

Board Members

Matthew J. Hayes, P.E., Chair
Robert K. Tucker, Vice-Chair
Sarah Raposa, A.I.C.P., Clerk
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TOWN OF MEDWAY COMMONWEALTH OF MASSACHUSETTS

PLANNING AND ECONOMIC DEVELOPMENT BOARD

November 22, 2022

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Modification of Previously Approved Medical Marijuana and Adult Marijuana Special Permits, Major Site Plan Approval, and Groundwater Protection Special Permit 2 Marc Road APPROVED with Waivers and Conditions

Decision Date: November 22, 2022

Name/Address of Applicant/Permittee: 2 Marc Road LLC
730 Main Street, Suite 2A
Millis, MA 02054

Name/Address of Property Owner: 2 Marc Road LLC
730 Main Street, Suite 2A
Millis, MA 02054

Location: 2 Marc Road

Parcel Size: 6.93 acres

Assessors' Reference: 33-001

Zoning District: East Industrial
Groundwater Protection District (Mass DEP Zone II wellhead protection area)

Engineer: Legacy Engineering
730 Main Street, Suite 2C
Millis, MA

Site Plan: 2 Marc Road Site Plan of Land in Medway, MA, dated February 28, 202, last revised October 26, 2022, by Legacy Engineering of Millis, MA, to be revised as specified herein.

Members Voting: Matthew Hayes, Robert Tucker, Jessica Chabot, Sarah Raposa

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I. PROJECT DESCRIPTION – The Applicant seeks approval to modify the previous site plan approval and marijuana special permits and approval of a groundwater protection special permit pursuant respectively to Section 3.5, Section 8.9, Section 8.10, and Section 5.6.3 of the *Medway Zoning Bylaw* for the proposed expansion of the marijuana cultivation, manufacturing, and processing business (CommCan) currently operating at 2 Marc Road and associated site improvements. NOTE – The Ellen Realty Trust previously applied for and received site plan approval, groundwater protection district special permit and a medical marijuana special permit from the Board dated June 28, 2016, recorded at Norfolk County Registry of Deeds at Book 34328, Page 450, and an adult recreational marijuana establishment special permit on February 26, 2019, recorded at Norfolk County Registry of Deeds at Book 36679, Page 81. The site plan was subsequently modified on January 14, 2020, that decision is recorded at Norfolk County Registry of Deeds at Book 37927, Page 175. The subject property, located at 2 Marc Road, is 6.93 acres in size. The site presently includes the existing 60,000 sq. ft. marijuana cultivation and processing facility and paved areas which comprise 28.5% of the site (impervious).

The Applicant proposes to construct a two-story, 20,000 sq. ft. addition (10,000 sq. ft. footprint) and loading dock at the rear of the existing marijuana cultivation and processing facility to be used for the processing of products, a beverage canning operation, and storage. The proposal also includes constructing a 56-vehicle parking area in the previously disturbed easterly portion of the site with a gravel connecting driveway to the existing access driveway from Marc Road and a paved connecting driveway to the end of Industrial Park Road to be used as the primary entrance to the new parking lot. The existing parking area in front of the building will be modified to include additional handicap spaces and 10 spaces to charge electric vehicles. The existing driveway around the building will also be modified to accommodate the building addition and a new loading dock. The site work includes stormwater management facilities and other site amenities.

The property also includes wetlands resources which are under the jurisdiction of the Medway Conservation Commission which issued an Order of Conditions and a Land Disturbance Permit pursuant to Article XXVI of the *Medway General Bylaws* on November 8, 2022.

II. VOTES OF THE BOARD

MAJOR SITE PLAN MODIFICATION - After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives, comments offered by the public, and comments provided by the Board's consultants and Town staff, the Medway Planning and Economic Development Board, on November 22, 2022, voted to approve with CONDITIONS and WAIVERS from the *Site Plan Rules and Regulations* as specified herein, a modified site plan titled *2 Marc Road Site Plan of Land in Medway, MA*, dated February 28, 202, last revised October 26, 2022, by Legacy Engineering of Millis, MA, to be further revised as specified herein, pursuant to Section 3.5 of the *Zoning Bylaw*.

The vote was approved unanimously by a vote of four in favor and none opposed.

MARIJUANA SPECIAL PERMITS MODIFICATION - After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives, comments offered by the public, and comments provided by the Board's consultants and Town staff, the Medway Planning and Economic Development Board, on November 22, 2022, voted to approve with CONDITIONS, modifications to the previously approved medical marijuana and adult recreational marijuana establishment special permits for 2 Marc Road pursuant to Sections 8.9 and 8.10 of the *Zoning Bylaw*.

The vote was approved unanimously by a vote of four in favor and none opposed.

C. GROUNDWATER PROTECTION SPECIAL PERMIT – After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives, comments offered by the public, and comments provided by the Board’s consultants and Town staff, the Medway Planning and Economic Development Board, on November 22, 2022, voted to approve with CONDITIONS, a groundwater protection special permit for 2 Marc Road pursuant to Section 5.6.3 of the *Zoning Bylaw*.

The vote was approved unanimously by a vote of four in favor and none opposed.

III. PROCEDURAL HISTORY

- A. March 3, 2022 – Applications for modification to previously approved site plan and modification to previously approved marijuana special permits and groundwater protection special permit application were filed with the Board,
- B. March 17, 2022 - Public hearing notice was filed with the Town Clerk and posted at the Town of Medway web site and posted at Town Hall.
- C. March 17, 2022 - Public hearing notice was mailed to abutters by certified sent mail.
- D. March 28 and April 5, 2022 - Public hearing notice was advertised in the *Milford Daily News*.
- E. April 12, 2022 - Public hearing commenced. The public hearing was continued to May 24, July 12, August 9, September 13, October 11, October 25, and November 22, 2022 when a decision was rendered, and the hearing was closed.

IV. INDEX OF DOCUMENTS

- A. The following documents were provided at the time the site plan and special permit applications were filed with the Board:
 - Application dated 3/3/22 to amend previous site plan and marijuana special permit decision
 - Application dated 3/3/22 for groundwater protection district special permit
 - Site Narrative dated 2/28/22 prepared by Dan Merrikin, Legacy Engineering
 - Abutters List
 - Site Plan dated 2/28/22 prepared Legacy Engineering, Millis, MA
 - Requests for waivers from the *Site Plan Rules and Regulations*
- B. During the course of the review, the following additional materials were submitted to the Board by the Applicant and its representatives and consultants:
 - Letter dated April 5, 2022 from Dan Merrikin of Legacy Engineering with documentation re: change of name and ownership of 2 Marc Rd from Ellen Realty Trust to 2 Marc Road, LLC
 - Marijuana licenses from the Cannabis Control Commission
 - CommCan Annual Reports (2017-2021)
 - Groundwater Protection District Materials MSDS Sheets
 - Email dated August 8, 2022 from Dan Merrikin to Mike Fasolino and Bridget Graziano re: driveway/parking lot

- Letter dated August 31, 2022 from project engineer Dan Merrikin of Legacy Engineering with revised submittal package including the follow items:
 - Additional Requests for Waivers dated August 26, 2022 from *Site Plan Rules and Regulations*
 - Development Impact Statement dated August 26, 2022 prepared by Legacy Engineering
 - Revised Site Plan dated August 26, 2022 by Legacy Engineering including building elevation and floor plan drawings dated February 24, 2022 by UDA Architects of Walpole, MA
 - Revised Stormwater Report dated August 26, 2022 prepared by Legacy Engineering
 - Truck Turning analysis dated August 26, 2022 by Legacy Engineering
 - Noise Analysis memo by Acentech, the Applicant's noise consultant, dated August 25, 2022
 - Review memorandum dated 10-13-22 from Jeff Komrower of Noise Control Engineering, the Board's noise consultant, in response to the Acentech Noise Analysis memo.
 - Odor Mitigation Report by Engineered Systems Consulting Engineers, the Applicant's odor consultant, dated June 10, 2022, September 8, 2022, and October 11, 2022
 - Letter dated 10-7-22 from project engineer Dan Merrikin of Legacy Engineering re: the Cannabis Control Commission's requirement for a back-up generator.
 - Letter dated 10-13-22 from project engineer Dan Merrikin of Legacy Engineering with revised submittal package including the following items:
 - Revised Site Plan dated 10-13-22 by Legacy Engineering
 - Additional Requests for Waivers dated October 13, 2022 from *Site Plan Rules and Regulations*
 - Letter dated October 21, 2022 from Dan Merrikin of Legacy Engineering with revised submittal package including the following items:
 - Revised Site Plan revision dated October 20, 2022
 - Revised Operations and Maintenance Plan, revised October 20, 2022
 - Letter from OMI dated October 21, 2022 re: odor control
 - Letter dated 10-26-22 from project engineer Dan Merrikin of Legacy Engineering with revised submittal package including the following item:
 - Revised Site Plan revision dated October 26, 2022
- C. During the course of the review, the following materials were submitted to the Board by the Board's consultants and Town staff:
- Plan review letter to the Board from Steve Bouley, P.E. Tetra Tech, dated March 31, 2022
 - Host Community Agreement with the Town of Medway
 - Email dated March 16, 2022 from Planning and Economic Development Coordinator Susan Affleck-Childs to Town staff requesting review and comment

- Emails between Susan Affleck-Childs and Dan Merrikin (Applicant's project engineer) dated March 16 – April 5, 2022 regarding needed additional submittals.
- Review of Applicant's noise study by Acentech, prepared by Noise Control Engineering, the Board's noise consultant, dated August 29, 2022
- Tetra Tech plan review letter updated September 9, 2022 from Steve Bouley, P.E.
- Review of Applicant's odor mitigation report by Engineered Systems Consulting Engineers, prepared by Straughan Forensic, LLC, the Board's odor consultant, dated September 2, 2022
- Medway Design Review Committee site plan review letter dated 10-11-22
- Tetra Tech plan review letter dated 10-29-22 on revised site plan
- Letter dated September 2, 2022 from Bruce Straughan, the Board's odor consultant in response to the Applicant's June 10, 2022 Odor Mitigation Report by Engineering Systems Consulting Services
- Email communications dated September 22, 2022 and October 17, 2022 from Bruce Straughan, the Board's odor consultant in response to the Applicant's September 8th and October 11th revised Odor Mitigation Reports by Engineered Systems Consulting Engineers
- Email dated October 24, 2022 from Steve Bouley, P. E., Tetra Tech
- Mass Department of Environmental Protection Notice of Noncompliance dated September 14, 2022 including a site visit report
- Email dated 10-6-22 from Ellen Rosenfeld to Mass DEP in response to the DEP Notice of noncompliance and providing the 9-8-22 Odor Mitigation Report
- Email dated 10-19-22 from Giles Steele Perkins, Mass DEP to Susan Affleck-Childs re: status of the MA DEP enforcement order.
- Order of Conditions dated November 8, 202 from Medway Conservation Commission

D. Other Documentation

- 2 Marc Road medical marijuana special permit and site plan decision dated 6-28-2016
- 2 Marc Road recreational marijuana special permit decision dated 2-26-2019
- Email from John Lally dated September 15, 2022 with attachments
- Email from John Lally dated October 24, 2022
- Second email from John Lally dated October 24, 2022

V. **TESTIMONY** – During the course of the public hearing, the Board heard and received verbal testimony from:

- Steve Bouley, P.E, Tetra Tech, the Board's consulting engineer
- Dan Merrikin, P.E., Legacy Engineering (for the Applicant)
- Jeff Komrower of Noise Control Engineering LLC, the Town's acoustic sound consultant
- Applicant Ellen Rosenfeld, 2 Marc Road LLC
- John Lally, 35 Coffee Street
- William Ray, 22 Spruce Road
- Marlene Gibson, 45 Coffee Street
- Sabrina Farley, 47 Coffee Street
- Donna Barnes, 43 Coffee Street

- Candace Bearce, 44 Coffee Street

VI. FINDINGS

A. **Site Plan Rules and Regulations Findings** – The Board shall determine whether the proposed development is in conformance with the standards and criteria set forth in the *Site Plan Rules and Regulations*, unless specifically waived. In making its decision, the Board shall consider the following criteria as applicable to the proposal in accordance with Section 204-8 of the *Site Plan Rules and Regulations*, and Section 3.5 of the *Bylaw*:

- 1) **The proposed buildings, uses and site improvements are appropriately located on the development site in relation to the terrain and the location and scale of buildings and site features on abutting sites.**

The 20,000 sq. ft. building addition and expanded parking area are suitably located on the site. The parking area and its access are positioned to protect natural resources under the jurisdiction of the Conservation Commission.

- 2) **The construction and/or renovation of buildings and site improvements and amenities are designed to be compatible with the Medway Design Review Guidelines.**

The proposed building addition is in an industrial style to match the design of the existing industrial building. Its scale and materials are suitable for the site and use. The building design has been reviewed by the Design Review Committee and is acceptable for its location. Feedback from the Design Review Committee has been provided regarding dumpster enclosures, landscaping, and sidewalk lighting which have been incorporated into the revised site plan.

- 3) **Building and site designs reflect the character, materials, and scale of existing buildings in the vicinity as well as Master Plan goals for the area.**

The building and site design are reflective of the scale and nature of the existing industrial park in which 2 Marc Road is located. There are no particularly distinguished industrial buildings in the vicinity with which the proposed building addition would conflict in terms of character, materials, and scale. The proposed scope of work serves to implement Economic Development Goal #6 of the 2009 Master Plan, to attract new (and retain existing) businesses and increase the industrial/manufacturing base.

- 4) **Reasonable use is made of building location, grading, and landscaping, and other site features to reduce the visible intrusion of structures, parking areas, and outside facilities for the storage, handling, and disposal of sewage, refuse and other solid wastes resulting from the normal operation of the establishment(s) from public view or from adjacent residential property.**

The subject property is located within the East Industrial zone and is abutted on the east, west and south by other industrial and business properties. The dumpster is to be located in the northwest corner of the site, well out of public view from Jayar Road. Suitable provisions have been made to screen the dumpster.

- 5) **Private drives are properly designed and constructed to serve the intended use and provide an adequate level of service in relation to the traffic to be generated by the development.** *The project includes construction of a new private driveway off of Industrial Park Road to access the new parking area for use by CommCan employees. The facility is not open to the public, so traffic generation is limited to employees.*

- 6) **Internal circulation, queuing and egress promote traffic safety access via minor streets servicing residential areas is minimized, and traffic backing up into the public way is avoided.** *The plan has been thoroughly reviewed by Town officials and the Board's Consulting Engineer. No access from minor streets is necessary or available, there is no backing onto a public way, and Industrial Park Road and Jayar Roads are adequate to safely handle the additional traffic.*
- 7) **Convenient and adequate access for firefighting and emergency vehicles is provided to each structure and throughout the site.** *Access for fire and service equipment is provided with paved surfaces on three sides of the existing building and the planned addition. The Fire Department has reviewed the proposed driveway and parking lot reconfiguration and the provided auto turn analysis provided by the Applicant's traffic consultant. The Fire Department has determined that its fire apparatus will be able to maneuver throughout the site.*
- 8) **Design and construction minimize, to the extent reasonably practical, the following environmental impacts:**
 - a) **the volume of cut and fill;**
 - b) **the number of trees to be removed with particular care taken with mature trees and root systems;**
 - c) **the visual prominence of man-made elements not necessary for safety;**
 - d) **the removal of existing stone walls;**
 - e) **the visibility of building sites from existing streets;**
 - f) **the impacts on waterways and environmental resource areas;**
 - g) **soil pollution and erosion;**
 - h) **noise.**

The site plan and proposed stormwater drainage system have been rigorously reviewed by the Town's Consulting Engineer and the Conservation Commission which issued an Order of Conditions and Land Disturbance Permit on November 8, 2022. Appropriate soil pollution and erosion controls have been incorporated into the plan. The building addition will not be visible from Marc Road. The landscaping plan and building design have been reviewed and positively recommended by the Design Review Committee. No stone walls are being removed. Since the site is located within a Groundwater Protection District, this Decision also includes a groundwater protection special permit to ensure that the project will not adversely affect groundwater.

- 9) **Pedestrian ways, access driveways, loading areas and vehicular and bicycle parking facilities are properly designed for public convenience, accessibility, and safety of customers, employees, and the general public.** *Because of its use as a marijuana cultivation facility, the building is not open to the general public. The entrances and egresses to the site and its parking facilities have been designed for safe operation and have been reviewed by the Board's consulting engineer. A sidewalk connecting the rear parking area to the main entrance at the front of the building has been added to enable employees to walk safely from their cars to the CommCan building's main entrance.*
- 10) **Design and construction, to the maximum extent feasible, preserve and incorporate the visual prominence of the site's natural and historic features (i.e., hills, water bodies, wetlands, trees, tree groves, wooded areas, rock outcrops, native plants, stone walls, wildlife habitats, and other areas of aesthetic or ecological interest).** *The*

site is already heavily disturbed with its prior use as a contractor's yard. However, the property includes wetland resources under the jurisdiction of the Conservation Commission which issued an Order of Condition and Land Disturbance Permit on November 8, 2022.

11) Lighting on the site complies with Section 7.1.2 of the Zoning Bylaw.

The photometric plan was reviewed by the Board and its Consulting Engineer and found to comply after it was revised. The Permittee is required to comply with Section 7.1.2 of the Zoning Bylaw regarding Outdoor Lighting – See Specific Condition 14.

12) The proposed limit of work area is reasonable and protects sensitive environmental and/or cultural resources on the site and on adjacent parcels. The project as designed will not cause substantial or irrevocable damage to the environment, which damage could be avoided or ameliorated through an alternative development plan or mitigation measures. *The plan has been reviewed by both the Conservation Commission and the Planning and Economic Development Board and their consulting engineer and has been modified to address environmental concerns. The limit of work is reasonable, and the site design has evolved to protect sensitive environmental resources. The project has been reviewed by the Conservation Commission and an Order of Conditions and Land Disturbance Permit was issued November 8, 2022.*

13) The project's impact on abutting residential neighborhoods has been adequately mitigated. Adjacent and neighboring properties are protected from nuisance and harmful effects caused by noise, traffic, noxious or harmful fumes, and the glare of headlights and other light sources generated by uses on the development site.

There are no abutting residential neighborhoods, but the adjacent land to the north is zoned residential. The project, consisting primarily of an addition to the building, a new parking lot, and related site improvements, should not create harmful effects from noise, traffic, or light. The project has been reviewed by the Town's odor and noise consultants and all of their comments have been satisfactorily addressed by the Applicant. Nearby residents have complained about odors generated from the existing cultivation building. The proposed addition will not be used for cultivation and therefore will not be adding any further odors. In addition, the Applicant has been working with an odor consultant, OMI, which has installed an odor control system called Ecosorb on the existing building and will extend that odor control system to the addition.

14) The project is compatible with the existing and potential future development of the surrounding area and with the character of adjacent residential neighborhoods. *The project is compatible with the existing industrial uses in the industrial park*

15) Off-street loading facilities and methods for unloading vehicles, goods, products, materials, and equipment incidental to the normal operation of the establishment(s) to be located on the site are conveniently and safely provided while the visual intrusion thereof is appropriately screened from public view. *The building addition includes construction of a loading dock. It will be located at the back of the building and away from public view from Marc Road.*

16) The project complies with the requirements of Section 26.8 of Medway General Bylaws, ARTICLE XXVI, Stormwater Management and Land Disturbance; the Massachusetts DEP Stormwater Management Standards, and EPA's National

Pollution Discharge Elimination System (NPDES) requirements. The stormwater plan for this project has been reviewed by the Town’s consulting engineer and the Conservation Commission which issued an Order of Conditions and associated Land Disturbance Permit on November 8, 2022.

- 17) **The effects and impacts of the proposed use of land or structures on vehicular and pedestrian traffic, municipal services and utilities, roadways, parking, drainage, environmental quality, water resources, and the community’s character, amenities and appearance have been identified and evaluated and reasonable conditions, limits, safeguards, and mitigation measures are established pursuant to s. 204-8 G of the Site Plan Rules and Regulation**

Vote on Site Plan Findings - The Planning and Economic Development Board, at its meeting on November 22, 2022, voted to approve the above noted Site Plan Findings regarding the application to approve the previously approved major site plan and decision for 2 Marc Road (the “Property”). The motion was approved unanimously by a vote of four in favor and none opposed.

B. Marijuana Special Permit Findings

See Marijuana Special Permit Findings included in the previously issued medical marijuana special permit decision issued by the Board on June 28, 2016 and the adult recreational marijuana permit issued by the Board on February 26, 2019. No additional Findings are needed.

C. Groundwater Protection Special Permit Findings (Sub-Section 5.6.3 of the Zoning Bylaw)

– The subject property at 2 Marc Road is located within the Town’s Groundwater Protection District (MA Department of Environmental Protection Zone 2 recharge area). The scope of the project with the building addition and site improvements will increase the extent of impervious surface to more than 15% of the lot area. Accordingly, a groundwater protection special permit is required. Section 5.6.3 specifies that the following findings must be made to issue a groundwater protection special permit:

- 1) **Permitted Uses** – *Enlargement of an existing structure and new construction are permitted uses, subject to certain restrictions, within the Groundwater Protection District. As conditioned herein, the project will comply with those restrictions. See Specific Condition 8.*
- 2) **Prohibited Uses** – *The project includes an on-site emergency generator. Storage of liquid petroleum products is prohibited. There is an exception for emergency generators required by statute, rule, or regulation. The Applicant has provided documentation that the Cannabis Control Commission requires marijuana facilities to maintain the ability to remain operational during power outages for a minimum of 4 hours, thus necessitating the installation of a generator.*
- 3) **Uses and Activities Requiring a Groundwater Special Permit** – *Specific to this project, the following activities are allowed only upon issuance of a special permit.*
 - *Any use which will render impervious more than 15% or 2,500 sq. ft. of any lot whichever is greater. The proposed building expansion and site improvements planned for 2 Marc Road increase the extent of impervious surface to 35.3% of*

the of the site, thus triggering the need for a Groundwater Protection special permit.

- 4) **Special Permit Granting Authority** - *The Board of Appeals is the designated special permit granting authority for the Groundwater Protection District. However, the Bylaw (Section 3.5. Site Plan Review, 4. a.) provides that authority to the Planning and Economic Development Board when both site plan approval and a special permit are needed so as to consolidate and streamline the review process.*
- 5) **Does the site design include a system for groundwater recharge which does not degrade groundwater quality? Does the recharge system use stormwater infiltration basins, or a similar system covered with natural vegetation? Are such basins preceded by oil, grease, and sediment traps to facilitate removal of contamination? Is there a plan for all recharge areas to be permanently maintained in full working order by the owner?** *The existing facility, proposed addition, and associated site improvements will render the site to be 35.3% impervious. Stormwater runoff from all proposed impervious surfaces will be routed through pretreatment devices and into stormwater infiltration BMPs (existing or new) in order to meet the treatment and recharge requirements of the bylaw. The Conservation Commission is responsible for stormwater review on this site and has issued an Order of Conditions and a Land Disturbance permit which includes numerous conditions and protective measures. As part of its review, the Commission used the services the Town's Consulting Engineer to review and comment on the stormwater management plan to ensure that groundwater recharge does not degrade groundwater quality and to ensure compliance with DEP's Stormwater Management Regulations and the Town's Stormwater Management and Land Disturbance Bylaw.*
- 6) **Does the proposed use, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Groundwater Protection District?** *The project has been reviewed by the Conservation Commission and the Town's Consulting Engineer to ensure that the planned stormwater management facilities and the associated groundwater recharge does not degrade groundwater quality. The Conservation Commission issued an Order of Conditions and Land Disturbance Permit on November 8, 2022 which specifies suitable measures to protect groundwater.*
- 7) **Is the proposed development designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed?** *The plan for the proposed development has been developed and revised such that the impact of the planned stormwater infrastructure on groundwater is minimized.*
- 8) **Has the applicant provided sufficiently detailed, definite, and credible information to supportive positive findings in relation to the standards given herein?** *The Board finds that the Applicant has provided sufficiently detailed, definite, and credible information to support positive findings in relation to the standards for a Groundwater Protection special permit as documented in the application materials and additional information provided during the course of the public hearing.*

- 9) **Were the submission requirements and hearing procedures conducted in accordance with Section 3.4 of the Zoning Bylaw?** *The submission requirements and public hearing procedures have been conducted in accordance with Section 3.4 of the Bylaw and the Board's Site Plan Rules and Regulations including the posting of a public hearing notice with the Town Clerk, abutter notification, and legal advertisement. In a local newspaper of general circulation. Information about the project has also been posted to the Board's web page and review and comments have been sought from the Board of Health, Conservation Commission, and the Department of Public Works.*
- 10) **Has the Board consulted with the Board of Health, Conservation Commission, Water and Sewer Commission and the Department of Public Works and referred this project to those entities for review and comment?** *The site plan has been provided to the Board of Health, Conservation Commission, and Department of Public Works Services for review and consultation. The noted boards and committees were kept apprised of the status of the Board's review of the project and were able to provide information and recommendations throughout the process. Further, the Conservation Commission has reviewed this project and has issued an Order of Conditions and Land Disturbance Permit with associated conditions.*
- 11) **Other Conditions** - For further protection, the Board has included a series of conditions in this decision which require certain measures to address groundwater protection. *See Specific Condition 8.*
- 12) **Project Meets the Special Permit Decision Criteria (Zoning Bylaw, Section 3.4 C. 1-9)** **Special permits shall be granted by the special permit granting authority only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In making its determination, the special permit granting authority, in addition to any specific factors that may be set forth in other sections of the Bylaw, shall make findings on all of the applicable criteria.** *See Special Permit Findings included in the previously issued medical marijuana special permit issued by the Board on June 28, 2016 and the adult recreational marijuana permit issued by the Board on February 26, 2019.*
- 13) Accordingly, the Board finds that the proposed development meets the criteria for a Groundwater Protection Special permit under Section 5.6.3 of the Zoning Bylaw.

Vote on Groundwater Protection Findings - The Planning and Economic Development Board, at its meeting on November 22, 2022, voted to approve the above noted Groundwater Protection Special Permit Findings for 2 Marc Road (the "Property"). The motion was approved unanimously by a vote of four in favor and none opposed.

VII. WAIVERS - At its October 25, 2022 meeting, the Board, voted to grant waivers from the following provisions of the *Rules and Regulations for the Submission and Approval of Site Plans*. The Board's action and reasons for granting each waiver are listed below. All waivers are subject to the *Special and General Conditions of Approval*, which follow this section.

The motion was passed by a vote of 4 in favor and 0 opposed.

Site Plan Submittal Requirements

1. **Section 204-5 C. 3) Existing Landscape Inventory** - An *Existing Landscape Inventory* shall be prepared by a Professional Landscape Architect licensed in the Commonwealth of Massachusetts. This inventory shall include a “mapped” overview of existing landscape features and structures and a general inventory of major plant species including the specific identification of existing trees with a diameter of one foot or greater at four feet above grade.

The Applicant has requested a waiver from this requirement as the site has been used for many years as a contractor’s yard and is already considerably disturbed. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

2. **Section 204-5 D. Landscape Plan, a)** A Landscape Plan shall be prepared by a Registered Professional Landscape Architect licensed to practice in the Commonwealth of Massachusetts or a Massachusetts Certified Landscape Professional.

The Applicant has requested a waiver from this requirement. Instead, the Applicant’s project engineer, who has completed many such plans for other development projects, has prepared a landscape plan for the Board’s review. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

Development Standards Requirements

3. **Section 207-11 Traffic and Vehicular Circulation, B. Internal Site Circulation 2)**
The perimeter of driveway aisles shall be bounded with vertical granite curb.

The Applicant has requested a waiver from this requirement and has proposed to use Cape Cod berm instead of vertical granite curbing for the perimeter of the driveway aisles. The site is already developed, and the Board previously approved this same waiver in 2016 for the original 2 Marc Road site plan. Use of Cape Cod berm will provide consistency throughout the development. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

4. **Section 207 – 19 Landscaping, C. Parking Areas, 1) Internal Landscaped Planted Divisions, a)** A minimum of ten percent of the total internal parking area shall be provided as landscaped islands, exclusive of perimeter landscaping.

The Applicant has requested a waiver from this requirement. Strict adherence to this standard for internal landscaped divisions in the new parking lot would reduce the number of much needed parking spaces. The provision of additional parking is one of the critical components of this site plan modification; the spaces are needed to address the current parking shortage and to accommodate both existing personnel and expected additional personnel associated with the 20,000 sq. ft. building expansion. The additional parking spaces will address the current situation of overflow employee parking on Marc Road. It is

also noted that the site plan includes landscaping around the perimeter of the new parking area. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

5. Section 207 – 19 Landscaping, C. Parking Areas 1) Internal Landscaped Planted Divisions, c) Where the length of parking aisles exceeds twenty-five spaces, intermediary landscape islands shall be installed at regular intervals, not to be more than every thirteen spaces.

The Applicant has requested a waiver from this requirement. Strict adherence to this standard for intermediary landscaped islands in the new parking lot would reduce the number of much needed parking spaces. The need for parking is explained above. It is also noted that the site plan includes landscaping around the perimeter of the new parking area. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

6. Section 207 - 19 Landscaping, E. Landscaping Around Stormwater Infiltration Basins – Substantial landscaping shall be provided around stormwater detention and retention basins and shall be included in the design of the stormwater drainage system to the satisfaction of the Board. For screening purposes and to minimize the visual impact of stormwater basins, such landscaping should include two staggered rows of suitable trees and shrubs. Landscaping shall be designed to not obstruct access to the stormwater basins for maintenance purpose.

The Applicant has requested a waiver from this requirement to install landscaping around stormwater basins. The plan is to plant the area around the basins with a seed mix approved by the Conservation Commission. The Applicant indicates that substantial landscape screening is not warranted at this industrial site as there are no residential abutters who will view the stormwater basin. It is further noted that other stormwater basins in the industrial area are not landscaped on their perimeter. Also, the planned basin is fairly shallow, and as such, it is not intrusive and blends in with the surrounding lawn area. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

VIII. CONDITIONS The *Specific and General Conditions* included in this Decision are to assure that the Board's approval of the major site plan, groundwater protection special permit, and reduced parking special permit are consistent with the *Zoning Bylaw*, that the comments of various Town boards and public officials have been adequately addressed, and that concerns of abutters and other town residents which were aired during the public hearing process have been carefully considered. These conditions are binding on the Permittee.

A. SPECIFIC CONDITIONS OF APPROVAL

1. Limitations - Notwithstanding any future amendment of the *Bylaw*, G.L. c.40A, or any other legislative act:

- a) The tract(s) of land on which this proposed development will be located at 2 Marc Road shall not be altered or used except
 - i. as granted by this site plan and special permits modification decision;
 - ii. as granted by the medical and adult recreational marijuana uses special permits granted on June 28, 2016 and February 26, 2019 and recorded at the Norfolk County Registry of Deeds.
 - iii. substantially as shown on the *2 Marc Road Site Plan of Land in Medway, MA*, dated February 28, 2022, last revised October 26, 2022, by Legacy Engineering of Millis, MA, to be further revised as specified herein before plan endorsement.
 - iv. in accordance with any subsequently approved field changes, modified plans, or amendments to this site plan/special permit decision; and
 - b) The tract of land and buildings comprising 2 Marc Road shall not be used, sold, transferred, or leased except in conformity with this decision and approved site plan and shall not be further divided.
 - c) The groundwater protection special permits are limited to the operation of the property for the cultivation, manufacturing and processing of medical and adult use recreational marijuana and marijuana products.
2. All conditions included in the previously issued marijuana uses special permits and site plan and modification thereto as approved by the Board on June 28, 2016 and February 26, 2019 are incorporated herein.
 3. **Plan Endorsement** – Within 60 days after the Board has filed its *Decision* with the Town Clerk, the *2 Marc Road Site Plan of Land in Medway, MA*, dated February 28, 2022, last revised October 26, 2022, by Legacy Engineering of Millis, MA, including building elevations, renderings, landscaping plan and lighting plan, shall be further revised to reflect all conditions and required revisions as specified herein, and shall be submitted to the Board to review for compliance with the Board's *Decision*. (*Said plan is hereinafter referred to as the Plan*). Upon approval, the Applicant shall provide the revised Plan in its final form to the Board for its endorsement prior to recording at the Norfolk County Registry of Deeds along with this decision. All plan sheets shall be bound together in a complete set. Prior to plan endorsement, the Permittee shall also provide a Certificate of No Appeal from the Town Clerk's office.
 4. **Recording** - No construction shall begin on the site and no building permit for any work shall be issued before this Decision and the *Plan* are recorded at the Norfolk County Registry of Deeds and proof of such recording is provided to the Board within thirty days of recording.
 5. **Cover Sheet Revisions** – The following revisions shall be made to the Cover Sheet of the plan set.
 - a) Revise the cover sheet to include a list of APPROVED waivers.
 - b) Add references to the previously issued marijuana special use permits and site plan decisions including the recording information.
 6. **Other Plan Revisions** – The following revisions shall be made to other sheets in the plan set.

- a) Add the Operations and Maintenance plan (Attachment A of the final 2 Marc Road Stormwater Report) as a sheet of the plan set and reference it on the cover sheet plan index.

7. **Parking**

- a) The Permittee shall require employees to park on the premises; employee parking is not allowed on Marc Road.
- b) Parking or use of the parking areas at 2 Marc Road shall be limited only to vehicles for CommCan employees, deliveries, vendors, and customers. The parking area shall not be leased or made available to any other businesses for any purposes.

8. **Conditions Pertaining to Groundwater Protection District Special Permit**

- a) Use and storage of toxic and hazardous materials is prohibited unless stored within a free-standing container located inside the building. Any accidental spillage must be contained within the building and any that enters the sewer system shall be treated prior to being discharged to the municipal sewer system. Operation and maintenance procedures are in place to prevent any accidental outdoor spillage from reaching groundwater.
- b) Any commercial fertilizers, as defined in Massachusetts General Law, c. 128 §64, used for the growing of marijuana plants shall be stored within containers and kept inside the 2 Marc Road building. Any fertilizers used on landscape material anywhere on the site shall be the slow-release organic granular type, and only the absolute minimum necessary. All storage of fertilizers must be in a free-standing container within a building, have adequate secondary storage capacity or be within a facility designed to prevent the generation and escape of contaminated runoff or leachate. Application of fertilizers on site must be done in a manner to prevent adverse impacts on groundwater.
- c) Outdoor storage anywhere on the site shall consist only of non-hazardous materials. Metal materials stored outside shall be under cover of a building or structure to prevent leaching of the metal into the groundwater.
- d) There shall be no outdoor storage of pesticides, herbicides, fungicides, or insecticides anywhere on the site. Any such products shall be stored inside.
- e) Deicing materials shall be limited to calcium chloride or other deicer material approved by the Medway Department of Public Works.
- f) Plowed snow for the site shall be stored only in the designated areas shown on the plan or taken off site in times of substantial storms.
- g) All vehicles shall be parked or stored on the paved surface to ensure treatment of any leaks of fluids from the vehicles. There shall be no outdoor maintenance or cleaning of vehicles.
- h) There shall be no earth removal within six feet of the historical high groundwater level except for excavations for building foundations, roads, or utility work.

- i) The Town reserves the right to periodically inspect the site to ensure compliance with these conditions.
 - j) The Conservation Commission issued an Order of Conditions and Land Disturbance Permit on which specifies suitable measures and conditions to protect groundwater. This groundwater special permit is subject to those applicable conditions.
9. **Nuisance** – The Permittee shall construct and maintain the property and building so as to not create a nuisance to abutters or to the surrounding area, or create any hazard, including but not limited to fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure, or dwelling in the area. The Permittee shall comply with Section 7.3 of the *Zoning Bylaw*.
10. **Noise Management**
- a) See conditions included in the previously issued marijuana special permit decisions dated June 28, 2016 and February 26, 2019.
 - b) Within 45 days after issuance of a certificate of occupancy for the new addition, the site shall be evaluated by the Applicant's noise consultant to verify that the additional HVAC equipment associated with the addition does not violate the Zoning Bylaw pure tone requirement. The Applicant shall submit the findings of its noise consultant to the Board, which may require that it be peer reviewed by the Board's noise consultant at the Applicant's expense. Any violation of the DEP noise policy or the Town Zoning Bylaw requirements as to noise that are revealed by this evaluation shall be remedied by the Applicant and the site brought into compliance.
11. **Odor Management**
- a) See conditions included in the marijuana special permit decisions dated June 28, 2016 and February 26, 2019.
 - b) No cultivation of any type is allowed in the addition.
 - c) The Applicant shall extend the odor control systems that are in place on the existing building to cover the addition and will utilize the odor control system as necessary to control any odors that violate the Town Zoning Bylaw.
 - d) Within 45 days after issuance of a certificate of occupancy, the site shall be evaluated by the Applicant's odor consultant to verify that:
 - i. the extension of the odor mitigation systems is functioning properly and have not negatively affected the overall performance of the system; and
 - ii. that the addition and existing building are not creating any odor nuisances.
- The Applicant shall submit and present the report of its odor consultant to the Board, which may require that it be peer reviewed by the Board's odor consultant at the Applicant's expense. Any violation of the Zoning Bylaw requirements as to odor that are revealed by this evaluation shall be remedied by the Applicant and the site brought into compliance.

12. **Open Space** – At least 20% of the site shall be permanently retained as open space and/or yard in perpetuity. This is an on-going obligation of the Permittee. This area shall be unpaved but may be landscaped or left natural with the balance being trees, shrubs, and grass suitable for the site. The area may include communal gathering space for employees.
13. **Signage** – Any business signage for this project shall comply with the sign regulations of the Zoning Bylaw (Section 7.2) and is subject to review by the Design Review Committee.
14. **Lighting** – Any outdoor lighting for the site and building shall comply with the outdoor lighting regulations of the Zoning Bylaw (Section 7.1.2).
15. **Sidewalk Construction** – Pursuant to Section 3.5.4. I.3. Procedures for Site Plan Review of the *Zoning Bylaw*, sidewalks shall be provided along the entire frontage of properties along existing public ways. The Applicant has not proposed to provide sidewalks along the property's frontages on Industrial Park and Jayar Roads. In lieu of sidewalk construction, the Applicant will make a payment to the Town's Sidewalk Fund in the amount of \$3,352.00 as calculated by the Board's Consulting Engineer (Tetra Tech 10-24-22 estimate) as the amount needed for the Town to construct 10 linear feet with curbing and handicapped ramp. The funds shall be held in the Town's Sidewalk Fund for use to construct sidewalks elsewhere in the community. The funds shall be paid to the Town before an occupancy permit for the new addition is issued by the Building Department.
16. **Snow Storage and Removal**
 - a) On-site snow storage shall not encroach upon nor prohibit the use of any parking spaces required by the Bylaw.
 - b) Accumulated snow which exceeds the capacity of the designated snow storage areas on-site shall be removed from the premises within 72 hours after the conclusion of the storm event.
17. **Water Conservation** – The development is relying on the Town's public water system and the Town is being held to its Water Management Act Permit with the MA Department of Environmental Protection. The Permittee shall incorporate the following water conservation measures:
 - a) Any landscape irrigation system shall not be connected to municipal water supply. Irrigation wells must be permitted by the Board of Health.
 - b) rain-gauge controlled irrigation systems
 - c) low flow plumbing fixtures
 - d) water efficient appliances for toilets, etc.
 - e) any irrigation planned for the property shall not use potable water
18. **Construction** – In conjunction with the pre-construction meeting (*See General Condition 24*), the Permittee shall provide the following:
 - a) Stormwater Pollution Prevention Plan (SWPPP) and documentation under the NPDES General Construction Permit program of the US EPA.
 - b) Construction Management Plan compliant with Section 204-3 H. Site Plan Submittals of the *Site Plan Rules and Regulations*

19. **Occupancy Permit** – An occupancy permit for the building addition shall not be issued until:
- a) the following at a minimum, are installed in compliance with this decision, the Plan, and applicable bylaws and regulations and determined to be acceptable to the Board and the Board so notifies the Building Commissioner/Zoning Enforcement Officer.
 - i. driveways and parking areas gravel sub-base
 - ii. driveways and parking areas binder course
 - iii. drainage system completed
 - iv. as-built plan of each stormwater facility with all critical elevations and details
 - v. stop line pavement markings and traffic control signs
 - vi. provisions for fire prevention and protection
 - vii. suitable erosion controls
 - viii. construction of sidewalk/pathway from the new parking lot to the front door.
 - b) suitable performance security has been provided to the Town of Medway, to the Board's satisfaction, to cover the cost of all remaining site work as specified herein. *See General Condition 28.*

B. GENERAL CONDITIONS OF APPROVAL

20. **Applicability** – This Decision shall apply to any successor in control or successor in interest to the subject property
21. **Fees** - Prior to filing this Decision with the Town Clerk, the Board requires the Applicant to pay:
- a) the balance of any outstanding project review fees owed to the Town for review of the application by the Town's engineering or other consultants;
 - b) any other outstanding expenses or obligations due the Town of Medway pertaining to this property, including real estate and personal property taxes and business licenses.
22. **Compliance with Other Permits** – This special permit does not relieve the Applicant from its responsibility to apply for, obtain, pay for, and comply with all other required federal, state and Town permits, licenses, and approvals. The Permittee or agent shall apply for, obtain, pay for, and comply with all other required Town permits.
23. **Restrictions on Construction Activities** – During construction, all local, state, and federal laws shall be followed regarding noise, vibration, dust and blocking of Town roads. The Permittee and its contractors shall at all times use all reasonable means to minimize inconvenience to abutters and residents in the general area. The following specific restrictions on construction activity shall apply.
- a) *Construction Time* – Work at construction sites and in the operation of construction equipment including start-up and movement of trucks, vehicles, and machines shall commence no earlier than 7 a.m. and shall cease no later than 7

p.m. Monday through Saturday. No construction shall take place on Sundays, federal holidays, or state legal holidays without the advance written approval of the Building Commissioner. These rules do not apply to interior construction work such as carpentry, installation of drywall, flooring, electrical and HVAC systems, painting, etc.

- b) *Neighborhood Relations* – The Permittee shall notify neighbors in the general area around the site when site work and construction are scheduled to begin and provide a phone number for them to use for questions and concerns that arise during construction.
- c) The Permittee shall take all measures necessary to ensure that no excessive dust leaves the premises during construction including use of water spray to wet down dusty surfaces.
- d) There shall be no tracking of construction materials onto any public way. Daily sweeping of roadways adjacent to the site shall be done to ensure that any loose gravel and dirt is removed from the roadways and does not create hazardous or deleterious conditions for vehicles, pedestrians, or abutting residents. In the event construction debris is carried onto a public way, the Permittee shall be responsible for all clean-up of the roadway which shall occur as soon as possible and in any event within twelve hours of its occurrence.
- e) The Permittee is responsible for having the contractor clean-up the construction site and the adjacent properties onto which construction debris may fall on a daily basis.
- f) All erosion and siltation control measures shall be installed by the Permittee prior to the start of construction and observed by the Board's consulting engineer and maintained in good repair throughout the construction period.
- g) *Construction Traffic/Parking* – During construction, adequate provisions shall be made on-site for the parking, storing, and stacking of construction materials and vehicles. All parking for construction vehicles and construction related traffic shall be maintained on site. No parking of construction and construction related vehicles shall take place on adjacent public or private ways or interfere with the safe movement of persons and vehicles on adjacent properties or roadways.
- h) *Noise* - Construction noise shall not exceed the noise standards as specified in the *Zoning Bylaw*, SECTION 7.3 Environmental Standards.
- i) *Stormwater Management* – During construction, the Applicant shall maintain the site and installed stormwater management facilities in accordance with Stormwater Pollution Prevention Plan (SWPPP) and documentation under the Applicant's NPDES General Construction Permit program of the US EPA.

24. **Construction Oversight**

- a) *Pre-Construction Meeting* – At least seven days prior to the start of any site preparation or construction, the Applicant shall meet with the Town's Consulting Engineer, the Planning and Economic Development Coordinator, the Medway Department of Public Works, the Medway Conservation Agent, other Town

officials as may be appropriate, and the Permittee's project engineer and site contractors for a pre-construction meeting. The construction schedule shall be reviewed and the procedures for inspections discussed.

b) *Construction Account*

- i. Inspection of infrastructure and utility construction, installation of site amenities including landscaping, and the review of legal documents by Town Counsel is required. Prior to plan endorsement, the Permittee shall establish a construction account with the Board. The funds may be used at the Board's discretion to retain professional outside consultants to perform the items listed above as well as the following other tasks - inspect the site during construction/installation, identify what site plan work remains to be completed, prepare a bond estimate, conduct other reasonable inspections until the site work is completed and determined to be satisfactory, review as-built plans, and advise the Board as it prepares to issue a *Certificate of Site Plan Completion*.
- ii. Prior to plan endorsement, the Permittee shall pay an advance toward the cost of these services to the Town of Medway. The advance amount shall be determined by the Board based on an estimate provided by the Town's Consulting Engineer.
- iii. Depending on the scope of professional outside consultant assistance that the Board may need, the Permittee shall provide supplemental payments to the project's construction inspection account, upon invoice from the Board.
- iv. Any funds remaining in the Permittee's construction inspection account after the *Certificate of Site Plan Completion* is issued shall be returned to the Permittee.

c) *Right to Enter Property* - Board members, its staff, consultants or other designated Town agents and staff shall have the right to enter the property at reasonable times during construction and with advance notice to the Permittee to inspect the site for compliance with the terms and conditions of this decision and the Plan and while on site, may acquire any information, measurements, photographs, and observations deemed necessary for that evaluation.

d) *DPW Inspections* - The Department of Public Works will conduct inspections for any construction work occurring in the Town's right-of way in conjunction with the Town of Medway Street Opening/Roadway Access Permit.

e) *Monthly Reports* - The Permittee shall have a professional engineer licensed in the Commonwealth of Massachusetts conduct progress inspections of the construction of the approved site improvements. Inspections shall occur at least on a monthly basis and shall start immediately once any work begins on the property. The Permittee's engineer shall prepare a written report of each inspection and provide a copy to the Board within five days of inspection. The Board may provide a template for such monthly reports.

25. **On-Site Field Changes**

- a) During construction, the Permittee may be authorized to make limited, minor, on-site field changes to the approved plan based on unforeseen site or job conditions,

situations, or emergencies necessitated by field conditions or due to practical considerations. These field changes shall not alter items which may affect the site's compliance with this *Decision* and the *Zoning Bylaw* nor conflict with a specific condition of the *Decision*. Field changes shall not substantially alter the intent, layout, or design of the endorsed *Plan*.

- b) Prior to undertaking such field changes, the Permittee and/or contractor shall discuss the possible field changes with the Town's Consulting Engineer and the Planning and Economic Development Coordinator and submit a letter and drawings to the Planning and Economic Development Coordinator and the Building Commissioner describing the proposed changes and what conditions, situations, or emergencies necessitate such changes. In accordance with Section 3.5.2.C of the *Zoning Bylaw*, the Building Commissioner may determine that the field change is insubstantial, authorize the change, and so notify the Board. Otherwise, the Board shall review the proposed field changes at a public meeting and determine whether the proposed field changes are reasonable and acceptable based on the unforeseen conditions, situations, or emergencies and whether other options are feasible or more suitable. A written authorization of field change will be provided. Any approved field change shall be reflected in the as-built plan to be provided at project completion.

26. **Modification of Plan and/or Decision**

- a) Proposed modifications, not including on-site field changes, to this *Decision* or the endorsed Plan shall be subject to review by the Board.
- b) This site plan and special permit approval is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the site plan that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as site plan modifications.
- c) Any work that deviates from the approved *Plan* or this *Decision* may be a violation of the *Zoning Bylaw* unless the Permittee requests approval of a modification pursuant to Section 208-4 of the *Site Plan Rules and Regulations* and such approval is provided in writing by the Board, or as provided in General Condition 25.
- d) The request for a modification to a previously approved special permit and/or *Plan* shall be subject to the same application and review process including a public hearing. Whenever additional reviews by the Board, its staff or consultants are necessary due to proposed modifications, the Permittee shall be billed and be responsible for all supplemental costs including filing fees, review fees and all costs associated with another public hearing including legal notice and abutter notification. If the proposed revisions affect only specific limited aspects of the site, the Board may reduce the scope of the required review and waive part of the filing and review fees.
- e) Any modification approved by the Board shall be made a permanent part of the approved special permit documents and shall be shown on the final as-built plan.

27. Compliance with Plan and Decision

- a) The Permittee shall construct all improvements in compliance with the approved and endorsed *Plan* and this *Decision* any modifications thereto.
- b) The Board or its agent(s) may use all legal options available to it, including referring any violation to the Building Commissioner/Zoning Enforcement Officer for appropriate enforcement action, to ensure compliance with the decision and the foregoing Specific and General Conditions of Approval.
- c) The Specific and General Conditions of Approval are enforceable under Section 3.1. F. of the *Zoning Bylaw* (non-criminal disposition) and violations or non-compliance are subject to the appropriate fine.

28. Performance Security

- a) Prior to the grant of an occupancy permit, the Board must provide a written communication to the Building Commissioner/Zoning Enforcement Officer that the project, as constructed, substantially conforms to the approved site plan and that any conditions including construction of any required on and off-site improvements, have been satisfactorily completed OR that suitable performance security has been provided to the Town of Medway, to the Board's satisfaction, to cover the cost of all remaining work.
- b) The Permittee shall propose a form of performance security which shall be of a source and in a form acceptable to the Board, the Treasurer/Collector, and Town Counsel. The Board requires that the performance security be accompanied by an agreement which shall define the obligations of the Permittee and the performance security company including:
 - i. the date by which the Permittee shall complete construction
 - ii. a statement that the agreement does not expire until released in full by the Board
 - iii. procedures for collection upon default.
- c) The amount of the performance security shall be equal to 100% of the amount that would be required for the Town of Medway to complete construction of the site infrastructure including installation of stormwater management facilities, utilities, services, pedestrian facilities, and all site amenities as specified in the approved Site Plan that remain unfinished at the time the performance security estimate is prepared if the developer failed to do so.
- d) The performance security amount shall be approved by the Board based on an estimate provided by the Town's Consulting Engineer based on the latest weighted average bid prices issued by the Mass Department of Transportation. The estimate shall reflect the cost for the Town to complete the work as a public works project which may necessitate additional engineering, inspection, legal and administrative services, staff time and public bidding procedures. The estimate shall also include the cost to maintain the infrastructure in the event the Permittee fails to adequately perform such and the cost for the development of as-built plans. In determining the amount, the Board shall be guided by the following formula in setting the sum: estimate of the Town's Consulting Engineer of the cost to complete the work plus a 30% contingency.

29. Project Completion

- a) Site plan approval and special permit modification shall lapse after two years of the grant thereof as provided in Sections 3.4.E and 3.5.7 of the Zoning Bylaw if construction has not begun except for good cause. Upon receipt of a written request from the Permittee filed at least thirty days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and specify the additional length of time requested. If no request for extension is filed and approved, the site plan modification approval shall lapse and may be reestablished only after a new filing, hearing, and decision.
- b) The work shown on the approved Plan including all site work and the building addition shall be completed by the Permittee or its assignees within 3 years of the date of plan endorsement. Upon receipt of a written request from the Permittee filed at least thirty days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and specify the additional length of time requested. If no request for extension is filed and approved, the site plan approval shall lapse and may be reestablished only after a new filing, hearing, and decision.
- c) Prior to issuance of a final occupancy permit, the Permittee shall request a ***Certificate of Site Plan Completion*** from the Board. The ***Certificate*** serves as the Board's confirmation that, in its opinion, the completed work conforms to the approved Plan and any conditions and modifications thereto, including the construction of any required on and off-site improvements. The ***Certificate*** also serves to release any performance security that has been provided to the Town of Medway.
 - i. Before issuing such Certificate, the Board's Agent shall conduct a final inspection of the site and prepare a punch list to identify any remaining work to be completed. The Board may consult with its consulting engineer and various Town staff and boards or committees to determine whether the project is complete.
 - ii. To secure a Certificate of Site Plan Completion, the Permittee shall complete or provide the following items to the satisfaction of the Board.
 - a. receipts to document cleaning of the stormwater system
 - b. a signed statement from the Permittee committing to the ongoing maintenance of the stormwater management facilities and replacement of landscaping.
 - c. removal of erosion controls
 - d. full stabilization of the site
 - e. a written certification from a Professional Engineer registered in the Commonwealth of Massachusetts that all building and site work has been completed in substantial compliance with the approved and endorsed site Plan, and any modifications thereto; and
 - f. an electronic version of a final As-Built Plan, prepared by a registered Professional Land Surveyor or Engineer registered in the Commonwealth of Massachusetts, to the Board for its review and approval. The As-Built Plan shall show actual as-built locations and conditions of all buildings

and site work shown on the original site plan and any modifications thereto. The As-Built Plan shall also show all utilities found during the construction process. The final As-Built Plan shall also be provided to the Town in CAD/GIS file format per MASS GIS specifications.

30. ***Landscape Maintenance*** – The site’s landscaping shall be maintained in good condition throughout the life of the facility and to the same extent as shown on the *Plan of Record*. Any shrubs, trees, bushes, or other landscaping features shown on the Plan that die shall be replaced by the following spring.
31. ***Conflicts*** – If there is a conflict between the Plan and the Decision’s Specific and General Conditions, the Decision shall rule. If there is a conflict between this Decision and the *Zoning Bylaw*, the *Bylaw* shall apply.

IX. APPEAL – The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth herein. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Permittee, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

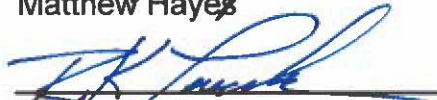
Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

In accordance with G.L. c. 40A, §11, no special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner’s certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the office of the Town Clerk and no appeal has been filed within said twenty-day period, or that an appeal has been filed. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. The fee for recording or registering shall be paid by the Permittee. A copy of the recorded Decision, and notification by the Permittee of the recording, shall be furnished to the Board.

###

AYE:


Matthew Hayes


Robert Tucker


Jessica Chabot


Sarah Raposa

COPIES TO: Jonathan Ackley, Building Commissioner
Michael Boynton, Town Manager
Stephanie Carlisle, DPW Compliance Officer
Michael Fasolino, Deputy Fire Chief
Bridget Graziano, Conservation Agent
Sean Harrington, Deputy DPW Director
William Kingsbury, Police Chief
Derek Kwok, Health Agent
Jeff Lynch, Fire Chief
Christopher Park, Assessor
Pete Pelletier, DPW Director
Joanne Russo, Treasurer/Collector
Barbara Saint Andre, Director of Community and Economic Development
Jeff Watson, Police Lieutenant
Steven Bouley, Tetra Tech
Ellen Rosenfeld, Applicant
Dan Merrikin, P.E., Legacy Engineering

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