by the owners of repairs at public expense is one circumstance that strongly tends to show the intent to dedicate." Id., at 575, 996. The Vermont Supreme Court has further noted that "[w]hether a town highway has been established is a mixed question of law and fact: the essential element is the intent of the owner." Okemo Mountain, Inc. v. Town of Ludlow Zoning Bd. of Adjustment, 164 Vt. 447, 454-55, 671 A.2d 1263, 1269 (1995). Additionally, the Vermont Supreme Court found that the facts of the Okemo case established an "endpoint of the dedication," which was after the landowner began to complain

Please Respond to: X Brattleboro Office Dover Office

about repairs outside the established roadbed, which proved “intent to dedicate additional land could no longer be implied.” *Id.*

At issue in our matter is the damage that occurred to the Town’s highways as a result of Tropical Storm Irene. The Town asserts that the Weir Road was established by (implied) dedication and acceptance. To the best of our knowledge, there had never been another ‘owner’ of the bridge over the Weir Road; to the contrary, the bridge appears to have been *constructed* by the Town. The Town’s Selectboard believes that they show evidence of continuous maintenance and repair to the structure, such that there is no question of the abutting landowner’s intent to dedicate the land upon which the abutment sits for the purpose of this public way, consistent with Vermont precedent in Okemo.

Although the Town had provisionally added Weir Road as a Class IV highway in its annual Mileage Certificate filings with the State of Vermont Agency of Transportation (“AOT”), the AOT alleges that it never received the follow-up materials to officially recognize the road at the state level. As far back as the Mileage Certificate filing for 1981, the Town identified Wineburg Road (also known as Weir Road), which added 0.06 miles of Class IV Town Highway; the road was also then referred to as “Town Highway # 57 Prov.” In order to have accomplished the formal, statutory, road creation means, the Town would have needed to have done more than it did in this matter. However, there is overwhelming evidence that the Town treated Weir/Wineburg Road as a Town road, and that it is thus a highway by means of implied dedication and acceptance.

Nevertheless, at one time, and through one channel, it appeared as though the Vermont AOT was in agreement with the Town as to the status of Weir Road and its associated bridge. State Public Assistance Officer for Vermont AOT wrote in an email on April 17, 2012, that

“[g]iven the 1980 town highway map and the affidavit from a town official … I am now convinced that the Town of Halifax has treated the Weir Road bridge appropriately based on their belief that this road was in fact still a Class IV town highway. It is clear from the attached map that this road was at one time a Class IV town highway and we have no record that the town took any action to abandon this town highway. They have maintained the bridge in question based on their belief that this road was still a Class IV town highway. They have since included this mileage on their latest town highway mileage certificate to our Agency to correct this error *that I believe was no fault of their own.*

Exhibit #1.

It was an extremely busy and sometimes overwhelming experience that the Town went through when it applied to the AOT for reimbursement on various highway and bridge projects following Tropical Storm Irene. Parts of the Town were essentially inaccessible; the three-member selectboard was holding regular and special meetings to address all the damage to the Town; paperwork was completed to the best of the Town’s ability under these circumstances. Now that most of the work to the Town’s highways has been completed, it is clear that some mistakes were made. Anticipating this type of event, and the Town’s level of need would have been impossible, though without a doubt the Town likely would have done more to clarify what were crucial Town assets.

For example, the Town apparently forwarded a note from a single selectboard member, Lewis Sumner, on September 14, 2011 that mistakenly asserted access over a “Private bridge – [to the] Wineburg residents off TH 1 Brook Road,” which is referred to throughout this letter as either the Weir or Wineburg Road. The two-line entry cited indicated that the bridge was a “[t]otal loss and would only leave east abutment stud as protection for newer stub constructed behind this remnant.” Exhibit #2.

Were this the only assertion as to whether the Weir Road bridge was a private or a Town asset, this letter would not be written. Note that four additional *private* bridges were completely washed away by the floodwaters of Tropical Storm Irene, and the Town has not once asserted that any of these bridges were Town assets; they clearly are not. However, Selectboard member Lewis Sumner later submitted an affidavit stating that, he has been a “Selectman for the Town of Halifax for over 40 years [and that] the Town has maintained the bridge off Brook Road over Branch Brook known as the Wineburg Bridge for as long as I have been in town. I have lived in Halifax all my life having been born in 1942.”

Moreover, additional affidavits as to dominion over the bridge have been submitted by (1) Raymond Putnam: “road commissioner for the Town of Halifax, Vt. from 1974 – 1998. All the while I was commissioner the two bridges in question, the Wineburg bridge and the Sumner bridge were maintained by the town. I believe they were maintained by the town for many years before I was Rd. Commissioner.”; (2) Wayne Courser: “I worked for the Highway dept in this Town for about 38 years. 6 years of that I was Road Commissioner. The bridge leading to the Wineburg Home off of Brook Rd has been a Town bridge. I remember working on this bridge. The iron railing had the names of the town three selectmens (sic.) stamped on them. I believe it was in the early 1900 (sic.) that it was built i can remember two of the names, S. Worden and Z. Learnard. This bridge is definitely a town bridge.”; and (3) Bradley Rafus, current Town of Halifax Road Commissioner: “as the current Road Commissioner and employee of the Town of Halifax since 1997 I have considered The Wineburg Bridge located at 465 Brook Rd. to be a town Bridge (sic.), on one occasion I recall Putting rip-rap around the embutments (sic.), and more recently Installing a New guard rail system. This Bridge has always been maintained as a town owned Bridge.” Exhibit #3.

Additionally, the Town purchased materials at Stones Saw Mill (4x4x8 and 4x8x8 lumber materials), and special order materials (unfortunately unspecified) at Deerfield Valley Supply, albeit with the notation “Bridge Repair” on the invoice, in the summer of 2006. Exhibit #4. These materials are consistent with current Town of Halifax Road Commissioner Bradley Rafus’s recollection of “installing a new guard rail system” on the Wineburg Bridge.

Moreover, the Town has, in addition to providing physical maintenance of the structure, plowed the Weir Road bridge continuously for years. Although not dispositive of the matter, the Town notes that it never has sought, nor will seek, FEMA funds for any of the private bridges that were destroyed in the town, some of which remain unrepairs to this day. The Town does strongly maintain that the Weir Road and associated bridge to the Wineburg’s property has been Town-maintained asset since it was built, and became a Town road through the long-standing Vermont process of dedication and acceptance. Perhaps the issue is best summarized by Edee Edwards, current Halifax Selectboard Vice Chair, who wrote in a May 3, 2012 email to Vermont AOT personnel Sara Moulton and Johnathan Croft:

I request your patience and assistance as I outline our documentation of the town asset, and legal responsibility for repair, of a bridge on Weir Road, a Class IV

road. First, I apologize for any and all delays in our response. The Town of Halifax has 728 residents, an \$850,000 annual budget, approximately \$4.5M worth of damage from Tropical Storm Irene, a 3-person Selectboard, and no Town Administrator.

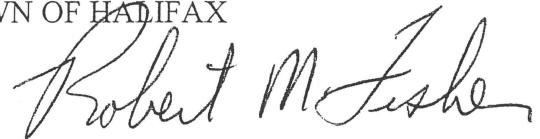
...
I also ask you to keep in mind that many of these resource constraints we have today, as a typical small town in Vermont, have been the case throughout the timeframe of the road and bridge lifespan. Sometimes the historic level of recordkeeping may not be what we have come to expect in the digital age, or it may be that transitory records were in fact appropriately disposed of as per recordkeeping best practices.

Exhibit #5.

If you have any questions or concerns please feel free to call our offices. With best wishes.

Sincerely,

TOWN OF HALIFAX



By: Robert M. Fisher, Esq
Town Attorney

Enclosures

cc: Town of Halifax Selectboard