

## Lieutenant Island Boat House

### The Access Issue:

- There is no formal agreement for the public to access the walking trail over the dune to the boathouse (owned by the Aggers and whoever owns the paper cul-de-sac), the dirt parking lot at the end of the road (owned by the Audubon), and the dirt road leading to the parking lot (owned by the abutting homeowners and/or the Audubon).
- The site is effectively used like a town landing, and should be designated as such. It is used by shellfish farmers, wild harvesters, recreational shellfishermen, anglers, kayakers, sailors, boaters, and beachgoers, and remains the only available public access to the North side of Lieutenant Island / South side of Blackfish creek.
- The Aggers have granted verbal permission to the public to pass, but if they sell the new owners may block access. The Audubon has granted verbal permission for the public to pass over the road and to park in the lot, and has been maintaining both.
- The Aggers have offered either to sell their property to the Town or to sell an easement to the Town for \$10,000. How do we secure the paper road, parking lot, and dirt road?

### What we Know:

- In 1962, a Town Landing was recorded at the boathouse in order for the town to receive Chapter 90 funds from the state to build Lieutenant Island Rd. However, it was never properly executed, since the land (potentially acquired through tax title) was never recorded with the registry of deeds, and there is no record of a vote by the town to accept it as one. The boathouse land is now owned by David & Sharon Agger.

#### **Town Counsel has advised that the Town Landing is not valid (2006).**

- In 1963 Town Meeting Article 39, the Town voted to accept “the road running from Pond St to the Town Landing on Blackfish Creek on Lieutenant Island.” However, the Town did not complete the steps necessary to accept it as a public road (including acquiring the land beneath the road).

#### **Town Counsel has advised that Heron Point Rd is private (2021)**

- Who owns the paper Heron Point Rd and cul-de-sac? According to *Massachusetts Streets and Ways for Surveyors*, who owns the road depends on the order of events in which the property is sold. If a lot in a subdivision is sold without the boundary to that lot expressly identified in the deed as the border of the road, then by default the new owner of that lot also owns to the centerline of the road, and the abutting homeowners to the road collectively own the rights to it. If the boundary is identified as the border of the

road without any indication of rights to the road, then the owner of the land that was originally subdivided then still owns the road.

According to our research, the Audubon obtained their land in 1964 “to the lowland line,” and Luther Crowell claimed ownership of the upland land (so called the “Sandy Hook”) he subdivided in 1967. Since all of the deeds lack language specifying the border of the road as a boundary and also convey rights to the road, we believe that the owners of the road should be the private homeowners abutting it to the North, and not the Audubon.

**Town Counsel says...**

- Satellite maps from September 2019 overlaid by the assessor’s database show that the original 2002 survey (black dotted line on the left) placing the dirt road on Audubon land may be out of date, possibly due to erosion. However, Oliver (with satellite imagery from March 2019) shows the dirt road on Audubon land.

Town Assessor’s Database:



Oliver:



Satellite imagery is imperfect, but an updated survey is necessary. We obtained funds with a 2022 Town Meeting vote on Article 29 to hire a surveyor.

**Surveyor says ...**

### Next Steps:

- Hire Outermost Land Survey to tell us which property the dirt road is on (Audubon or the paper Heron Point Rd).
- Ask Town Counsel who owns the paper road Heron Point Rd: only the abutting homeowners or the Audubon as well? Need them to conduct a title search.
- Request a meeting with Town Counsel to discuss the potential solutions

### Potential Solutions:

- Buy easement from Aggers for \$10,000 & easement on Heron Point Rd from \_\_\_\_\_
- Buy easement from Aggers for \$10,000 & take the road by adverse possession
  - However, this would make the road a public way. The DPW may not want to maintain it given its proximity to the marsh, and the private homeowners most likely do not want to give up their private road. Amicable avenues preferred.
- Buy the property from Aggers, & receive appurtenant easement on Heron Point Rd if possible or purchase easement on Heron Point Rd
  - Aggers have been amenable to a buyout, but under the condition that Jason & Elizabeth keep their right to use the boathouse. Town concerned with liability of Jason's use of the boathouse.
  - Appurtenant easement on Heron Point Rd with ownership of the boathouse property by the Town does not necessarily convey rights to the road to the *public*

## Lieutenant Island Osprey Nest / Way 100

### The Access Issue:

- Muddy ditch in the dirt road currently being used for shellfishing access off of Lot 152. This road passes over the marsh, and abuts Audubon owned land. It passes through private property and is not laid out as a paper road.
- Laurie Ruderfer, owner of Lot 154, has allowed access for David & Sharon Agger, owners of Lot 153, and for shellfishermen, for decades. Should either of them sell, shellfishermen could lose their rights to pass.
- General public is using the road to “find the beach” and getting stuck. Technically trespassing private property.

### What we Know:

- The muddy ditch is the result of erosion through tidal flow and marsh accretion. Sea level rise will eventually capture this land, making the road permanently impassable.
- There is a terrapin nesting site South of Lot 152 that the Audubon is actively trying to preserve. They have filled in the hole in the past to prevent turtles from nesting there.

### Potential Solutions:

- Fill the muddy ditch
  - Easier short-term solution
  - However, the ditch may act as a deterrent to the general public.

**The Aggers have said they prefer that the hole does not get filled, as it will deter the general public from attempting to pass (2021)**

- Install some kind of barrier (gate, fence, rope) to deter non-shellfishing vehicles from entering. Perhaps installing signage that says not open to the general public, no beach access, no turnaround. Coordinate with Audubon’s signage at SW Lt. Island.

**Audubon has said they can’t post signs here because the road is privately owned by the abutting homeowners, not the Audubon.**

- Pursue shellfishing access up Way 100 through Lot 152.
  - Since conservation rules prohibit vehicle access, we would need to apply for an exception in order to create a small parking lot for shellfishing vehicles. Frame the request as a way to save the marsh and the turtles below.
  - Way 100 is a private way whose maintenance costs are paid for only by abutting homeowners. Although the Town owns Lot 152 and it is in the custody of the

cons comm, Town Counsel has advised previously that the Town owning a parcel of land in a subdivision does not necessarily grant access for the public across the road. We would have to secure an easement over the road, and only for shellfishermen, which is tricky to convey and to enforce.

- Long-term solution, if access becomes jeopardized by a change of hands on Lots 153 & 154, sea level rise, or eroding marsh... which may be sooner than we think.
- Hauling a tote up the hill to a parked car off Way 100 would not be easy, but higher ground is the only solution for preserving access with sea level rise.

#### Next Steps:

- Follow up with Laurie and the Aggers - are tourists still driving through the mud hole and getting stuck? Do we need to help them address this? Would signage help?
- Ask Town Counsel if the public has the right to pass on Way 100 on the grounds that the town is an abutter to the road and owns property in the subdivision
- Ask Cons Comm for an exception to their vehicle restrictions on Lot 152 in the name of preserving shellfishing access, saving the marsh, and saving the turtles.

## **Lieutenant Island SW / Meadow Ave**

### **The Access Issue:**

- People have been parking on the marsh and on private property when the lot at the end of Meadow Ave fills up with cars. Tourists have been coming in increasing numbers since the pandemic, thinking it is a ‘free beach.’
- Vehicle access is closed, but necessary for the fire department if someone were to get hurt on the beach.

### **What we Know:**

- The parking lot is Audubon owned, and the Town owns some of the sandy dune South of the parking lot.

### **Potential Solutions:**

- The Audubon has agreed to address the parking situation. They have said they would install signage indicating a maximum of 7 parking spaces, with posts and rope deterring people from driving over the marsh. There are several signs throughout Lieutenant Island that notify vehicles of limited parking at end of Meadow Ave

### **Next Steps:**

- Monitor the situation throughout the summer and keep in touch with Bill Huss

## Lieutenant Island Puddle

### The Access Issue:

- Large puddle blocking the road leading to Silver Spring Harbor from Lieutenant Island Rd (before the bridge). Shellfishermen and shellfish constables have been using this road to access the shellfish beds, and the depth of the puddle has made it more difficult and increasingly unsafe to pass. It is intertidal, with a small inlet leading to it that fills it up on extreme tides but fails to drain water at low tide.
- Summer tourists will inevitably go “off-roading” down this road to explore and sometimes get stuck in the puddle.

### What we Know:

- This road is not a paper road laid out on the assessor’s maps, but remains a well-worn road used by shellfishermen and duck hunters for decades. It is on property owned by the Mass Audubon, who allow vehicles to continue to pass.
- Satellite imagery shows evidence of the puddle’s existence dating back to the 1990s

### Potential Solutions:

- Short-term solution: fill the puddle with substrate that matches the road.

**Cons Comm has granted Mass Audubon an RDA to fill the puddle with native coarse sand one time (2022).**

**Audubon has indicated that they will fill it in the fall, before the shellfishing season begins in Silver Spring Harbor in October.**

- Long-term solution: find alternative access on higher ground - Ring Rd?

### Next Steps:

- Discuss Ring Rd vehicle access with Melissa Lowe in the fall (she has said she does not have the bandwidth to discuss this until the fall).
- Monitor any shifting sand and access issues here after the puddle is filled.
- Pursue funding to fill the puddle again if necessary in the future and if the first fill proves non-destructive to the marsh and a viable short term solution... CPC?

## Indian Neck: Omaha Rd

### The Issue:

- Shellfish farmers use Omaha Rd, a private road, to access the flats on Indian Neck. It is currently the only vehicle access point to HDYLTA, a Town owned intertidal property. Shellfishermen pass with verbal consent from Anne Sterling, a property owner abutting the road to the South.
- The road abuts Wellfleet Conservation Trust land at Sewell's Gutter to the North, and private property in the Cape Lands Subdivision to the South.
- Parking in the summer is an issue both for the Field Point Property Owners Association and the shellfishermen that use the road to drive onto the beach. Sometimes the Yudowitz property gets blocked by parked cars, causing a safety issue for fire department and EMT access.

### What we Know:

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### Potential Solutions:

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### Next Steps:

**Passed to Selectboard**

## **Indian Neck: Field Point / King Phillip Rd**

### The Issue:

- Historically, shellfishing vehicles were allowed to pass through the cul-de-sac and onto the beach. At some point someone put boulders around the turnaround to halt access. This site could be an additional vehicle access point to the Indian Neck grants, as a way to take pressure off of some of the issues at Omaha Rd.

### What we Know:

- The state purchased the land to the Southeast of the cul-de-sac and put it into conservation in the late 90s. It is now called Fox Island Marsh
- Jane Prager owns lots 184, 185, 187, 188. John Murray owns 186. The “Way” connecting King Phillip Rd to the parking lot may be privately owned.

### Potential Solutions:

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### Next Steps:

- Find out who put the boulders there.
- Talk with the state about pursuing vehicle access over the beach here.

**Put on hold until Omaha Rd. negotiations are resolved.**

## Chipman's Cove Richman Ln

### The Access Issue:

- The boathouse gallery property on Chipman's Cove is on the market to be sold. Vehicle access is granted informally by the private owner to shellfishermen in the winter. There are three parking spots.

### What we Know:

- The current owners have said they won't formalize the agreement since the property is on the market. They have agreed to introduce the new owners to Nancy Civetta.

### Potential Solutions:

- Eventually formalize the agreement by way of an easement.

### Next Steps:

- Establish a new relationship with the new owners, and convey the importance of preserving winter vehicle access for shellfishermen here.

**Nancy Civetta will talk to the new owners.**

- Explore alternative vehicle access via Naughaut Bluff Rd.