

DONATION AGREEMENT

This Donation Agreement (the “Agreement”) is by and between **HAYWARD 310 US ROUTE 2, LLC**, a Vermont limited liability company with a place of business in South Hero, Vermont (“Hayward”), and the **TOWN OF SOUTH HERO**, a Vermont municipality located in Grand Isle County, Vermont (the “Town”), and shall be effective as of the date of the last party to sign this Agreement (the “Effective Date”).

Background

1. Hayward is the owner of a parcel of land with improvements thereon containing 10.78 acres, more or less, as shown on a survey entitled: “Plat of Lands of Willis Fifield Trust, 310 U.S. Route 2, South Hero, Vermont,” prepared by Richard W. Bell Land Surveying, Inc, dated April 2021 and recorded on May 25, 2021 in Map Slide 116B of the Town of South Hero Land Records, which lands are all and the same lands and premises conveyed to Hayward by Warranty Deed from Dana Fifield Garrett, Trustee of the Willis K. Fifield Revocable Trust UAD 05/23/2012 by Warranty Deed dated July 16, 2021 and recorded in Volume 154 at Page 38 of the Town of South Hero Land Records (the “Hayward Property”).

2. The Town is a Vermont municipality which owns two adjacent parcels of land depicted on the above-referenced survey as “Parcel #RT320 Town of South Hero B. 10, P. 103 ‘White Fire Station’” and “Parcel #RT318 Town of South Hero B. 143, P. 423 ‘Red Fire Station’” on the above-referenced survey (the “Town Parcels”).

3. Hayward has expressed an intent to the Town to donate approximately 1.88 acres of the Hayward Property, contiguous to and behind the Town Parcels, for the future creation of a Town park (the “Town Park”) in the location shown as “Parcel ‘A’ 81840 Sq. Ft. 1.88 Acres, Proposed ‘Town Park’” on a boundary line adjustment plat entitled: “Lot Line Revision, Lands of Town of South Hero & Hayward US Route 2, LLC, U.S. Route 2, South Hero, Vermont,” prepared by Richard W. Bell Land Surveying, Inc, dated _____, 2024 and to be recorded in the Town of South Hero Land Records (the “Boundary Adjustment Plat”), a copy of which is attached hereto as Exhibit A.

4. The Town previously received ARPA funding, \$135,000.00 of which was allocated by the Town’s Selectboard towards the development of the Town Park to enhance the vitality of the Town’s village center, and to provide a recreation area to be enjoyed by Town residents and visitors.

5. Hayward now wishes to formally donate, and the Town wishes to accept, Parcel A as shown on the Boundary Adjustment Plat to the Town for use as a Town Park subject to the terms of this Agreement.

N O W , T H E R E F O R E ,

In consideration of the foregoing and mutual covenants herein contained, the parties hereby agree as follows:

Section 1. **Donation**. Hayward hereby agrees to irrevocably give, grant, convey and transfer to the Town all of Parcel A as shown on the Boundary Adjustment Plat for use as a Town Park within thirty (30) days after Hayward’s Closing Conditions (defined below) have been satisfied.

Section 2. **Intent of Donation**. It is the intent of Hayward: (a) to convey Parcel A as a gift to the Town to be used for a Town Park to support the vitality of the Town’s village center and provide an area for recreation for residents and visitors; (b) for the Town to utilize its prior ARPA funding of \$135,000.00 toward the planning, permitting, and construction or installation of the landscaping features and improvements for the Town Park as shown on the draft landscape plans for the Town Park attached hereto as

Exhibit B; and (c) that the \$135,000.00 of prior ARPA funding shall be spent on the Town Park planning, permitting, and construction or installation of the landscaping features and improvements as shown on Exhibit B within 36 months after the closing and transfer of title to Parcel A (together, "Hayward's Intent"). Hayward acknowledges and agrees that in order for the ARPA funding to be used as efficiently as possible, the Town may allow the Town's Road Crew to complete some of the planned improvements for the Town Park, which may include construction of the road and parking as well as any buried utilities or other site work required.

Section 3. **Town's Due Diligence**. The Town may perform its due diligence relating to Parcel A and the Town Park and shall complete its due diligence period on or before the forty-fifth (45th) day after the Effective Date (the "Due Diligence Date"). During the due diligence period, the Town may inspect Parcel A and conduct, at the Town's sole cost and expense, such reviews, tests and studies and take such actions as the Town shall deem appropriate in connection with its investigation of Parcel A, including, but not limited to the following:

- (a) Review of title to Parcel A.
- (b) Review of the permits and approvals for Parcel A and the Hayward Property.
- (c) Obtaining an Environmental Site Assessment of Parcel A.
- (d) Obtaining formal resolution from the Town Selectboard to approve the acceptance of Parcel A as a Town Park subject to the terms and conditions of this Agreement.

If the results of the Town's due diligence are not acceptable to the Town for any reason, the Town may, in the Town's sole discretion, on or before the Due Diligence Date elect to: (i) rescind this Agreement by providing written notice of termination to Hayward, in which case all of the rights and obligations of the parties to this Agreement shall cease and terminate; or (ii) waive the satisfaction of such conditions and proceed with the transaction contemplated by this Agreement. The failure of the Town to provide its termination or extension notice on or before the Due Diligence Date shall be deemed a waiver of the satisfaction of the above conditions.

Section 4. **Closing Conditions**. Hayward's obligation to close under this Agreement shall be conditioned upon the following ("Hayward's Closing Conditions"):

- (a) Hayward obtaining, at its own cost and expense, all necessary and final permits and approvals required for the creation of Parcel A as a boundary adjustment parcel as shown on the Boundary Adjustment Plat, including municipal boundary adjustment approval and approval of the Wastewater System and Potable Water Supply Permits for the Hayward Property.
- (b) The Town accepting the Warranty Deed for Parcel A with the following terms and conditions:
 - (i) Parcel A shall be conveyed as fee simple determinable, meaning that Parcel A shall be conveyed to the Town for so long as it is used as a Town Park for public use and enjoyment; and in the event Parcel A is no longer used as a Town Park then Parcel A shall revert back to Hayward and its successors and assigns.
 - (ii) Parcel A shall also be conveyed subject to the condition that the \$135,000.00 of prior ARPA funding shall be spent on the Town Park planning, permitting, and construction or installation of the landscaping features and improvements as shown

on Exhibit B within 36 months after the date of the Warranty Deed for Parcel A and, in the event that substantial progress towards the use of the \$135,000.00 of prior ARPA funding for the design, construction or installation of the landscaping features and improvements of the Town Park has not occurred within 36 months after the date of the Warranty Deed for Parcel A, then Parcel A shall revert back to Hayward and its successors and assigns.

- (iii) The Warranty Deed shall contain the following reserved easements for the benefit of, and future development of, the Hayward Property:
 - (A) A temporary easement for the placement of a dumpster enclosure for trash, recycling and compost serving the restaurant located on adjacent Parcel #RT316 owned by Hayward's affiliate, Hayward 316 US Route 2, LLC, the present location of the dumpster enclosure is shown on the Boundary Adjustment Plat, for so long as a restaurant is operated in the building on Parcel #RT316, and in the event a restaurant is no longer operated on Parcel #RT316 then this easement shall terminate. The Town may relocate this temporary easement and enclosure to a mutually agreed location, at the Town's expense, at any time to facilitate the Town Park implementation.
 - (B) An existing permanent easement 15' in width for sewer force mains shown as "Existing Easement for Sewer Force Mains To Also Benefit Hayward 310 U.S. Route 2, LLC" as shown on the Boundary Adjustment Plat.
 - (C) Permanent easements 15' and 30' in width for above ground drainage ditches and/or subsurface piping depicted as "Proposed Stormwater Drainage Easement to Benefit Hayward U.S. Route 2, LLC" on the Boundary Adjustment Plat, including maintenance, repair and replacement of existing underground field drainage tile.
 - (D) Permanent access easement in common with the Town and others depicted as "Proposed 50' Access Easement to Benefit Town of South Hero, Hayward 310 U.S. Route 2, LLC and SP Properties, Inc." on the Boundary Adjustment Plat.
- (iv) The Warranty Deed shall contain a provision that any material changes to the planned landscaping and improvements for the Town Park shown on Exhibit B made prior to initial installation shall be approved in writing by Hayward, which approval not to be unreasonably withheld, conditioned or delayed.

If Hayward's Closing Conditions are not satisfied within fifty (50) days after the Effective Date (the "Closing Condition Date"), Hayward may elect to: (i) rescind this Agreement by providing written notice of termination to the Town, in which case all of the rights and obligations of the parties to this Agreement shall cease and terminate; or (ii) waive the satisfaction of such conditions and proceed with the donation contemplated by this Agreement. The failure of Hayward to provide its termination notice on or before the Closing Condition Date shall be deemed a waiver of the satisfaction of the above conditions.

Section 5. **Access/Indemnity.** Hayward agrees to cooperate with the Town's due diligence inspection as follows:

- (a) Hayward hereby authorizes the Town and its agents, employees and invitees to go on Parcel A for the purpose of making such inspections, tests, surveys and other studies as are

reasonably necessary or appropriate for the Town to carry out its obligations under this Agreement including.

- (b) The Town agrees to restore any damage to Parcel A resulting from the conduct of any such inspections, tests and/or studies and shall indemnify and hold Hayward harmless from any and all liability arising from its entry or the entry of the Town's agents upon Parcel A for the purposes of conducting such inspections, tests and/or studies.

Section 6. **Closing.** The closing and transfer of title to Parcel A (the "Closing") shall take place at an agreed upon location in South Hero, Vermont within thirty (30) days after the satisfaction of Hayward's Closing Conditions (the "Closing Date"), or on such earlier date or at such other place as may be mutually agreed upon. The Property shall be delivered at Closing, free of all personal property and tenants and/or persons in possession.

Section 7. **Transfer Documents.** Hayward shall deliver to the Town, at the Closing, in form satisfactory to the Town and its counsel:

- (a) A limited liability resolution in recordable form authorizing the transfer of Parcel A to the Town and appointing a duly authorized agent to sign the Transfer Documents.
- (b) A standard Vermont Warranty Deed, sufficient to convey good, insurable and marketable title to Parcel A, subject to the terms, conditions and easements set forth above in Section 4(c), including standard terms and provisions for such easements.
- (c) A completed Vermont Property Transfer Tax Return.
- (d) In the event the sale of the Property is not exempt from Land Gains Tax, a certificate issued by the Vermont Department of Taxes certifying the amount of the Vermont Land Gains Tax due pursuant to the provisions of 32 V.S.A. §§ 10001, *et seq.* or certifying that no such tax is due on account of the transaction contemplated by this Agreement.
- (e) A partial discharge and/or termination statement for any existing mortgage, security interest, lease, lien or encumbrance on Parcel A.
- (f) Such affidavits, reports and agreements as may be required by the company issuing title insurance to the Town and to the institution providing financing to the Town, if any, to permit such title insurance company to issue the title insurance policy without standard exceptions for mechanic's liens or parties-in-possession.

Hayward shall provide the Town, or its attorney, with a copy of the proposed Warranty Deed and Transfer Documents no later than five (5) days before the Closing Date. Failure to make timely delivery of such copies shall not constitute a default under this Agreement, but shall entitle the Town, at its option, to delay closing until five (5) days following actual delivery of such copies.

Section 8. **Recording Fees and Costs of Closing.** Hayward shall bear the cost of preparing the documents described in Section 7(a)-(e) hereof. The Town shall pay the cost of the documents described in Section 7(f) and for the recording of the Warranty Deed and Transfer Tax Return delivered pursuant to Sections 7(b) and 7(c) hereof.

Section 9. **Title.** The Town shall cause title to Parcel A to be examined and shall notify Hayward within forty-five (45) days after the Effective Date of any encumbrances or defects in the title which render Parcel A unmarketable (the "Town's Title Objections"). Within ten (10) days after the date that Hayward

received the Town's Title Objections, Hayward shall provide the Town with written notice of its plan to address and/or resolve the Town's Title Objections ("Hayward's Title Plan"). If Hayward's Title Plan is not acceptable to the Town, the Town may terminate this Agreement on or before the Due Diligence Date, as described above in Section 3, by providing Hayward with its notice of termination, whereupon this Agreement shall be terminated and of no further force and effect. If, however, the Town does not object to Hayward's Title Plan and fails to provide notice of termination, as described above in Section 3, Hayward shall deliver at Closing, and the Town shall accept at Closing, such title as Hayward is able to convey under Hayward's Title Plan.

This Section shall not be construed to be a waiver of a claim against marketability by the Town for a defect arising between the date of the Town's Title Objections and the date of Closing, which defect(s) in that event shall be removed or corrected by Hayward prior to Closing.

As used herein, marketable title shall be defined as insurable title which is free from all liens or encumbrances of record, including, without limitation, any zoning, subdivision, flood plain, Act 250, public safety, fire code, electrical code, or other land use law violations which may subject the Town to an enforcement action or claim by any permitting authority exercising jurisdiction over Parcel A, or any protective covenants and/or easements which substantially impair the use of Parcel A for the Town Park.

Section 10. **Acceptance of Donation.** By accepting the Warranty Deed at the Closing, the Town agrees to accept Hayward's donation in accordance with Hayward's Intent and subject to the terms, conditions set forth herein. The Town further agrees to provide a donation letter at Closing confirming the charitable donation made by Hayward and following closing the Town shall execute an IRS Form 8283 or comparable related form for purposes of reporting Hayward's donation.

The Town also agrees that in connection with the development of the Town Park, a sign or plaque shall be installed which memorializes the donation being made by the Hayward Family.

Section 11. **Further Assurances.** The parties agree to execute, acknowledge and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intent and purpose of this Agreement.

Section 12. **Notices.** Any notice or other communication to be given hereunder shall be in writing and mailed, certified with return receipt requested, or telecopied or sent by nationally recognized overnight courier (e.g., Federal Express) to such party at the address or number set forth below:

If to Hayward: Hayward 310 US Route 2, LLC
 c/o Hayward Design Build
 38 Community Lane
 South Hero, VT 05486
 Telephone No.: (802) 578-3078
 E-mail: nate@haywarddesignbuild.com

with a copy to: Robert H. Rushford, Esq.
 Gravel & Shea PC
 P.O. Box 369
 Burlington, VT 05402-0369
 Telephone No.: (802) 658-0220
 Telecopier No.: (802) 658-1456
 E-mail: rrushford@gravelshae.com

If to the Town: Town of South Hero
 Attn: David Carter
 P.O. Box 175
 South Hero, VT 05486-0175
 Telephone No.: (802 372-5552)
 E-mail: dcarter@usa.net

With a copy to: _____

 Telephone No.: _____

 E-mail: _____

or to such other person, address or number as the party entitled to such notice or communication shall have specified by notice to the other party given in accordance with the provisions of this Section. Any such notice or other communication shall be deemed given: (i) if mailed, when deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by telecopy, when transmitted; or (iii) if sent by overnight service, next-day after sending.

Section 13. **Survival.** All of the terms, conditions, covenants and indemnity provisions of this Agreement shall survive the Closing and execution of the Warranty Deed and shall be in full effect and enforceable after the Closing.

Section 14. **Entire Agreement; Amendment.** This Agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, oral or written, except as herein set forth. This Agreement may not be amended, waived or discharged except by an instrument in writing executed by the party against whom such amendment, waiver or discharge is to be enforced.

Section 15. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 16. **Captions.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of such sections, nor in any way affect this Agreement or have any substantive effect.

HAYWARD 310 US ROUTE 2, LLC

Dated

By: _____
Duly Authorized Agent

TOWN OF SOUTH HERO

Dated

By: _____
Duly Authorized Agent

Exhibit A

BOUNDARY ADJUSTMENT PLAT

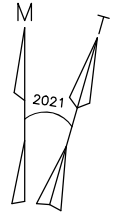
[To be Attached]

Draft Boundary Line Adjustment Plat

I CERTIFY THAT THIS PLAT IS AN ORIGINAL INK ON MYLAR DRAWING. RICHARD W. BELL L.S.



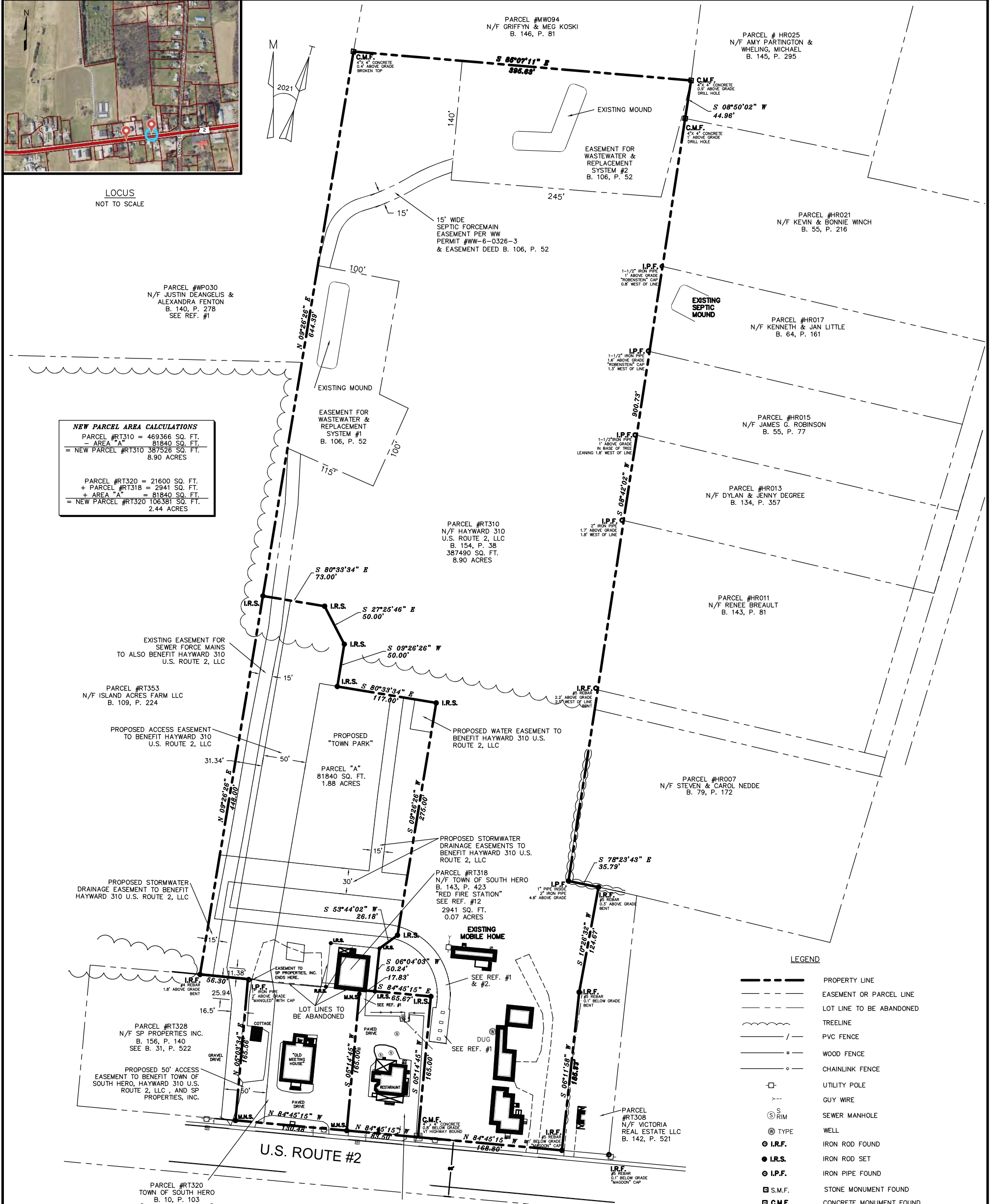
LOCUS
NOT TO SCALE



NEW PARCEL AREA CALCULATIONS

PARCEL #RT310 = 469366 SQ. FT.
= AREA "A" = 81840 SQ. FT.
= NEW PARCEL #RT310 387526 SQ. FT.
8.90 ACRES

PARCEL #RT320 = 21600 SQ. FT.
+ PARCEL #RT318 = 2941 SQ. FT.
+ AREA "A" = 81840 SQ. FT.
= NEW PARCEL #RT320 106381 SQ. FT.
2.44 ACRES



LEGEND

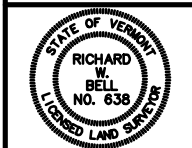
	PROPERTY LINE
	EASEMENT OR PARCEL LINE
	LOT LINE TO BE ABANDONED
	TREELINE
	PVC FENCE
	WOOD FENCE
	CHAINLINK FENCE
	UTILITY POLE
	GUY WIRE
	SEWER MANHOLE
	WELL
	IRON ROD FOUND
	IRON ROD SET
	IRON PIPE FOUND
	STONE MONUMENT FOUND
	CONCRETE MONUMENT FOUND

CERTIFICATION

I HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON IS A TRUE AND CORRECT REPRESENTATION OF THE PARCEL BOUNDARIES DETERMINED AS NOTED HEREON AND IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PERFORMED WITH ELECTRONIC TOTAL STATION SURVEY EQUIPMENT, WITH A POSITIONAL TOLERANCE CONFIDENCE LEVEL ABOVE 95%. I FURTHER CERTIFY THAT THIS PLAT MEETS ALL THE REQUIREMENTS OF TITLE 27 V.S.A. SECTION 1403.

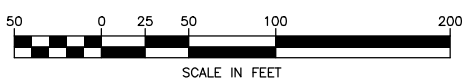
DATED _____ RICHARD W. BELL L.S. #638 VT.

PROJ. #231542
DATE: MARCH 2024
SCALE: 1"=50'
SURV. BY: RWB/MLC/TWW
CHECKED BY: RWB



LOT LINE REVISION, LANDS OF TOWN OF SOUTH HERO & HAYWARD #RT310, U.S. ROUTE 2, LLC U.S. ROUTE 2 SOUTH HERO, VERMONT

RICHARD W. BELL, LAND SURVEYING, INC.
297 SOUTH MAIN ST. BARRE, VERMONT 05641
802-478-9282 C 802-783-5037



- NOTES**
- BEARINGS ARE BASED ON MAGNETIC OBSERVATIONS TAKEN AT THE TIME OF THIS SURVEY.
 - ENCROACHMENTS ARE AS DEPICTED AND NOTED HEREON.
 - OTHER EASEMENTS RECORDED OR UNRECORDED MAY EXIST.
 - THE UTILITIES SHOWN ARE FROM SURFACE OBSERVATIONS ONLY. NO SUBSURFACE UTILITIES WERE IDENTIFIED OR SHOWN HEREON.
 - THE PROPERTY IS BENEFITTED BY A RIGHT-OF-WAY FOR INGRESS AND EGRESS IN COMMON OVER A 30' X 20' TRIANGULAR PARCEL B. 32, P. 507.
 - AREA "A" (1.95 ACRES) TO BE CONVEYED TO TOWN OF SOUTH HERO, PLUS EXISTING "MEETING HOUSE" LOT (0.50 ACRES) AND "RED FIRE HOUSE" LOT (0.07 ACRES) FOR A TOTAL OF 2.52 ACRES. THE REMAINING PORTION OF PARCEL #RT310 EQUALS 8.90 ACRES.

- REFERENCES**
- PLAN ENTITLED "PLAT OF LANDS OF WILLIS FIELD TRUST, 310 U.S. ROUTE 2, SOUTH HERO, VERMONT," DATED APRIL 2021 BY RICHARD W. BELL LAND SURVEYING, INC. OF BARRE, AND TO BE RECORDED IN THE TOWN OF SOUTH HERO LAND RECORDS.
 - PLAN ENTITLED "PLAT OF LANDS OF TOWN OF SOUTH HERO AND HAYWARD 316 U.S. ROUTE 2, LLC, U.S. ROUTE 2, SOUTH HERO, VERMONT," DATED JUNE 2023 BY RICHARD W. BELL LAND SURVEYING, INC. OF BARRE, AND TO BE RECORDED IN THE TOWN OF SOUTH HERO LAND RECORDS.
 - PLAN ENTITLED "TOWN PARK ACCESS SITE PLAN, SOUTH HERO RECREATION COMMISSION, 318-322 U.S. ROUTE 2, SOUTH HERO, VERMONT," DATED DECEMBER 1, 2023 BY BUERMANN ENGINEERING, LLC OF MILTON, AND PROVIDED BY SAME.

Exhibit B

**TOWN PARK LANDSCAPING AND
IMPROVEMENT PLANS**

[To be Attached]

Draft Landscape Site Plan



ROUGH LAWN / MEADOW
(MOW 2X / YEAR), TYP

OVERFLOW PARKING (LAWN)

SEASONAL FACILITIES

PARKING (GRAVEL)

PLAYGROUND AND GAME AREA.
EQUIPMENT TBD BY REC COMMITTEE.
SAFETY MULCH OR PLAY SURFACE

PLAYGROUND
AND GAME AREA

STONEDUST PATH
(OPTIONAL)

PARKING (+/- 70)

GREAT LAWN

LITTER BINS ON
CONCRETE BASE, TYP
CONCRETE PATHS, TYP

SPLITRAIL FENCE WITH
6' PATH OPENINGS, TYP

PICNIC TABLES ON
CONCRETE BASE
FLUSH W/ LAWN

WATER FOUNTAIN AND
LITTER BINS, TYP

OPEN PAVILION
(50' X 25'), SHED ROOF

HONEYMOON CABIN

GREEN

Staff
Parking (5)

PAN'S
PIZZA

ARBOR
FARM
MARKET

OLD
MEETING
HOUSE

BLUE
PADDLE

Guest Parking
(11 +2 access.)



PLANTING SCHEDULE

QTY	SIZE	SYMB	COMMON NAME	LATIN NAME	NOTES
TREES					
7	4" cal	Ar	Red Maple	Acer rubrum 'October Glory'	
2	5" cal	As	Sugar Maple	Acer saccharinum 'Green Mountain'	
15	15'-18' ht	Bn	River Birch	Betula nigra 'Heritage'	multistemmed
1	5" cal	Cs	Northern Catalpa	Catalpa speciosa	
17	12'-15' ht	Pa	Norway Spruce	Picea abies	
10	3" - 5" cal	Qa	White Oak	Quercus alba	
16	4" cal	Rp	Black Locust	Robinia pseudoacacia	straight species

Draft Landscape Planting Plan

