

Applicant's redline changes to draft decision May 16, 2024

[Redline does not address corrections needed to numbering/lettering of Conditions.]

DRAFT DECISION - UPDATED MAY 7, 2024  
Chapter 40B Comprehensive Permit Decision  
Heritage Landing, Cow Pond Brook Road  
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**DECISION ON CHAPTER 40B COMPREHENSIVE PERMIT APPLICATION**

**G.L. c. 40B, §§20-23**

**APPLICANT**

Defcon 1, LLC

390 Broadway Road, Dracut, MA 01826

**LOCATION OF PROPERTY**

Cow Pond Brook Road

Groton, MA

Assessor's Map 248, Lot 42

**I. PROCEDURAL HISTORY.**

1. Defcon 1, LLC (the "Applicant") applied to the Groton Zoning Board of Appeals (the "Board")

for a Comprehensive Permit on May 17, 2023. The Applicant proposed to construct 28 singlefamily

homes and 12 duplex units on approximately 15.5 acres of land on Cow Pond Brook Road, to be named Heritage Landing.

2. The Board opened the public hearing on the Application on June 14, 2023.

3. The Board deliberated on the application on June 14, 2023, June 28, 2023, July 26, 2023, August 9, 2023, August 23, 2023, September 20, 2023, October 4, 2023, November 8, 2023, November 29, 2023, January 3, 2024, January 24, 2024, February 7, 2024, March 6, 2024, March 20, 2024, ~~and~~ April 11, 2024, April 24, 2024, May 6, 2024, May 8, 2024 and May 23, 2024. The Board closed the hearing on [DATE]. All submittals

concerning the Project are on file in the office of the Board of Appeals and incorporated herein. All waivers requested and votes taken are listed in Exhibit A and incorporated herein.

4. The Applicant provided certain plans, materials, reports, and revised plans during the public hearing on the Application. The Applicant was represented primarily by its attorney, Paul F. Alphen, Esq., and assisted by Jeffrey Brem, Meisner-Brem Corporation, engineering; Jim Jozokos, Jozokos Architecture, Inc., construction management; Defcon 1, LLC, traffic consultant, Kim Eric Hazarvartian, Principal, TEPP, LLC; and septic system design expert, Jeffrey Hannaford, Norse Design Services, Inc.

5. The Board utilized the services of Nitsch Engineering, Inc. for site and civil, and Robert J. Michaud, Managing Principal, MDM Transportation Consultants, Inc. for traffic review.

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6. The Board conducted a site visit to the property on December 2, 2023.

7. The following Board members were present for the entire public hearing process: Bruce Easom, Daniel McLaughlin, Veronica O'Donnell, Tom Peisel, and Jay Prager. Ms. O'Donnell joined the case after Russell Harris had to step down. The Applicant agreed to the change in Board membership.

## **II. GOVERNING LAW**

8. The law governing this application is the Comprehensive Permit Law, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Executive Office of Housing and Livable Communities ("EOHLC"), 760 CMR 56.00 et seq. (the "Regulations").

9. The Act promotes regional distribution of low- or moderate-income housing by preventing individual cities and towns from blocking it through zoning and other local regulations that exceed state requirements. Toward these ends, the purposes of the Act are satisfied if (a) a town has low- or moderate-income housing in excess of 10 percent of the total number of yearround

housing units reported in the latest decennial census; or (b) a town has low or moderate income housing which is on sites comprising 1.5 percent or more of the town's total land area zoned for residential, commercial, or industrial use; or (c) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3 percent of such total area or 10 acres, whichever is larger, in one year.

10. The Regulations expand the conditions for satisfying the statute to include various "safe harbor" opportunities, such as certification of progress under an approved Housing Production Plan (HPP), where "progress" means achieving a minimum annual low- or moderate-income housing production threshold established by EOHLC (in Groton, at least 21 new low- or moderate-income units per year). Groton has a current Housing Production Plan in effect from 2020-2025.

11. The Board's decision on a comprehensive permit must balance the regional need for low- or moderate-income housing against the Town's planning goals and local requirements and regulations to the extent that they are applied equally to subsidized and unsubsidized housing, and valid concerns about the health and safety of residents of the proposed housing, the surrounding neighborhood, or the Town as a whole.

## **III. JURISDICTIONAL FINDINGS**

12. The Town of Groton does not meet the statutory minima set forth in G.L. c. 40B § 20 or 760 CMR 56.03(3):

a. According to the Chapter 40B Subsidized Housing Inventory ("SHI"), as defined in 760 CMR 56.02, as of May 17, 2023, 5.65 percent of the Town's total housing stock

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comprised SHI eligible housing, as defined in 760 CMR 56.02. On the date of the applicant's submission to the Board, the Town did not meet the 10 percent statutory minimum. The Board approved a comprehensive permit for a 200-unit rental development known as Groton Farms on November 1, 2023 (filed with the Town Clerk on November 6, 2023).

b. The granting of this comprehensive permit will not result in the commencement of construction of low- or moderate-income housing units on a site comprising more than

three-tenths of one percent of land area in the Town of Groton or ten acres, whichever is larger, zoned for residential, commercial, or industrial uses (excluding land owned by the United States, the Commonwealth of Massachusetts, or any political subdivision thereof) in any one calendar year.

c. At the time the application for the comprehensive permit was filed in May 2023, the Town did not qualify for any of the “safe harbor” provisions under 760 CMR 56.03.

13. The Applicant received a Project Eligibility Letter (“PEL”) from MassHousing dated July 25, 2022. Based on the PEL, the Board finds that the Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:

a. The Applicant has or will form a Limited Dividend Organization and agrees to comply with the Subsidizing Agency relative to a reasonable return under G.L. c. 40B., 760 CMR 56.00, with a principal place of business of 390 Broadway Road, Dracut, MA 01826. The Applicant has agreed to conform to the limited dividend requirements of G.L. c. 40B, § 21.

b. The Applicant provided sufficient documentation to demonstrate Site Control as required by the Chapter 40B Regulations.

c. By virtue of receiving the PEL, the Applicant demonstrated that it had received approval to build low- or moderate-income housing under a recognized federal or state housing program, consistent with G.L. c. 40B, § 20.

#### **IV. FACTUAL FINDINGS:**

14. The Site is located in the Residential-Agricultural District and Official Open Space District.

It

consists of 14.5 acres of land with approximately 428 feet of frontage on Cow Pond Brook Road.<sup>2</sup>

<sup>1</sup> Still developing this section.

<sup>2</sup> Note: I accepted the acreage change, but both the Assessor’s Maps and the Applicant’s Project Eligibility Application to MassHousing describe the site as 15.5 acres.

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15. In the Residential-Agricultural District, a conforming lot must have at least 80,000 sq. ft. in area and 250 feet of frontage. The permitted residential uses in the district include a detached single-family dwelling and an attached two-family dwelling.

16. The Official Open Space District is intended for public and semi-public uses. Residential uses are explicitly prohibited.

17. The Site is subject to the requirements of the Zoning Bylaw unless the Board grants certain waivers requested by the Applicant and the waivers are within the Board’s jurisdiction.

18. The Board requested and heard input from Town staff, abutters, and other interested persons. The Board received written comments from the Board of Health, Groton Fire Department, Groton Police Department, a representative of the Park Commission, Sustainability Commission, Water Department, and the Groton Housing Coordinator, Fran Stanley. All written comments are on file with the Board.

19. The Board has determined that the Project, as conditioned in Section VI below, is Consistent

with Local Needs, as that term is defined in 760 CMR 56.02, and as required by G.L. c. 40B, § 20.

20. The Board finds that the conditions imposed in this Decision are necessary to address Local Concerns and that granting waivers from local bylaws and regulations is acceptable even though granting any waivers may have an adverse impact on Local Concerns.

#### **V. DECISION**

Pursuant to the Act, the Board, after convening a public hearing and making findings of fact, grants

a Comprehensive Permit to the Applicant for the construction of a multifamily development subject to all the conditions in Part VI of this Decision.

#### **VI. CONDITIONS**

##### **A. General**

A.1. The Project shall consist of not more than 28 homeownership units.

A.2. Except as may be provided for in the following Conditions or in the Final Plans referenced below, the Project shall be constructed substantially in conformance with the plans, correspondence, and drawings listed below in this Condition A.2, which for purposes of this Comprehensive Permit shall be considered the Approved Plans for the Project

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(“Approved Plans”). The Approved Plans consist of the following:<sup>3</sup>

Comprehensive Permit Application (66 sheets), dated May 17, 2023, and prepared by Alphen & Santos, P.C.

Plans entitled: Chapter 40B – Residential Development Permit Set –

“Comprehensive Permit Plan Set”, Not for Construction, “Heritage Landing”, Cow Pond Brook Road, Groton, Massachusetts, D-Size, and consisting of the following:

A. Site Plans by Meisner Brem Corporation – 5 Sheets, Dated 04-25-2023

1 – Cover Sheet

2 – Existing Condition Plan

3 – Grading and Utility Plan

4 – Profile Plan

5 – Detail Sheet

B. Landscape Plans by Lemon Brooke – 6 Sheets, Dated 05-18-2023

L-1.01 Lighting Illustrative Plan

L-1.02 Lighting Plan

L-1.03 Lighting Cut Sheets

L-1.04 Photometric Plan

L-2.00 Planting Details

L-2.01 Planting Details

Letter to Groton Zoning Board of Appeals from Jeffrey Brem of Meisner Brem Corporation regarding the water line extension dated November 20, 2023.

Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated July

<sup>3</sup> Please verify the final plan set with the Applicant. The list should include only the Approved Plans, not other submittals.

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26, 2023 regarding Nitch peer review.  
Letter from MDM as a peer review letter regarding the Traffic Impact Analysis dated January 30, 2024.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated September 21, 2023 regarding voting members.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated September 21, 2023 regarding extension request.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated July 31, 2023 regarding subdivision regulations.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated August 2, 2023 regarding timing of construction.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated August 8, 2023 regarding applicable rules and regulations.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated August 21, 2023 applicable septic regulations.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated September 21, 2023 regarding an extension request and extension agreement.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos P.C. dated November 28, 2023 regarding plan revisions.  
Comprehensive Permit Plan Set – 28 units for Heritage Landing by Meisner Brem Corporation dated January 3, 2024 (1<sup>st</sup> Revision)  
Comprehensive Permit Plan Set – 28 units for Heritage Landing by Meisner Brem Corporation dated January 30, 2024 (2<sup>nd</sup> Revision)  
Letter to Groton Zoning Board of Appeals from Alphen & Santos P.C. dated November 28, 2023 regarding MIT email of November 21, 2023  
Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated September 30, 2023 regarding additional waiver requests for the 28 Unit proposal.  
Letter to Groton Zoning Board of Appeals from Alphen & Santos P.C. dated December 8, 2023 regarding MIT email of November 21, 2023 and Dark Sky  
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standards  
Letter to Groton Zoning Board of Appeals from Jeffrey Hannaford of Norse Design Services dated November 17, 2023 regarding soil testing at Heritage Landing site on Cow Pond Brook Road  
Test Hole Location Plan for Cow Pond Brook Road by Jeffrey Hannaford of Norse Design Services dated May 24, 2005  
Soil Suitability Assessment for On-Site Sewerage Disposal performed by Jeff Hannaford and witnessed by B. Braley, Groton Board of Health, 14 tests, dated

May 25, 2005

Percolation Tests performed by Jeff Hannaford and witnessed by B. Braley,  
Groton Board of Health, 10 tests, dated April 27, 2004

Water Extension Overview, undated

Letter to Groton Zoning Board of Appeals from Jeffrey Brem of Meisner Brem  
Corporation regarding water and wastewater dated October 17, 2023

Water Line Extension Plan Sketch on Record Plans dated May 4, 2023

Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated  
January 10, 2024 regarding revisions to the plan to create 28 units.

Fire Turning Template Exhibit, Revision 2 by Meisner Brem Corporation dated  
January 3, 2024

Scope of Traffic Study by TEPP LLC for Heritage Landing dated August 8, 2023

Agreement to Extend Time Limitations on a Comprehensive Permit dated  
October 4, 2023.

Agreement to Extend Time Limitations on a Comprehensive Permit dated April  
~~11~~, 2024.

[Agreement to Extend Time Limitations on a Comprehensive Permit dated May 8, 2024.](#)

Traffic-Impact & Access Study by TEPP LLC for Heritage Landing dated  
January 12, 2024

Letter to Groton Zoning Board of Appeals by Kim Eric Hazarvartian, Principal,  
TEPP LLC regarding response to traffic comments dated February 7, 2024

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Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated  
February 2, 2024 regarding Cow Pond Brook Road.

Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated  
February 5, 2024 regarding additional waiver requests.

Letter to Groton Zoning Board of Appeals from Jeffrey Brem of Meisner Brem  
Corporation regarding response to January 24, 2024 Nitsch Engineering  
comments, dated February 9, 2024

Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated  
March 26, 2024 regarding additional waiver requests.

Preliminary Stormwater Management Report by Meisner Brem Corporation dated  
January 30, 2024

Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated  
Revised April 17, 2024 v2, regarding revised waiver requests.

Rough grading sketch plan prepared by Meisner Brem Corporation submitted by  
email on April 17, 2024.

Turning Template Exhibit prepared by Meisner Brem Corporation revised  
through January 30, 2024.

Heritage Landing Comprehensive Permit Plan Set prepared by Meisner Brem  
Corporation dated revised January 30, 2024.

Letter to Groton Zoning Board of Appeals from Alphen & Santos, P.C. dated

February 5, 2024 regarding waiver requests.

Site Plan Sheet 3 of 5 revised 4/2/24 prepared by Meisner-Brem Corporation showing proposed additional parking and signage.

[Site Plan sheet 3 of 5 revised 5/2/2024 prepared by Meisner-Brem Corporation showing the proposed redesigned entrance for bus & changed road name.](#)

Detail Photometric Calculations, prepared by Illuminate dated 4-8-24, “Heritage Landing- Groton, MA, Lighting Plan-Right of Way” prepared by Lemon Brooke dated 4/11/24, and “Heritage Landing – Groton, MA, Right of Way Lighting Cut-Sheets” prepared by Lemon Brooke dated 4/11/24. The above were revised by

“Detail Photometric Calculations” prepared by Illuminate dated 4/30/24, [and subsequently updated by “Heritage Landing – Groton, MA, Lighting Plan” prepared by Lemon Brooke dated 5/13/2024 and](#)

A.3. The Applicant shall be a Limited Dividend Entity as required by Chapter 40B, and it and  
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its successors and assigns shall comply with the limited dividend and other applicable requirements of Chapter 40B and the regulations adopted thereunder.

A.4. Affordable units shall be interspersed throughout the Project, as approved by the Subsidizing Agency during Final Approval.

A.5. Pursuant to the Waiver List submitted to the Board and attached hereto as Exhibit A, the Applicant has requested, and the Board has granted, certain waivers from the Groton Zoning Bylaw and other local bylaws and regulations as specified therein. Some of the waivers granted by the Board have been granted conditionally, as set forth in Exhibit A. Those conditions are expressly incorporated by reference as conditions of approval to this Comprehensive Permit. No waivers are granted from requirements that are beyond the purview of G.L. c. 40B, §§ 20-23, and no waivers of any requirements otherwise within the Board’s jurisdiction under G.L. c.40B, §§20-23 have been granted except for those specifically granted by the Board as set forth in Exhibit A. No waiver of building permit or inspection fees has been granted except as specifically stated and conditioned. Any subsequent revision to the Approved Plans, including but not limited to revisions that are apparent in the Final Plans that require additional or more expansive waivers of any local by-laws or regulations, must be approved by the Board in accordance with 760 CMR 56.05(11), provided however that any increased or new waivers required on account of revisions to the Approved Plans to accommodate the conditions of this Decision shall be treated as insubstantial changes as set forth in 760 CMR 56.05(11). .

A.6. The Project shall comply with all local regulations of the Town of Groton and its boards, commissions and departments unless specifically waived herein.

A.7. Nothing contained in this order shall limit the authority of the Building

~~Inspector~~Commissioner to enforce the provisions of the State Building Code.<sup>4</sup>

A.8. Except as otherwise specifically provided herein, where this Decision provides for the

submission of plans or other documents for approval by the Building ~~Inspector~~Commissioner or other

Town Departments, the Building ~~Inspector~~Commissioner or applicable Department Head will use

reasonable efforts to review and provide a written response within 30 days following submission. For submissions that require assistance from an outside consultant, as determined by the Building ~~Inspector~~Commissioner or applicable Department Head, the 30-day time

period shall not begin until the consultant's fee has been paid by the Applicant. Applicant will not unreasonably withhold consent for extra time due to any delay in reviews.

A.9. The provisions of this Comprehensive Permit Decision and Conditions shall be binding upon the successors and assigns of the Applicant and the obligations shall remain in perpetuity and run with the land for so long as the Project is developed and maintained as a residential project approved under M.G.L. c. 40B. In the event that the Applicant sells, 4 Pursuant to Condition C.2.h, the Applicant will file a copy of all federal, state and local permits with the Building ~~Inspector~~Commissioner.

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transfers, or assigns its interest in the development, this Comprehensive Permit shall be binding upon the purchaser, transferee, or assignee and any successor purchasers, transferees or assignees. The limited dividend restrictions shall apply to the owner of the project regardless of sale, transfer, or assignment of the project.

A.10. The sidewalks, driveways, utilities (including water supply infrastructure), drainage and stormwater systems, and all other infrastructure located on the Project site and shown on the Approved Plans as serving the Project shall remain private in perpetuity within the responsibility of the Condominium Association to be created for the ownership of all common elements of the Project, and the Town of Groton shall not have, now or in the future, any legal responsibility for the installation, inspection, operation, or maintenance of the infrastructure, including but not limited to snow removal and landscape maintenance. The final drainage design, including all plans and details needed for construction, must be included on the Final Site Plans.

A.11. Snow storage (addressed in Condition D.9 as part of Final Design Plans).

A.12. The Building ~~Inspector~~Commissioner may designate an agent to review and approve the Final Plans for consistency with this Decision and to monitor construction subsequent to this Decision.

#### **B. Affordability**

B.1. A minimum of 25 percent of the units (7 of 28) shall be low- or moderate-income units, meaning that they shall be sold to households whose income is not more than 80 percent of the Area Median Income ("AMI"), as determined by the United States Department of Housing and Urban Development ("HUD") and Executive Office of Housing and Livable Communities (EOHLC) ("Affordable Units"). Affordable Units shall be dispersed throughout the Project in accordance with the guidelines of the Subsidizing Agency. The Applicant shall be responsible for maintaining records sufficient to comply with EOHLC or Subsidizing Agency guidelines for the location of Affordable Units in the Project and



occupancy of such Affordable Units by income-eligible households.

B.2. Upon completion of the Project and in perpetuity or for the maximum period allowed by law for so long as the Project is developed and maintained as a residential project approved under M.G.L. c. 40B, at least 25% of the units shall meet the criteria for inclusion in EOHLC's Subsidized Housing Inventory for the Town of Groton.

B.3. The Applicant shall obtain approval by the Subsidizing Agency of an Affirmative Fair Housing Marketing Plan (AFHMP) prior to the sale of any units and shall ensure that the Project complies with the Subsidizing Agency's fair housing requirements.

B.4. No later than two weeks prior to submitting the proposed AFHMP to the Subsidizing Agency, the Applicant shall provide a copy to the Building ~~Inspector~~ Commissioner and the Groton Land

Use Department for review and comment; however, final terms and conditions of the DRAFT DECISION - UPDATED MAY 7, 2024

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AFHMP shall be solely determined by the Subsidizing Agency.

B.5. A local preference for the initial sale of affordable units in the Project may be established subject to, and solely in accordance with the requirements of, the subsidizing agency and applicable law. The Board acknowledges that the Town will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preference and to obtain approval of the categories of persons qualifying for the same, and in no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof.

### **C. Submission Requirements**

C.1. Prior to any construction or site development activities (including site clearing, tree removal, fill, grading, etc.) on the Site, whether or not pursuant to a building permit, the Applicant shall:

a. Submit the following plans ("Final Plans") as part of the building permit plan submission set to the Building ~~Inspector~~ Commissioner for review and comment as to consistency with

the Approved Plans:

i. The Applicant shall provide Final Site/Civil Plans that address the comments from the peer review letters prepared by Nitsch Engineering and dated September 20, 2023, November 8, 2023, January 24, 2024, March 19, 2024, and March 20, 2024. For any comments not addressed in the Final Site/Civil plans or covered under an approved waiver, the Applicant shall provide a written narrative stating the reasoning for non-compliance with the comments.

ii. The Final Plans shall also incorporate revisions, as necessary, to address conditions and requirements of permitting agencies having jurisdiction.

Applicable sheets of the Final Plans shall be signed and sealed by the Professional Land Surveyor of record or the Professional (Civil) Engineer of record, as applicable. Applicant will not unreasonably withhold consent for extra time due to any delay in reviews.

iii. The Final Plans shall include common parking areas between Units 26 & 25,

24 & 23, and 6 ~~and 7~~.

iv. The Final Plans shall provide a turnaround area for school buses at the intersection of Cow Pond Brook Road and Hanson Way at least 75 feet long, and a school bus waiting structure shall also be constructed at that location (as shown on the Site Plan sheet 3 of 5 revised 5/2/2024 prepared by Meisner-Brem Corporation showing the proposed redesigned entrance for bus & changed road name).

v. Final Architectural Plans prepared, signed, and sealed by an architect with a DRAFT DECISION - UPDATED MAY 7, 2024  
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valid registration in the Commonwealth of Massachusetts, containing certifications required by applicable provisions of the State Building Code. At a regularly scheduled Board hearing, the Building ~~Inspector~~ Commissioner may provide the Board with an update on the conformity of the Final Architectural Plans with this Comprehensive Permit.

vi. Final landscaping and lighting plan prepared by a landscape architect with a valid registration in the Commonwealth of Massachusetts.

vii. A signage plan for the Project's residential signage, which shall conform to applicable Town of Groton Zoning Bylaw unless specifically waived herein or as approved by the Board in accordance with 760 CMR 56.05(11).

viii. The Applicant shall provide a Final Stormwater Report that addresses the comments from the peer review letter prepared by Nitsch Engineering and dated March 20, 2024. For any comments not addressed in the Final Stormwater Report or covered under an approved waiver, the Applicant shall provide a written narrative stating the reasoning for non-compliance with the comments. The Final Stormwater Report shall include the Stormwater Pollution Prevention Plan (SWPPP), Operation and Maintenance (O&M) Plan, Long-Term Pollution Prevention Plan (LTPPP), and the Illicit Discharge Statement along with other documents and calculations required to show compliance with the Massachusetts Stormwater Handbook and the Stormwater Management Standards.

i. The Applicant shall determine the depths and volumes of cuts and fills based on the final site grading design and provide a plan showing the depths of cuts and fills throughout the site, total volume of cut, total volume of fill, and net volume of cut/fill. The depths of cuts and fills on this plan shall be laid out in a grid pattern with a maximum spacing of 10 feet between grid points. Alternatively, a colored cut/fill plan can be provided where cut/fill depths are represented by different colors. Cut/fill depth increments shall be no more than 2 feet per color.

b. The Applicant shall submit documentation of compliance with the Massachusetts Endangered Species Act, including a conservation and management plan approved by the Natural Heritage and Endangered Species Program (NHESP).

b. Submit to the Building ~~Inspector~~ Commissioner a construction management plan consistent with the

requirements found in Subsection D below, and a construction schedule outlining the entire development of the Project.

c. The Building ~~Inspector~~Commissioner may engage, at the Applicant's expense and upon prior agreement to scope of services, one or more agents to review the plan(s) for consistency

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with this decision, if necessary. Pursuant to this condition, the Applicant shall deliver to the Town a check in the initial amount of \$9,000.00 to be used for the Building ~~Inspector~~Commissioner, if requested, to retain outside experts for technical reviews and inspections

required under these conditions and shall be required to supplement the amount if the balance drops below \$2,000.00. The funds shall be deposited by the Building

~~Inspector~~Commissioner

in an account pursuant to G.L. c. 44, s. 53G and shall only be used for technical reviews and inspections associated with this project. Any unspent funds shall be returned to

the Applicant with accrued interest at the completion of the project. If at any time the

Building ~~Inspector~~Commissioner reasonably determines that there are insufficient funds to cover the

costs of technical reviews, it shall inform the Applicant and the Applicant shall

forthwith deliver additional funds as specified by the Building ~~Inspector~~Commissioner in a reasonable

amount as may be determined by the Building ~~Inspector~~Commissioner. The funds may be used by

the Building ~~Inspector~~Commissioner to hire civil engineering, architect, traffic engineering, or other

related professionals that the Building ~~Inspector~~Commissioner deems reasonably necessary to ensure

compliance with the conditions hereof.

d. Provide proof of coverage under a National Pollution Discharge Elimination System (NPDES) Permit Construction General Permit from the U.S. Environmental Protection Agency (EPA). The Town shall also be provided a copy of the SWPPP submitted along with the NPDES filing.

a. Submit recording information documenting that an Order of Conditions for the Project, if required, issued by the Groton Conservation Commission has been recorded with the Middlesex South District Registry of Deeds.

b. Submit to the Building ~~Inspector~~Commissioner a Site-Specific Safety Plan including but not limited

to emergency contacts information for the job team, emergency response plan, and designated fueling area. All employees on site shall be responsible for understanding the plan and at any point during the construction process shall be checked by the Building ~~Inspector~~Commissioner for compliance of all site personnel.

c. Attend with the site general contractor a preconstruction conference with the Building ~~Inspector~~Commissioner and other Town staff as may be determined by the Building ~~Inspector~~Commissioner.

C.2. Prior to the issuance of any building permits, the Applicant shall:

d. Record this Comprehensive Permit (with a copy of a reduced size plan set of the Project) with the Middlesex South Registry of Deeds, at the Applicant's expense, and provide proof of such recording with the Groton Building ~~Inspector~~Commissioner.

e. Submit to the Town evidence of Final Approval from the Subsidizing Agency as required by the Project Eligibility letter and the Chapter 40B regulations.

f. Submit to the Town a certified copy of the Regulatory Agreement and Monitoring

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Services Agreement for the Project. Execution and recording of such Regulatory Agreement shall be complete prior to the issuance of any building permit.

g. Submit the Final Plans to the Building ~~Inspector~~Commissioner for his review and comment as to

consistency with the Approved Plans and this Decision.

h. Provide the Board and Building Department with the approximate location of all utilities, including but not limited to electric, telephone, and cables.

i. Obtain and file with the Building ~~Inspector~~Commissioner a copy of all required Federal, State, and

local permits and approvals required to begin construction of the Project.

j. Obtain all necessary electrical, plumbing, and other permits required to begin construction on the building for which the building permit is sought.

C.3. Prior to issuance of a Certificate of Occupancy for any portion of the Project, the Applicant shall, for the portion of the Project seeking a Certificate of Occupancy, submit the following to the Building ~~Inspector~~Commissioner:

k. Submit engineer's interim certification of accessway infrastructure, water and sewer service, and as-built foundation plans to the Groton Building ~~Inspector~~Commissioner.

l. Provide a letter to the Board, signed and stamped by the Applicant's civil engineer, certifying that the as-built Project or applicable portions thereof have been constructed in compliance with the Final Plans in all material respects, or noting where there are differences or remaining work.

m. Obtain acceptance from the Groton Fire Department of testing of all fire protection systems, fire alarm systems, and local smoke alarms within the dwelling units and that all fire hydrants are in place at proper grade and functioning.

n. Complete all water improvements necessary to serve the Project and submit interim asbuilt plans to the ~~Department of Public Works-Groton Water Department~~ for the Department's approval.

o. Submit an as-built plan of stormwater management system and certification of compliance with the conditions of approval by a Mass Registered Professional Engineer.

p. Submit a certificate of compliance with the conditions of approval with the Conservation Commission's Order of Conditions for the project, if applicable.

C.4. Prior to issuance of the final Certificate of Occupancy for the last residential building to be constructed, the Applicant shall:

q. Submit to the Building Department, in digital file format, a final as-built utilities plan including profiles, showing actual-in ground installation of all applicable utilities, rim

and invert elevations, roadway, sidewalk and associated construction. The file format shall be in a form acceptable to the Building Department. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. The digital data shall be delivered in the Massachusetts State Plane Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet. The as-built plan shall be provided within 120-days after issuance of the Project's final Certificate of Occupancy.

- r. Submit to the Board all information relating to the Condominium Association and/or its management company being retained to act as the property manager that the Applicant submits to the Subsidizing Agency as part of the Final Approval process. Such property management agreement Condominium documents shall, at a minimum, address subsurface septic system maintenance, repair and replacement; storm water management and maintenance plans; roadway maintenance, repair and replacement; building security, public access, pet policy, staffing, trash removal; smoking policies, snow and ice removal; and snow storage.
- s. Submit verification that all components of the stormwater management system have been inspected, cleaned, and approved by the Project's civil engineer.
- t. Submit to the Board Certification of compliance with all applicable terms and conditions of this Comprehensive Permit.
- u. Certification by the Project's engineer that all off-site measures are complete in accordance with Section I below.
- v. Certification from the Project's civil engineer that all water systems have been installed, tested, and that all valve covers, and other related items are at grade and are in proper working condition.

**D. Project Design and Construction**

D.1. The Applicant shall provide, as part of the Final Site/Civil Plans, an Erosion and Sediment Control plan and details for the site. This plan and details shall comply with the Town Bylaw and the United States Environmental Protection Agency (EPA) Construction General Permit (CGP).

D.2. The Applicant shall provide a Construction Management Plan (CMP) that details the construction schedule, phasing, and indicates locations for the following items: construction fencing, construction gates, erosion and sediment controls, construction trailers/offices, parking, laydown and stockpile areas, and other items deemed necessary by the Building ~~Inspector~~Commissioner.

D.3. The Applicant shall provide a detailed plan describing the logistics of bringing fill material

to the site. This logistics plan shall include, at a minimum, a schedule of fill deliveries with dates, hourly range when deliveries will occur, number of trucks per day, and total number of trucks. Any damage to public ways resulting from trucking operations as determined by the Department of Public Works shall be repaired

by the Applicant at their expense and within the time periods to the satisfaction of the Department of Public Works. Town of Groton Regulations require testing of fill material when more than 500 cubic yards of fill is introduced [citation?]. The applicant shall provide a method of documenting that fill material was tested and found to meet the applicable requirements regarding hazardous materials before bringing fill to the site, and documentation that the material brought to the site is from the tested source location; which documentation shall be provided weekly during trucking operations to \_\_\_\_\_ . Retesting and related documentation shall be obtained (i) each time more than 5,000 cubic yards of material is trucked from one tested location and/or (ii) each time the source location of fill material is changed.

D.4. Police details will be required for all work within the public right-of-way and when construction traffic will impact or potentially cause an unsafe condition for other vehicles or pedestrians. The cost for police details will be the responsibility of the Applicant.

D.5. The Applicant shall conduct test pits to verify the design of the stormwater management system. The number and location of test pits shall comply with the Massachusetts Stormwater Handbook and the Stormwater Management Standards. The results of the test pits shall be included in the Final Stormwater Report.

D.6. The Applicant shall coordinate with the Groton Water Department and their engineering consultant to confirm the water main extension, onsite water system, and services to the residential units are designed to their standards and will provide adequate pressure and flow rate to service the proposed development. The Final Plans shall include all design information for the proposed water system.

D.7. The Applicant shall comply with all requirements of and get approval from the Board of Health for the design of the septic systems. The Final Plans shall include all design information for the proposed sanitary sewer system.

D.8. All exterior lighting within the private way and within 10 feet of the pavement of the private way, the common parking spaces between Units 26 & 25, 24 & 23, and 6& 7 [NOTE: PER DISCUSSIONS AT THE MEETING, THE PARKING SPACES BETWEEN UNITS 1&2 ARE TO BE REMOVED]; and the

portion of the common area located inside the turning circle at the East end of the roadway (sometimes collectively referred to herein as the “Dark Sky Area”) at the site shall comply with the International Dark-Sky Association (IDA) Fixture Seal of Approval program certification standards and be designed and installed so as to minimize glare or spillover onto or into any adjacent properties. Future compliance with these requirements shall be enforced by the Condominium Association.

D.9. Snow shall be stored within the areas of the site designated on the Final Plans. To the extent snowfall exceeds the capacity of the designated snow storage areas, the Applicant shall truck excess snow off- site for proper disposal. The Condominium Association shall be responsible for snow removal and the proper disposal of snow removed off-site.

D.10. All construction equipment must be off-loaded on the Property, and all construction-related

vehicles and equipment shall be on site during construction unless approved by applicable authorities. No construction equipment or vehicles of employees or agents of the Applicant

or the Applicant's contractors shall be parked on any public way unless approved by applicable Town authorities.

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D.11. The Applicant shall implement all necessary controls to ensure that noise from construction activities does not constitute a nuisance or hazard beyond the Property. Upon notification from the Building ~~Inspector~~Commissioner or other appropriate Town officials, the Applicant shall cease

all construction activities creating noise in excess of state and federal standards and shall implement such mitigation measures as is necessary to ensure the construction activity will comply with applicable State and Federal requirements. For purposes of this condition, construction activities shall be defined as: start-up of equipment or machinery, vehicle fueling; vehicle access to and from site; delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; and erection of new structures. All offsite utility work shall be coordinated and approved by the Building Department and shall not be subject to the timing restrictions set forth above.

D.12. The Applicant shall conform to all local, State, and Federal laws regarding construction, noise, vibration, dust, and blocking of Town roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.

D.13. Site Utilities, including but not limited to telephone, electric, and cable, shall be located underground on the Project Site except as shown on the Approved Plans.

D.14. Exterior construction activities shall be conducted between the hours of 7:00 a.m. and ~~6~~7:00

p.m., Monday through Friday and 8:~~30~~00 a.m. and ~~5:00~~4:30 p.m. on Saturdays. [NOTE: WE UNDERSTAND THAT THOSE ARE THE HOURS CONTAINED IN THE 500 MAIN STREET DECISION] For purposes of

this condition, construction activities shall be defined as: start-up of equipment or machinery, vehicle fueling; vehicle access to and from site; delivery of building materials and supplies; delivery or removal of equipment or machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; removal of stumps and debris; and erection of new structures. No exterior work that generates noise at the Project property lines (excluding non-noise producing activities

such as, but not limited to, painting and light landscaping, etc) shall be conducted outside of the foregoing hours or on Sundays or the following National holidays: New Year's Day, President's Day, Memorial Day, Juneteenth, Fourth of July, Labor Day, Indigenous People Day, Veterans Day, Thanksgiving Day, and Christmas, except as may be permitted by the Building ~~Inspector~~Commissioner and Police Chief.

D.15. No disturbed areas shall be left in an un-stabilized condition longer than 60 days without appropriate temporary stabilization. Temporary stabilization shall be accomplished by ~~hay~~straw bales, hay coverings or matting. Final stabilization shall be accomplished by paving or

established vegetated ground cover in exposed areas.

D.16. Construction security fencing shall be maintained in accordance with the State Building Code. The petitioner will submit a security narrative to the Building ~~Inspector~~Commissioner for approval

in consultation with the Fire Chief and the Police Chief.

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D.17. Notwithstanding any other requirement in this Decision, the Building

~~Inspector~~Commissioner shall have

the authority to issue partial or temporary certificates of occupancy with approval from the

Fire Chief. A phased occupancy plan shall be submitted with the building permit

application. The Building ~~Inspector~~Commissioner may allow portions of each building to be

occupied

provided that all life safety systems including life safety features for the portion to be

occupied are operational and approved by the Fire Chief. Nothing contained in this section

shall limit the authority of the Building ~~Inspector~~Commissioner to make the final determination

of phased

occupancy, or final occupancy within the terms and conditions detailed in this order.

**E. Internal Accessway, Parking, and Traffic Safety Conditions**

E.1. Access and egress to the Project shall be consistent with the Approved Plans.

E.2. Internal sidewalks with ADA/MAAB-compliant ramps shall be constructed along the edge

of the pavement along the North side of the roadway from Cow Pond Brook Road to before

the driveway for Unit 8. [The applicant notes that the proposed roadway is 24' wide for

purposes of anticipating walking within the roadway. The addition of sidewalks could

create times when vehicles that may be parked in the driveways may interfere with

sidewalk travel.]

E.3. The internal roadways to each building shall be designed and constructed as depicted on the Approved Plans.

E.4. The Final Site/Civil Plans shall include construction details for the proposed roadway (Hanson Way) and associated site improvements, including but not limited to roadway and pavement cross-section, curb, pavement markings, and signs.

E.5. Hanson Way shall provide sufficient width and radii to allow for proper turning and maneuvering of fire apparatus through the site, as determined by the Groton Fire Chief.

E.6. Stopping sight distances on Hanson Way shall comply with the Town Bylaw, as determined by the Department of Public Works.

E.7. The Applicant shall ensure that signs, landscaping, and other features located within the sight triangle areas at the intersection of Cow Pond Brook Road and Hanson Way are designed, installed, and maintained so as not to impede lines of sight. Such features shall not exceed 2.5 feet in height as measured from the surface elevation of the project site roadway.

E.8. The Applicant shall promptly remove snow windrows located within sight triangle areas that exceed 2.5 feet in height or that would otherwise inhibit line of sight.

E.9. Appropriate directional and safety signage shall be installed by the Applicant and maintained by the Condominium Association on the internal roadways, subject to review



and approval by the Groton Fire Department. All stop signs to be installed shall be consistent with the current Manual on Uniform Traffic Control Devices standards and guidelines. The interior loop portion of the roadway shall be posted as a “No Parking” area. E.10. Applicant shall maintain the sight distance at the entrance by limiting/trimming vegetation consistent with the Approved Plans. The sight distance shall be maintained under the Town Engineer’s supervision.<sup>5</sup>

**F. Police, Fire, and Emergency Conditions**

F.1. Applicant shall confirm final layout and location of all fire safety equipment (hydrants, post indicator valves, panels, etc.) with the Groton Fire Department prior to the start of construction.

F.2. The Applicant shall submit final fire alarm plans to the Fire Chief for review and approval prior to construction.

c. F.3 The Applicant shall construct chain link fence 6 feet high along the Northerly property line of the Project, upon which, signage may be installed by the Police Chief as may be determined by the Police Chief for warnings pertaining to the gun range.

**G. Water, Stormwater, and Utilities**

G.1. The Applicant shall be responsible for the design and installation of all utilities servicing the Project.

G.2. All water infrastructure shall be installed in conformance with Town of Groton requirements. The Applicant shall consult with the ~~Department of Public Works~~Groton Water Department prior to the commencement of construction.

G.3. The service size for the domestic water service shall be verified by the Department of Public Works and information on the fire service size and requirements shall be verified by the Groton Fire Department. The Applicant shall submit information regarding the size of both the domestic and fire services as part of Final Plans, after consultation with the Department of Public Works and the Fire Department respectively.

G.4. Stormwater management facilities shall be constructed as shown on the Final Plans, and/or as required by the Order of Conditions for the Project, if applicable.

G.5. The Applicant shall comply with all terms and conditions of the Order of Conditions for the Project issued by the Conservation Commission under G.L. c. 131, § 40, if required. If an Order of Conditions is required, no work may proceed pursuant to this Comprehensive Permit until all appeals have been exhausted and the Order is recorded in the Middlesex South District Registry of Deeds. Should appeal of the Order of Conditions result in

<sup>5</sup> The Applicant’s attorney inserted two comments that do not seem to require a condition

elimination or modification of any condition of the Order of Conditions and the Applicant seeks to modify the Project based thereon, any such modification must be approved by the

Board in accordance with 760 CMR 56.05(11).

#### **H. Completion of Infrastructure**

H.1. The final infrastructure for the Project, including, but not limited to, final course of pavement meeting the Town's requirements, shall be installed prior to the issuance of the final Certificate of Occupancy for the Project, or secured by a deposit of money, a bank passbook or a tri-party agreement consistent with the procedures contained in MGL Ch 41 s 81U and in accordance with the cost estimates procedure contained in Section 381-8.1.E of the Groton Planning Board Subdivision Rules and Regulations ("Security"). The final infrastructure shall include, but not be limited to intermediate and final course of pavement, ~~remaining landscaping~~, and any "punch list" items identified by the Board's engineer or the Building ~~Inspector~~ Commissioner (the "Final Infrastructure"). Alternatively, if the Applicant desires to obtain ~~such one or more~~ final Certificate of Occupancy for one or more dwelling units before the completion of said Final Infrastructure, it shall deposit monetary security with the Town securing the installation and construction of such Final Infrastructure. The amount of such security and any necessary contingency shall be determined by the Board, acting reasonably and upon the advice of its consulting engineer and in a manner consistent with Section 381-8.1.E of the Groton Planning Board Subdivision Rules and Regulations. The form of the security agreement binding such ~~security~~ Security shall be subject to review by ~~the Town Solicitor~~ Counsel. Prior to the issuance of the final Certificate of Occupancy for the last dwelling unit in the Project, the Board may review the form of the security agreement and the value of the Security in relation to the then existing conditions of the Final Infrastructure and the then known costs of completion of same and may require adjustments to the form of the security agreement and/or the value of the Security to reflect such factors.

#### **I. Off-Site Improvements**

I.1. Prior to issuance of the final Certificate of Occupancy, the Applicant shall install the following off-site improvements ...: (needs additional content)

#### **J. Other General Conditions**

J.1. In accordance with 760 CMR 56.05(12)(c), this Comprehensive Permit shall expire three years from the date that the permit becomes final, unless (i) prior to that time substantial use of the Comprehensive Permit has commenced or (ii) the time period is otherwise tolled in accordance with law.

J.2. The Applicant shall comply with all local regulations of the Town of Groton and its boards, commissions, and departments unless specifically waived herein or as otherwise addressed in these conditions.

J.3. This Decision prohibits the parking or storage of any unregistered vehicle on the site, and likewise prohibits the service of any vehicles on the site, except during construction.

J.4. The landscaping shall be maintained in perpetuity. Dead or diseased plantings shall be replaced within six months in accordance with growing and weather conditions.

J.4. Conditions contained herein that survive the construction of the Project are to be the ongoing responsibility of the Condominium Association, and in such cases shall be the "Applicant" for purposes of such Conditions.

**SIGNATURE PAGE TO FOLLOW**

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**RECORD OF**

