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Planning & Economic Development Board
155 Village Street
Medway, Massachusetts 02053

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March 16, 2010

CERTIFICATE OF ACTION

**MODIFICATION to the Daniels Wood II
Definitive Subdivision Plan and Certificate of Action
(APPROVED with Waivers and Conditions)**

I. APPLICANT & PROPERTY OWNER:

Frederic Sibley
12 Oak Street
Medway, MA 02053

II. SUBJECT PROPERTY - The subject property is a 6.15 acre site located at 12 Oak Street in the Agricultural Residential II zoning district. The property is located on the north side of Oak Street and at the eastern end of Daniels Road. The site is shown as Medway Assessors Map 5, Parcel 354.

III. BACKGROUND - The applicant wishes to modify the previously approved Daniels Wood II Definitive Subdivision Plan and the associated Certificate of Action/Decision.

Daniels Wood II Subdivision Certificate of Action – Approved by the Medway Planning Board on April 29, 2008. NOTE – The applicant has not recorded this Certificate of Action at the Norfolk County Registry of Deeds.

Daniels Wood II Definitive Subdivision Plan – Endorsed by the Medway Planning Board on May 27, 2008. Prepared by Colonial Engineering of Medway, MA dated September 23, 2007, last revised May 23, 2008. This plan was recorded at the Norfolk County Registry of Deeds on September 25, 2009 in Plan Book 595, Page 36.

That prior plan divided the subject parcel into:

- Lot 2B-1 (24,212 sq. ft) – A new building lot to be accessed by a 107.23 linear foot extension of the Private Way portion of Daniels Road which is:
- Parcel A - a 11,979 sq. ft cul-de-sac right of way (from Station 7+43.13 to Station 8+50.37) to provide legal frontage for Lot 2B-1
- Lot 2B-2 (5.32 acres) – The remaining land which is accessed from a driveway off of Oak Street with 254' of legal frontage on Oak Street.

The previously approved site work was to include construction of a 14' paved private roadway and a T shaped turnaround within the cul de sac; installation of stormwater drainage facilities; and construction of water lines to connect Lot 2B-1 to the Town's system. Lot 2B-1 would be serviced by a new on-site septic system.

The approved infrastructure construction work has not occurred; Lot 2B-1 has not been sold. As a result of soil tests completed in April 22, 2009, the applicant has determined that the utility arrangement, driveway, site grading and stormwater management design need to be modified to accommodate the needed sewage disposal system for Lot 2B-1.

The applicant also wishes to modify the prior Certificate of Action/Decision and Covenant to allow the applicant to convey Lot 2B-1 and Parcel A to a new owner who will be responsible for the infrastructure construction.

IV. MODIFICATION DESCRIPTION - The modified design is shown on *Alternative Driveway and Grading Plan* – Daniels Wood II Definitive Subdivision Modification, dated October 29, 2009, last revised December 17, 2009, prepared by Faist Engineering of Southbridge, MA and O'Driscoll Land Surveying co. of Medway, MA. As described by the applicant, the intended purpose of the revised design is to provide for:

- A. the use of graded drainage pathways instead of the catch basin and drywell system to control storm water runoff across Lot 2B-1 to the low point on Lot 2B-2.
- B. the creation of an 18" grass basin and swale to allow for the natural infiltration of storm water runoff from the single family home driveway;
- C. the construction of a gravel emergency vehicle turnaround area within the cul-de-sac area to reduce runoff; and
- D. the reduction in the size of the proposed house size on Lot 2B-1 to a 1,800 sq. ft. footprint (as compared to the original 3,200 sq. ft footprint on the original Daniels Wood II plan)

- E. the development of a limited Operation and Maintenance Plan for the maintenance of Parcel A and its associated stormwater management system.

The proposed *Alternative Driveway and Grading Plan* will supplement the original *Daniels Wood II Definitive Subdivision Plan* last revised May 23, 2008, endorsed by the Planning Board on May 27, 2008, and recorded at the Registry of Deeds on September 15, 2009. The *Alternative Driveway and Grading Plan* essentially replaces Sheets 4 and 5 of the *Daniels Wood II Definitive Subdivision Plan* and also serves to void the *Driveway Infiltration Field Detail* and *Street Cross Section Detail* on Sheet 6 as they are no longer required because of the modified design.

The roadway layout and lot delineation shown on the new *Alternative Driveway and Grading Plan* vary slightly from the original Daniels Wood II plan (5-23-08). Lot 2B-1 is now shown as 23,463 sq. ft. as compared to 24,212 q. ft. This is a correction provided by the current land surveyor.

V. PROCEDURAL SUMMARY: With respect to the proposed modification to the Daniels Wood II Definitive Subdivision Plan and its associated Certificate of Action, the Planning and Economic Development Board verifies that:

- A. On October 30, 2009, it received an application to modify the *Daniels Wood II Definitive Subdivision Plan* and Certificate of Action/Decision.
- B. On November 10, 2009, it circulated the *Alternative Driveway and Grading Plan* to various Town boards and departments, including the Board of Health, soliciting review comments and noting that a public hearing was scheduled to begin on November 24, 2009. The Board of Health did not provide any written comments.
- C. On November 24, 2009, it commenced a public hearing on the proposed plan modification. The public hearing was duly noticed on November 9 and 17, 2009 in the *Milford Daily News*. Abutter notice was sent by certified mail to abutters, parties of interest and to the Planning Boards of adjacent communities on November 3, 2009. The public hearing was continued to January 12, 2010 at which time it was closed. At the public hearing, comments were received from the general public, municipal boards/ departments, PGC Associates (the Town's Consulting Planner), Tetra Tech Rizzo (the Town's Consulting Engineer), the applicant and members of the applicant's development team. All persons in attendance were provided the opportunity to comment and present evidence. All members voting on the definitive plan modification were present at all sessions.

VI. VOTE OF THE BOARD – At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on March 16, 2010, after having carefully reviewed the application and all plans, materials and

documentation presented by the applicant, the Board's consultants, abutters and the general public, comments from Town officials and boards, a motion was made by Bob Tucker and seconded by Chan Rogers to approve the *Alternative Driveway and Grading Plan* for the Daniels Wood II Definitive Subdivision prepared by FAIST Engineering and O'Driscoll Land Surveying, Inc., originally dated October 29, 2009, last revised December 17, 2009, as a modification to the *Daniels Wood II Definitive Subdivision Plan*, subject to the *Specific and General Conditions* as specified herein and with *Waivers* from the *Subdivision Rules and Regulations* dated April 26, 2005 also as specified herein. The motion was approved by a vote of 3 in favor (Andy Rodenhiser, Chan Rogers & Bob Tucker) and 1 opposed (Karyl Spiller-Walsh).

VII. EXHIBITS – Plans and Documents

Specified below is a list of application materials, public comments, consultant and town review documents, and supplemental information filed by the Applicant. All information is on file with the Planning and Economic Development Board and is available for public review.

Daniels Wood II Definitive Subdivision Plan Certificate of Action

Issued by the Medway Planning Board on April 29, 2008.

Daniels Wood II Definitive Subdivision Plan

Prepared by FAIST Engineering & O'Driscoll Land Surveying
Originally dated September 23, 2007; last revised May 23, 2008
Endorsed by the Medway Planning Board – May 27, 2008

Alternative Driveway and Grading Plan – Daniels Wood II Definitive Subdivision Modification

prepared by Faist Engineering of Southbridge, MA and O'Driscoll
Land Surveying Co. of Medway, MA.
Dated October 29, 2009,
Last revised December 17, 2009,

Stormwater Management Letter/Report

Letter/Report prepared by Faist Engineering - October 29, 2009 including excerpts from the Massachusetts Stormwater Handbook (January 2, 2008) and limited stormwater management calculations

Pre-Post Development: Limited Drainage Calculations & HydroCAD Report –
December 28, 2009, prepared by Faist Engineering.

Daniels Wood II - Lot 2B-1 Long Term Operation and Maintenance Plan- Site Stormwater Management System

Prepared by Faist Engineering – October 2009

Soil Suitability Assessment for On-Site Sewage Disposal, prepared by O'Driscoll Land Surveying Co, April 22, 2009

Waiver Request

Prepared by Faist Engineering, October 29, 2009

Town Engineering Consultant Review Letters - David Pellegrini, P.E., Tetra Tech Rizzo, Inc.

November 4, 2009 review letter responding to initial application
January 4, 2010 review letter responding to revised *Alternative Driveway and Grading Plan* dated December 17, 2009 and additional information submitted on December 29, 2009.

Medway Departmental/Board Review Comments

Memo from Medway Fire Chief Paul Trufant

Supplemental Information Provided By Applicant

December 28, 2009 letter David Faist, Faist Engineering responding to the November 20, 2009 review letter from David Pellegrini, Tetra Tech Rizzo.

VIII. PUBLIC HEARING SUMMARY: The public hearing and review of the Alternative Driveway and Grading Plan for Daniels Wood II was conducted over the course of two (2) Planning and Economic Development Board meetings (11-24-09 and 1-12-10) during which substantive information was presented, evaluated and discussed. The plan was reviewed for compliance with the *Subdivision Rules and Regulations* dated April 26, 2005.

Citizen/Resident Testimony

Frederic Sibley, owner

Professional Review/Testimony

Gino Carlucci, AICP, PGC Associates, Inc., Medway Planning Consultant
David Faist, PE, FAIST Engineering, engineer for the applicant
Paul Yorkis, Patriot Real Estate, representing the applicant
David Pellegrini, PE, Tetra Tech Rizzo, Inc., Medway Engineering Consultant
Glenn Murphy, Attorney for the applicant

Other Testimony - None

IX. PROJECT EVALUATION CRITERIA – Before taking action on a Definitive Plan, the Board must evaluate the proposed development according to the criteria as specified in Section 5.16 of the *Subdivision Rules and Regulations*. At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on March 16, 2010 a motion was made Chan Rogers and seconded by Bob Tucker to approve the Project Evaluation *Findings* as such pertain to the proposed modification as conditioned and approved by this Certificate of Action. The motion was approved by a vote of 3 in favor (Andy Rodenhiser, Chan Rogers and Bob Tucker) and 1 opposed (Karyl Spiller-Walsh).

5.16.1 Completeness and technical accuracy of all submissions.

Findings – The staff and consultants have reviewed the submitted information and the applicant and its development team have provided additional submissions, information and revisions as requested. Therefore, the Planning and Economic Development Board finds that this criterion is met.

5.16.2 Determination that the street pattern is safe and convenient and that proper provision is made for street extension. The Board may disapprove a plan where it determines that dangerous traffic or unsafe conditions may result from the inadequacy of the proposed ways within the subdivision.

Findings – This modification does not significantly change the street pattern previously approved. The extension of the street serves just 2 lots and the existing segment, which currently functions as a “driveway” serving a single lot, will be widened to accommodate the second lot. Future extension is not a viable option as the abutting lot has a restriction against further subdivision. Therefore, the Planning and Economic Development Board finds that this criterion is met.

5.16.3 Determination that development at this location does not entail unwarranted hazard to the safety, health and convenience of future residents of the development or of others because of possible natural disaster, traffic hazard or other environmental degradation.

Findings – The design of this development includes a drainage system reviewed by the Town’s consulting engineer and determined to be adequate. The location of the site and the grading of the lot ensure that it is generally protected from natural disasters. As noted above, the street pattern is also safe and traffic will be minimal. Therefore, the Planning and Economic Development Board finds that this criterion is met.

5.16.4 Determination, based on the environmental impact analysis, where submitted, that the subdivision as designed will not cause substantial and irreversible damage to the environmental, which damage could be avoided or ameliorated through an alternative development plan.

Findings – As a single lot with minimal street development, the environmental impact of this development is minimal and even falls below the threshold subject to DEP’s stormwater management regulations. Also, the development results in the preservation of an abutting 5.32-acre parcel as a single lot, which might have been further subdivided under another development plan. Therefore, the Planning and Economic Development Board finds that this criterion is met.

5.16.5 Determination that the roads and ways leading to and from the subdivision shall be adequate to provide emergency medical, fire and police protection as well as safe travel for the projected volume of traffic. The Board may disapprove a plan where it determines that

dangerous traffic or unsafe conditions may result from the inadequacy of the proposed access or of any ways adjacent to or providing access to the subdivision.

Findings – The proposed new roadway serves a single additional lot and the segment leading to it, which functions as a driveway serving a single lot, is being widened to accommodate the second lot. It has been reviewed by the Police and Fire Departments and has been determined to be adequate for the provision of emergency services. Therefore, the Planning and Economic Development Board finds that this criterion is met.

5.16.6 Conformity with all applicable requirements of the Medway Zoning By-Law including but not limited to minimum area and frontage standards.

Findings – The proposed modification corrects the lot size to 23,463 square feet which exceeds the minimum area required by the Zoning Bylaw of 22,500. The frontage requirement is also met by the new cul-de-sac. All other applicable zoning requirements are also met. Therefore, the Planning and Economic Development Board finds that this criterion is met.

5.16.7 Consistency with the purposes of the Subdivision Control Law.

Findings – The modification of this previously-approved development continues to meet the purposes of the Subdivision Control Law in that a street layout is created to serve a lot meeting the requirements of the Zoning Bylaw. The Subdivision Rules and Regulations have been waived in accordance with the circumstances of the development, but the project is essentially consistent with the purposes of subdivision control. Therefore, the Planning and Economic Development Board finds that this criterion is met.

- X. WAIVERS** – The Applicant has requested the following additional waivers from certain provisions of the *Medway Subdivision Rules and Regulations*, dated April 26, 2005. Please note that the *Daniels Wood II Definitive Subdivision Plan Certificate of Action* issued by the Medway Planning Board on April 29, 2008 included other waivers from selected provisions of Sections 5, 6 and 7 of the *Subdivision Rules and Regulations*. Those waiver approvals remain in effect.

SECTION 5. PROCEDURES FOR SUBMISSION AND REVIEW OF DEFINITIVE SUBDIVISION PLANS

SECTION 5.20.2 a) – Performance Guarantee – Restriction Covenant – *A Restrictive Covenant shall be executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be completed to serve any lot before such lot may be built upon or conveyed.*

EXPLANATION - The applicant seeks a waiver from this regulation to allow Lot 2B-1 to be sold to a new owner who will be responsible for the construction of the services and infrastructure shown on the plan. Otherwise, it places a heavy financial burden on the applicant to construct the infrastructure before selling the lot.

FINDINGS - The Board finds this to be a reasonable request in light of the small size of the development. A condition shall be included in this decision to not allow a building permit to be issued to construct a home on Lot 2B-1 until the required roadway and infrastructure is completed to the Board's satisfaction.

SECTION 7. CONSTRUCTION STANDARDS

SECTION 7.7.1 - 7.7.5 Stormwater Management

EXPLANATION - The applicant seeks a waiver from the provisions of the Stormwater Management standards of the *Subdivision Rules and Regulations* due to the small scale and size of the development site and the need to redesign the site and Parcel 2B-1 to accommodate the correctly sized septic system.

FINDINGS - The *Medway Subdivision Rules and Regulations* provide that the Board may modify the stormwater requirements to address specific needs of a particular site. The *Rules and Regulations* also defer to the Mass DEP Stormwater Management Policy. That policy, dated January 2, 2008, specifically exempts a single family house and housing developments comprised of detached single family dwellings on four or fewer lots from its provisions. Accordingly, the Planning and Economic Development Board finds its stormwater management provisions are not applicable for the following reasons:

- The modified plan includes only Lot 2B-1 and Parcel A, which combined are less than one acre in size and therefore the subject lot and parcel are exempt from the Mass DEP Stormwater Management Policy.
- At the request of the Planning and Economic Development Board, the applicant has provided limited stormwater analysis and the plan shows a scaled back "country style" drainage system that has been reviewed by the Town's Consulting Engineer and found to adequately mitigate the increased flow and volume of stormwater runoff that will be created by the construction of a single family home on Lot 2B-1 and the associated extension of Daniels Road.

Action on WAIVER FINDINGS - At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on March 16, 2010, a motion was made by Bob Tucker and seconded by Chan Rogers to approve the above noted Waiver Findings. The motion was approved by a vote of 3 in favor (Andy Rodenhiser, Chan Rogers, and Bob Tucker) and 1 opposed (Karyl Spiller-Walsh).

Action on WAIVER REQUEST – At a duly called and properly posted meeting of the Medway Planning and Economic Development Board held on March 16, 2010, a motion was made by Bob Tucker and seconded by Chan Rogers to approve the above requested Waivers from the *Subdivision Rules and Regulations*. The motion was approved by a vote of 3 in favor (Andy Rodenhiser, Chan Rogers, and Bob Tucker) and 1 opposed (Karyl Spiller-Walsh).

XI. CONDITIONS – The following specific and general conditions shall apply to the Applicant, its executors, administrators, devisees, heirs, successors and assigns:

Specific Conditions

1. It is expressly understood that this modification applies to Lot 2B-1, Lot 2B-2 and cul de sac Parcel A as shown on the original *Daniels Wood II Definitive Subdivision Plan* and the new *Alternative Driveway and Grading Plan*. As a permanent condition of this plan, no further subdivision of Lot 2B-2 will be allowed. The applicant is required to record a deed restriction pertaining to Lot 2B-2 to the satisfaction of the Planning and Economic Development Board and Town Counsel. The prior agreement to not allow any further subdivision of Lot 2C as shown on the original *Daniels Wood II Definitive Subdivision Plan* remains in effect.
2. The applicant or his successors in title shall construct the roadway and all related infrastructure including stormwater facilities and utility extensions as shown on the *Alternative Driveway and Grading Plan*. Construction shall commence within Parcel B, continue easterly and conclude at the eastern end of Parcel A at Station 8+50.37. The entire length of the roadway shall be paved 14' wide.
3. **Ownership/Maintenance**
 - A. The extension of the Daniels Road right of way and the stormwater drainage facilities through Parcel B and onto Parcel A will be privately owned. Parcel B shall be owned in common by the owners of new Lot 2B-1 and the owners of the property at 10 Daniels Road (Medway Assessors Map 5 - Parcel 354E12) and maintained by both parties. Parcel A shall be owned and maintained by the owner of the new Lot 2B-1. It is the intent of the Planning and Economic Development Board that these facilities will never be accepted by the Town of Medway.
 - B. The Board requires that the following aspects of the development shall be and remain forever private, and that the Town of Medway shall not have, now or ever, any legal responsibility for operation or maintenance of same:
 - 1) Roadway
 - 2) Stormwater management facilities
 - 3) Snowplowing/sanding
 - 4) Landscaping
 - 5) Street lights

4. **MITIGATION PLAN**

- A. The extension of Daniels Road as shown on this plan will be a private way in perpetuity and thus the Town will be relieved of the on-going responsibility and expense for its upkeep and maintenance.
- B. The stormwater management facilities will be privately maintained and thus the Town will be relieved of the on-going responsibility and expense for their upkeep and maintenance.
- C. ~~The applicant has agreed to not further divide Parcel 2B-2 (5.32 acres) or Lot 2C as shown on the original Daniels Wood II Definitive Subdivision Plan to the extent that might be otherwise allowed per the Medway Zoning Bylaw for the AR11 zoning district. The applicant will permanently restrict such further division of the aforementioned parcels through a deed restriction to be prepared and approved by Town Counsel and recorded at the Norfolk County Registry of Deeds.~~
- D. The reduced width of road paving will result in reduced disturbance to the topography and have less impact on the site's natural features and resources.

5. **Timetable for Completion** – Construction of the roadway and all related infrastructure including the stormwater management system and installation of all utilities as shown on the Daniels Wood II Modified Plan shall be installed to the satisfaction of the Planning and Economic Development Board, within three (3) years of the date of plan endorsement. A request to extend the completion time limits must be made in writing to the Board at least thirty (30) days prior to said expiration date. The Board reserves its right and power to grant or deny such extension, to make any appropriate changes to this decision, and to require appropriate further modifications of the modified Daniels Wood II definitive plan.

6. **Plan Revisions** - Prior to plan endorsement, the *Alternative Driveway and Grading Plan* dated October 29, 2009, last revised December 17, 2009 will be further revised as follows:

- A. Sheet 1
 - 1) The Plan Set shall be titled – Daniels Wood II Definitive Subdivision Modification; Sheet 1 is Alternative Driveway and Grading Plan
 - 2) The final plan revision date
 - 3) The list of additionally Approved Waivers
 - 4) ~~Standard Subdivision plan reference to a Covenant~~
 - 5) The boundaries of Parcel B need to be checked and revised to NOT include that portion of the Daniels Road public right of way that extends easterly from the end of the cul de sac for Daniels Road (public way) ending at Station 5+79.01

- 6) The drainage easement shall be shown to extend further onto Lot 2B-2.
- 7) Reference to a Private Roadway Agreement

- B. A Sheet 2 titled "Easement Plan" shall be added to the Plan Set. The Easement Plan shall show the property lines and easements as per the Planning & Economic Development Board's Decision. Area of all lots and parcels shall be shown. Sheet 2 shall also include the standard Definitive Subdivision Plan reference to a Covenant and signature box.
- C. The plan shall be revised to reflect all conditions as specified in this Certificate of Action. The Applicant shall provide such revised plan to the Planning and Economic Development Board and the Town's Consulting Engineer for review and approval. All conditions of this Certificate of Action must be addressed to the satisfaction of the Town's Consulting Engineer and the Planning and Economic Development Board before the Planning and Economic Development Board will endorse the OSRD definitive plan.

7. Legal Documents

- A. **Deeds** – Prior to plan endorsement, the Applicant shall provide the Planning and Economic Development Board with a copy of the deed to be used to convey Lot 2B-1 and Parcel A for review, comment, amendment and approval by Town Counsel. The deed shall clearly state that the owner of Lot 2B-1 or its assigns shall own and be responsible for the maintenance and upkeep of all improvements and infrastructure on Parcel A including the stormwater management system. The owner of Lot 2B-1 will also share in the responsibility for the upkeep and maintenance of the private roadway on Parcel B. Other deeds may be required as determined by Town Counsel.
- B. **Easements** – Prior to endorsement, the Applicant shall provide the Planning and Economic Development Board with a copy of the proposed easements for review, comment, amendment and approval by Town Counsel. These easements include, but are not limited to: slope and drainage easement on Lots 2B-1 and 2B-2 and a driveway easement on Parcel B. Additional easements may be required at the direction of Town Counsel.
- C. **Private Roadway Agreement** – The owners of Lot 2B-1, Parcel A and 10 Daniels Road (Parcel 354E12 - Medway Assessors Map 5) are subject to an existing Private Roadway Agreement. Prior to endorsement, the Applicant shall provide the Planning and Economic Development Board with a copy of the existing Private Roadway Agreement for review, comment, amendment if necessary and approval by Town Counsel. At a minimum, the Agreement shall include language regarding the property owners' responsibility for the up-keep, repair, and on-going maintenance of the roadway including snowplowing and sanding and the operation and maintenance of the stormwater facilities.

8. Plan Endorsement

- A. The original drawings of all sheets of the final *Daniels Wood II Definitive Subdivision Plan Modification* shall be endorsed by the signatures of a majority of the Planning and Economic Development Board within ninety (90) days after the statutory twenty (20) day appeal period has elapsed following the filing of the Board's Certificate of Action with the Town Clerk and the Clerk has notified the Board that no appeal has been filed. If the final Daniels Wood II Definitive Plan Modification is not submitted for endorsement within ninety days, this approval decision shall expire unless the deadline is extended at the applicant's request by the Planning and Economic Development Board.
- B. *Copies of Endorsed Plans* - Within thirty (30) days after plan endorsement, the Applicant shall provide the Town with one set of the endorsed plans in 11" x 17" and eight sets in 24" by 36" paper format. The Applicant shall also provide the approved plan in CAD format compatible with the Medway GIS and acceptable to the Medway Board of Assessors. The applicant may be required to pay any reasonable associated costs, to update the Medway GIS/Assessor's maps relative to this subdivision.

9. Recording of Plans and Documents

- A. Within ninety (90) days of plan endorsement, the following documents/ plans shall be recorded at the Norfolk County Registry of Deeds:
- 1) Daniels Wood II Certificate of Action approved by the Medway Planning Board on April 29, 2008.
 - 2) Daniels Wood II Definitive Subdivision Plan Modification – all sheets as endorsed by the Planning and Economic Development Board
 - 3) Daniels Wood II Definitive Subdivision Plan Modification - Certificate of Action/Decision dated March 16, 2010.
 - 4) Subdivision Covenant
 - 5) Certificate of No Appeal from the Medway Town Clerk
 - 6) Deed Restriction applicable to Parcels 2B-2 and 2C.
 - 7) Easements – Slope & Drainage; Driveway, etc.
 - 8) Other documents as may be required by Town Counsel
- B. Within thirty (30) days of recording the Daniels Wood II Definitive Subdivision Plan Modification and all associated documents with the Norfolk County Registry of Deeds, the Applicant or his assign shall provide the Planning and Economic Development Board with a receipt from the Norfolk County Registry of Deeds indicating that all documents have been duly recorded, or supply another alternative verification that such recording has occurred.

10. **Maintenance Responsibility During Construction** - The Applicant or its assigns shall provide for snow plowing, sanding and full maintenance of the applicable portion of Daniels Road and all related infrastructure including stormwater management facilities throughout the entire construction process.

11. **Building Permits**

- A. No building permit for Lot 2B-1 shall be issued before the Planning and Economic Development Board endorses the Daniels Wood II Definitive Plan Modification.
- B. Before the Board will authorize a building permit for construction of a home on Lot 2B-1, the following items, at a minimum must be installed and inspected and approved by the Board:
 - 1) Roadway gravel subbase
 - 2) Roadway binder course
 - 3) Drainage system completed to the proposed outfall with frame and grates set to binder grade, as well as detention basins, swales, infiltrations systems or any other stormwater management facilities.
 - 4) As-built plan of each detention pond and forebay and all critical elevations and details of the associated structures, pipes and headwalls.
 - 5) Provisions for fire prevention and protection. Municipal water service to be constructed, installed and functional.

12. **Performance Security**

- A. *Covenant* - Prior to plan endorsement, the Applicant shall sign a *Covenant*, on a form provided by the Planning and Economic Development Board, to be reviewed and approved by Town Counsel, to secure construction of the way and all related infrastructure and installation of utilities and services as specified in the approved Daniels Wood II Definitive Plan Modification. Reference to the *Covenant* shall be noted on the cover sheet of the Daniels Wood II Definitive Plan Modification. The *Covenant* shall specify that no building may be constructed on Lot 2B-1 unit until such services are completed or an alternative form of security is provided. The *Covenant* shall specify that the roadway and all infrastructure including the stormwater management system shall be constructed and all utilities and services shall be installed to the satisfaction of the Planning and Economic Development Board within 3 years of the date of plan endorsement. The *Covenant* shall be recorded at the Norfolk County Registry of Deeds at the same time the Daniels Wood II Definitive Plan Modification and this Certificate of Action/ Decision are recorded.

B. Alternative Performance Security

- 1) At such time as the Owner of Lot 2B-1 wishes to secure a building permit to construct a house on Lot 2B-1, the security provided by the *Covenant* shall be replaced by one of the types of performance guarantees set forth in M.G.L. Ch. 41, Section 81U, which method or combination of methods may be selected and from time to time varied by the applicant, in a sufficient amount, source and form acceptable to the Planning and Economic Development Board, the Treasurer/Collector and Town Counsel. The performance guarantee shall be accompanied by an agreement which shall define the obligations of the developer and the performance guarantee company including:
 - a. the date by which the developer shall complete construction
 - b. a statement that the agreement does not expire until released in full by the Planning and Economic Development Board
 - c. procedures for collection upon default.

- 2) *Amount* - The amount of the performance guarantee shall be equal to 100% of the amount that would be required for the Town of Medway to complete construction of the roadway and installation of stormwater management facilities, utilities, services, pedestrian facilities and all site amenities as specified in the Daniels Wood II Definitive Plan Modification that remain unfinished at the time the performance guarantee estimate is prepared if the developer failed to do so. The security amount shall be approved by the Planning and Economic Development Board based on an estimate provided by the Town's Consulting Engineer based on the latest weighted average bid prices issued by the Mass Highway Department. The estimate shall also include the cost to maintain the roadways and infrastructure in the event the developer fails to adequately perform such. 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. 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 twenty-five percent (25%) contingency.

- C. Adjustment of Performance Guarantee** – At the developer's written request, the amount of the performance guarantee may be reduced from time to time over the course of the construction project by vote of the Planning and Economic Development Board upon the partial completion of the roadways and infrastructure improvements as defined herein. In order to establish the amount to adjust the performance guarantee, the Town's Consulting Engineer shall prepare an estimate of the current cost

for the Town to complete all work as specified on the Daniels Wood II Definitive Plan Modification that remains unfinished at the time the estimate is submitted to the Board. The estimate shall be based on unit prices in the latest Weighted Average Bid Prices issued by the MassHighway Department. The estimate shall also include the cost to maintain the roadways, stormwater management system and other infrastructure in the event the developer fails to adequately perform such. 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 fees, staff time and public bidding procedures. In determining the amount of the adjustment of the performance guarantee, the Board shall be guided by the following formula to determine the reduction amount: the estimate of the Town's Consulting Engineer of the cost to complete the work; plus a twenty-five percent (25%) contingency.

- D. *Final Release of Performance Security* - Final release of performance security is contingent on project completion.

13. **Project Completion**

- A. **As-Built Plans** – Upon completion of all work included on the plan and specified in the Decision, the Applicant or its assigns shall have prepared and provide as-built construction plans of the roadways, utilities. Such as-built plans shall be prepared in accordance with the *Subdivision Rules and Regulations* in effect at the time the as-built plans are submitted. The as-built plans shall be determined to be complete and approved by the Planning and Economic Development Board. The Applicant or its assigns shall provide the final as-built plan in CAD format compatible with the Medway GIS and acceptable to the Medway Board of Assessors. The Applicant may be directed to pay any reasonable associated costs, as may be determined to update the Medway GIS/ Assessor's maps relative to this development.
- B. **Certification of Completion and Compliance** – A Letter of Completion and Compliance signed under oath by the applicant or its assigns and signed and stamped by a Professional Engineer registered in the Commonwealth of Massachusetts, who shall attest and certify that all facets of the subdivision work including roadway and all infrastructure was constructed and completed in strict compliance with the approved and endorsed the *Subdivision Rules and Regulations*, shall be provided to the Board.
- C. Certificate of Compliance from the Medway Conservation Commission relative to any Order of Conditions for the site.
- D. Proof of taxes paid to the Town of Medway for Lot 2B-1 and Parcel A by the applicant or its assigns.

- E. Sign-offs from the Planning and Economic Development Board, the Town's Consulting Engineer, Medway Fire Department, Medway Police Department and other Town departments/boards/ committees with jurisdiction.
 - F. The project's design engineer shall provide a signed statement verifying that the roof drain system for the constructed house is of adequate size to accommodate all of its stormwater runoff.
14. All other provisions/conditions of the Daniels Wood II Definitive Subdivision Plan Certificate of Action dated April 29, 2008 which have not been changed due to this Certificate of Action shall also apply.

General Conditions

15. **Expiration of Appeal Period** - Prior to plan endorsement, the Planning and Economic Development Board must receive the statutory notification of the expiration of the twenty (20) day appeal period from the Town Clerk's office.
16. **Payment of Balance of Fees/Taxes** - Prior to plan endorsement, releases, security adjustments or plan modifications, the Applicant shall pay the balance of any outstanding plan review and construction services by any outside consultants retained by the Planning and Economic Development Board and any other outstanding expenses, obligations or fees due the Town of Medway pertaining to these properties. The Applicant shall also provide proof from the Medway Town Treasurer/Collector that all real estate taxes are current to that date for all property included in this development.
17. **Order of Conditions** - Prior to plan endorsement, the Applicant shall provide the Planning and Economic Development Board with a copy of any and all "Order of Conditions" as issued by the appropriate agency, and recorded by the Applicant, pursuant to the Massachusetts Wetlands Protection Act. Any changes to the Definitive Open Space Plan that may be required under the "Order of Conditions" shall be presented to the Planning and Economic Development Board by the Applicant, for review and approval as a modification to the Definitive Plan. The Planning and Economic Development Board reserves the right to work with the issuing authority to accomplish any mutually acceptable modifications to the "Order of Conditions" that may be deemed appropriate by the Planning and Economic Development Board and the Town's Consulting Engineer. After the public hearing and acceptance of the modifications to the plan, the Planning and Economic Development Board shall take action on the modified plan, reporting said action to the Town Clerk. The statutory notification of the expiration of the twenty (20) day appeal period must be received from the Town Clerk's office before the Planning and Economic Development Board endorses the plan modification.

- Additionally, upon issuance of any "Order of Conditions" requiring further individual filings under the Massachusetts Wetlands Protection Act, the Applicant shall prepare an amended plan clearly identifying the lots requiring further action under the Wetlands Protection Act. The Applicant shall provide this plan for endorsement by the Planning and Economic Development Board and shall provide a receipt from the Registry of Deeds indicating that the endorsed amended plan has been duly recorded.
18. **Construction Account** – Inspection of roadway, infrastructure and utility construction by the Town's Consulting Engineer and review of legal documents by Town Counsel is required. Prior to plan endorsement, the Applicant shall pay an advance toward the cost of these services to the Town of Medway. The advance amount shall be determined by the Planning and Economic Development Board based on an estimate provided by the Town's Consulting Engineer. A construction account shall be established with the Medway Planning and Economic Development Board prior to plan endorsement. The Applicant shall provide supplemental payments to the Town of Medway, for reasonable construction inspection and legal services, upon invoice from the Planning and Economic Development Board, until the road construction and stormwater drainage system are completed, municipal services are installed, the as-built plan is reviewed and all legal documents associated with this development have been reviewed and determined to be satisfactory.
19. **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 applicant and its contractors shall at all times use all reasonable means to minimize inconvenience to abutters and residents in the general area. The following restrictions on construction activity shall apply:
- A. Outside construction shall not commence any day before 7 am and shall not continue beyond 6:00 p.m. including truck and machine start-up and movement.
 - B. There shall be no construction on any Sunday or legal holiday without the advance approval of the Board of Selectmen.
 - C. There shall be no off-site tracking of materials. Daily sweeping of roadways adjacent to the site shall be done to ensure that loose gravel/dirt does not create a hazardous or deleterious conditions for vehicles, pedestrians or abutting residents.
 - D. Blasting, if necessary, shall be limited to the hours between 9:00 am and 5:00 pm Monday through Friday.
20. **Modifications to Plan and/or Decision** – The Board, on its own motion on the petition of the Applicant or any person interested, may modify or amend or require a change in the Definitive Plan and/or the associated Certificate of Action. All of the provisions of the *Medway Subdivision Rules and Regulations* relating to the submission and approval of a plan shall be applicable to the approval of a

modification or amendment to the Certificate of Action. Any changes are subject to the *Rules and Regulations* in effect at the time a modification or amendment is sought.

21. Compliance

- A. All construction shall be as specified in the approved Daniels Wood II Definitive Plan and this Modification and shall be constructed in full compliance with the *Subdivision Rules and Regulations* and all applicable local, state and federal laws, including but not limited to the Americans with Disabilities Act, the NPDES permit requirements, the Massachusetts Department of Environmental Protection (DEP) Stormwater Management Policy requirements, MEPA requirements, the Massachusetts Wetland Protection Act (Chapter 131, Section 40, M.G.L.) and the regulations of the Massachusetts Architectural Access Board for handicap accessibility.
- B. The Planning and Economic Development Board shall use all legal options available to it, including referral of any violation to the Building Commissioner/Zoning Enforcement Officer for appropriate enforcement action to ensure compliance with this Decision.

XIII. APPEALS – Appeals, if any from this Decision shall be made to the Superior Court or to Land Court in accordance with M.G.L. Chapter 41, Section 81BB, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Medway Town Clerk.

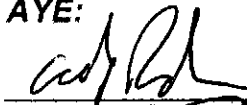
**DANIELS WOOD II DEFINITIVE SUBDIVISION PLAN MODIFICATION
CERTIFICATE OF ACTION**


Date of Action by the Medway Planning and Economic Development Board:

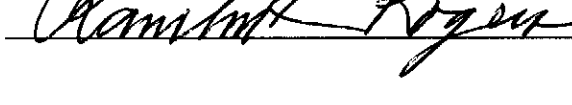
March 16, 2010

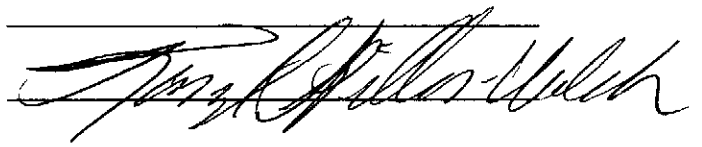
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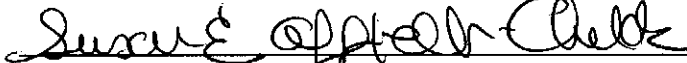








Date Signed: March 16, 2010

Attest: 
Susan E. Affleck-Childs
Planning and Economic Development Coordinator

March 16, 2010
Date

Date Filed with the Town Clerk:

RECEIVED
MAR 17 2010
TOWN CLERK

- Copies To:**
- Fred Sibley
 - Paul Yorkis, Patriot Real Estate
 - David Faist, Faist Engineering
 - Trish Brennan, Conservation Agent
 - John Emidy, Building Commissioner
 - Bill Fisher, Board of Health
 - Thomas Holder, DPW
 - Suzanne Kennedy, Town Administrator
 - Will Naser, Assessor
 - Melanie Philips, Treasurer/Collector
 - Barbara Saint Andre, Petrini & Associates Town Counsel
 - Dave Travalini, Conservation Commission
 - Paul Trufant, Fire Chief
 - Jeffrey Watson, Police Safety Officer
 - Maryjane White, Town Clerk
 - Gino Carlucci, PGC Associates
 - Dave Pellegri, Tetra Tech Rizzo