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**TOWN CLERK
ACTON**

Site Plan and Use Special Permit #11/20/15-459
180 & 182 Skyline Drive
Town of Concord – Nagog Pond Water Treatment Plant
March 29, 2017; **Modified April 30, 2018**



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Board of Selectmen

MODIFIED DECISION

#11/20/15-459

**180 & 182 Skyline Drive (Nagog Pond Water Treatment
Plant) Conditional Approval of**

1. Special Permit for Other Public Use (Zoning Bylaw, s. 3.1 & s. 10.3)
2. Site Plan Special Permit and related Waiver (Zoning Bylaw, s. 10.4)
3. Finding as related to Floodway (Zoning Bylaw Note #4 to s. 3.1 Table of Principal Uses)

Originally Issued March 29, 2017 – **MODIFIED April 30, 2018**

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of Alan Cathcart, Water/Sewer Superintendent, Town of Concord, 135 Keyes Road, Concord, MA 01742 (hereinafter the Applicant) for the property located at 180 & 182 Skyline Drive, owned by the Town of Concord. The property is shown on the Acton Town Atlas, Map C-4 as parcels 14, 14-1, 29 (access easement location), and 32 (hereinafter collectively the Site).

The Board issued an original Decision on March 29, 2017 (March 2017 Decision), conditionally approving a use special permit, site plan special permit and floodway finding pursuant to Sections 3.1, 3.4.7, 10.3, and 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the applicable Site Plan Special Permit Rules and Regulations (hereinafter the Rules). The Applicant challenged several of the conditions imposed in the March 2017 Decision in Concord v. Acton Board of Selectmen, Civil Action No. 17 MISC 000205 (the 40A Appeal). At the request of the parties, the Land Court remanded the matter to the Board (twice) for consideration of modifications to the original decision. Through this decision the Board is approving modifications to the original decision and issues this Modified Decision as a final Modified Decision superseding the original March 29, 2017 decision.

Initial Hearing and March 2017 Decision:

In response to the original application, the Board held a duly noticed public hearing on January 25, 2016, which was continued to February 22, April 11, July 18, September 12, November 1, December 14, 2016 and January 18, 2017. Substantive discussions took place at the January 25, 2016, September 12, 2016, November 1, 2016, and January 18, 2017 hearing sessions. Board members Peter Berry, Janet Adachi, Frances Osman, Katie Green and Chingsung Chang were present throughout that initial public hearing. On March 23, 2017, after deliberations, the Board voted to grant the requested (1) Special Permit for Other Public Use, (2) Site Plan Special Permit with Waiver (sidewalk), and (3) Floodway Finding pursuant to Note #4 of the Section 3.1 Table of Principal Uses – subject to the Plan Modifications, Conditions and Limitations set forth in its written decision. The vote was 5 for and 0 against to approve the Decision. The written Decision was filed with the Town Clerk on March 29, 2017. The Decision and the minutes of that hearing and submissions upon which the Decision was based are available at the Town Clerk's office and the office of the Board at the Acton Town Hall.

Applicant's 40A Appeal and 1st Remand Public Hearing (November 2017) and Decision on Remand (December 7, 2017):

On April 13, 2017, Concord filed its 40A Appeal. Concord and the Board then conducted extensive negotiations aimed at resolving outstanding differences with the terms of the March 2017 Decision and resolving public water supply issues along Route 2A in Acton.

Concord and the Board ultimately agreed to conduct a further public hearing pursuant to M.G.L. c. 40A to consider modifications to the March 2017 Decision as presented in a Draft Modified Decision ("2017 Draft Modified Decision") and jointly requested a remand order from the Land Court, which the Land Court issued on October 6, 2017.

The Board conducted a public hearing on the 2017 Draft Modified Decision with public hearing sessions held on November 20 and November 29, 2017. During the remand public hearing, the Board considered the materials presented during the initial public hearing that resulted in the original March 2017 Decision (see "Exhibits" referenced in March 2017 Decision) and supplemental materials and information presented during the Board's remand public hearing. Board members Janet Adachi, Peter Berry, Katie Green, Chingsung Chang and Joan Gardner were present throughout the remand public hearing.

On November 29, 2017, after deliberations, a motion to approve the 2017 Draft Modified Decision received 3 votes in favor (Selectmen Adachi, Berry and Green) and 2 votes opposed (Selectmen Chang and Gardner). Selectmen Chang and Gardner concluded that the Applicant's proposed project, as regulated by the revised conditions set forth in the 2017 Draft Modified Decision, did not meet the applicable criteria for grant of the requested special permit and/or site plan special permit. Pursuant to M.G.L. c. 40A, § 9 and the Board's Rules & Regulations for Site Plan Special Permits § 5.5, four (4) affirmative votes are required to grant a special permit and site plan special permit. Accordingly, as a result of the Board's 3-2 vote, the

2017 Draft Modified Decision was DENIED – leaving the original March 2017 Decision intact (subject to the pending 40A Appeal). The Board’s written “Decision on Remand on Draft Modified Decision - DENIED” was filed with the Acton Town Clerk on December 7, 2017. Concord appealed this decision by amending its Complaint in the pending 40A Appeal.

2018 Remand Hearing:

Concord and the Board engaged in additional settlement efforts to attempt to identify potential revisions to the Board’s decision that would address the conditions challenged by Concord in its 40A Appeal and also satisfy specific concerns of the Board. Among other issues, the Board had specific concerns regarding Concord’s provision of water to a section of Acton along Route 2A and more general concerns about fostering greater communication and cooperation among the towns with respect to water service. The parties ultimately agreed that it would be best to address those issues in an intermunicipal agreement rather than in the Board’s special permit decision.

Concord and the Board negotiated an intermunicipal water supply agreement (“IMA”). The Concord Public Works Commissioners, the Concord Select Board and the Acton Board of Selectmen voted to approve the IMA, and all three entities executed the agreement. By its terms, the IMA would not take effect “unless and until” Acton Town Meeting approved a town meeting article ratifying the agreement. On April 3, 2018, Acton Town Meeting voted against approving the IMA.

In addition to negotiations on the IMA, the parties also agreed to reopen the public hearing to consider and solicit public input on further revisions to the 2017 Draft Modified Decision – as presented in a revised Draft Modified Decision.

Concord and the Board jointly requested a remand order from the Land Court on March 15, 2018. The Land Court approved the remand on March 19, 2018 and issued a Second Order Remanding Case on March 27, 2018.

The Board scheduled the remand public hearing on the revised Draft Modified Decision for March 29, 2018. Notice of the remand public hearing was provided pursuant to G.L. c. 40A, § 11. However, some residents objected to that hearing date based on it being Holy Thursday or Maundy Thursday in the Christian faith. The Board considered this procedural objection at a public meeting on March 27, 2018 and voted to open the hearing on March 29, 2018 but to continue the hearing to a future date without accepting substantive comments on March 29.

On March 29, the Board opened the public hearing, received procedural comments from the applicant’s counsel, and, without accepting any substantive comments, continued the public hearing to April 26, 2018. On April 26, 2018, the Board continued the public hearing, accepted public comment, closed the public hearing and voted 4-1 to approve the Modified Decision.

For the remand public hearing, the Board included in the administrative record the materials presented during the initial public hearing (leading to the March 2017 decision) and the Board’s 1st remand public hearing in November 2017, in addition to supplemental materials submitted and presented during the Board’s 2nd remand public hearing. Board members Janet Adachi, Peter Berry, Katie Green, Joan Gardner and Jon Benson were present throughout the substantive portion of the remand public hearing on April 26, 2018. Recently-elected Selectmen Benson confirmed during the April 26, 2018 hearing that he had reviewed (1) the materials submitted during the public hearing leading to the March 2017 decision and videos of the associated hearings at which substantive presentations were made, and (2) the materials submitted during the November 2017 public hearing and videos of the Board’s November 20 and 29, 2017 hearings.

The minutes of the March 29, 2018 and April 26, 2018 hearing and submissions upon which this Modified Decision are based are available at the Town Clerk’s office and the office of the Board

at the Acton Town Hall.

1 EXHIBITS

Materials Submitted During the Original Public Hearing

Submitted for the Board's consideration during the original public hearing that led to the Board's March 2017 Decision were the following materials:

- 1.1 A plan entitled "Nagog Pond Water Treatment Plant, Concord, Massachusetts," dated November 18, 2015, revised in August 2016 (with portions subsequently revised/supplemented), drawn by Environmental Partners Group of 18 Commerce Way, Suite 2000, Woburn, MA 01801 consisting of 37 sheets (Attachment L in 1.2 below).
- 1.2 Application package entitled "Nagog Pond Water Treatment Plant, Acton, Massachusetts – Applications for Special Use Permit and Site Plan Special Permit", including supplemental items and documentation required by the Rules, dated November 20, 2015, revised August 25, 2016 (with portions subsequently revised/supplemented), with a cover letter, a project overview with existing and proposed use description, and Attachments A through L as follows:
 - A – Application for Special Use Permit.
 - B – Application for Site Plan Special Permit.
 - C – Zoning Compliance Analysis.
 - D – Variance and Special Permit.
 - E – Article 97 Analysis with Deeds and Plans.
 - F – Typical Distributed Energy Unit.
 - G – Noise Emissions Analysis Memorandum.
 - H – Order of Conditions.
 - I – Stormwater Drainage Calculations.
 - J – Water Balance Calculations.
 - K – Earth Removal Calculations.
 - L – Permit Design Plans.
- 1.3 Other items submitted as required by the Rules, including:
 - Filing fee.
 - Certified abutters list.
 - Record plans and deeds.
- 1.4 Additional information provided by the Applicant:
 - Fencing Plan (plan sheet C16, expanded view), dated 8/29/16, last revised 1/6/17.
 - Public Archaeology Laboratory, 1900 Crown Colony Dr., Quincy MA: Scope of Services, Nagog Pond Water Treatment Plant Improvement Project, Acton, Massachusetts, Archaeological Sensitivity Assessment, January 28, 2016.
 - Environmental Partners, "Response to Comments from the Engineering Department dated 1/8/2016", 9/8/16.
 - Nagog Pond Dam, Acton, Massachusetts, "Underwater Inspection of The Raw Water Intake Supply Line", April 11, 2012; by Inner Tech Marine Services LLC, PO Box 91234, Warwick, RI 02889 (report).
 - "Nagog Pond Watershed and Solar Feasibility Study, Acton/ Littleton, MA"; Environmental Partners Group, Inc./Epsilon Associates, Inc., Draft – July 17, 2013 (report).
 - "An Archaeological Site Location Survey for the Water Disinfection System, Acton, Massachusetts", UMass Archaeological Services, Amherst, MA, November 1994.
 - Memorandum from Paul Millet, P.E., Environmental Partners Group, Inc., dated

October 27, 2016, re: Percentage of Natural Flood Storage Volume Displaced by Proposed Fencing.

- Letter from Peter F. Durning, Mackie Shea, P.C. dated October 27, 2016 providing a Supplemental Zoning Analysis, with Exhibits A-I.
- Letter from Peter F. Durning, Mackie Shea, P.C. dated November 1, 2016 with two enclosures:
 - A. Memorandum from LEC Environmental Consultants, Inc., dated November 1, 2016: Wildlife Habitat Evaluation Summary, Nagog Pond Water Treatment Plant Fencing, Acton, Massachusetts.
 - B. Proposal/Scope of Services from Public Archaeology Laboratory (PAL) for "Intensive Archaeological Survey" services, dated October 31, 2016.
- Letter from Peter F. Durning, Mackie Shea, P.C. dated November 16, 2016 with the following enclosures:
 - A. Letter from LEC Environmental Consultants, Inc., dated November 16, 2016: Wildlife Habitat Impact Assessment, Proposed Security Fence, Nagog Pond Water Treatment Plant, Acton, Massachusetts.
 - B. October 31, 2016 cover letter to Proposal/Scope of Services from Public Archaeology Laboratory (PAL) for "Intensive Archaeological Survey" services.
 - C. Memorandum from Environmental Partners Group "Town of Concord – Nagog Pond WTP Chemical Addition Summary", dated November 14, 2016, with attached materials safety data sheets.
- Letter from Peter F. Durning, Mackie Shea, P.C. dated November 18, 2016 with resumes attached for two LEC staff members.
- Letter from Peter F. Durning, Mackie Shea, P.C. dated December 7, 2016, re: Acton Water Supply District 11/1/16 letter.
- Letter from Peter F. Durning, Mackie Shea, P.C. dated December 7, 2016, with the following enclosures:
 - A. Fencing Plan, revised 12/7/16; and
 - B. Proposal/Scope of Services from Public Archaeology Laboratory (PAL) for "Intensive Archaeological Survey" services, revised 12/5/16.
- Letter from Peter F. Durning, Mackie Shea, P.C. dated January 6, 2017, with the following enclosures:
 - A. Fencing Plan, revised 1/6/17; and
 - B. Letter from LEC Environmental Consultants, Inc., dated January 6, 2017: Supplemental Wildlife Habitat Impact Response, Proposed Security Fence, Nagog Pond Water Treatment Plant, Acton, Massachusetts.
 - C. Letter from the Massachusetts Historical Commission, dated December 21, 2016 with permit #3709 to conduct archaeological field investigation.

1.5 Interdepartmental communication was received from:

- Acton Water Supply District, written comments posted 1/1/16 and presented 1/8/16, letter from the Board of Water Commissioners, undated, and email from Chris Allen of Acton Water District (response to questions) dated 12/9/16.
- Acton Public Health Department, App 24 Munis output, undated.
- Acton Engineering Department, dated 9/29/15 (re: street address change), 1/8/16, 9/2/16, 9/12/16 and 10/28/16.
- Acton Fire Department, dated 10/27/16.
- Acton Land Stewardship Committee, dated 3/15/16.
- Acton Planning Department, dated 1/11/16, 9/8/16, 10/26/16, 10/27/16, 11/29/16, and 1/13/17.
- Acton Design Review Board, dated 11/4/15 and 12/7/16.

- Acton Open Space Committee, dated 10/19/16.
- Chris Allen, Acton Water District, 1/18/17.
- Jeffrey L. Roelofs, Counsel to the Board, dated 1/18/17 (zoning overview).

1.6 Correspondence from & presentations by Applicant, Parties in Interest, and others:

- Lynn Kibblehouse, 166 Skyline Drive, 1/13/16.
- Jay and Suzanne Jacobson, 1/14/16.
- Nigel Godley, 1/15/16.
- Lisa Munson, 1/17/16.
- David Spotts, 11 Parkland Lane, 1/18/16.
- Rebecca Seel Oddsund, 1/21/16.
- Breezy Point Homeowner's Association, 1/21/16, with multiple signatures & 12/9/16.
- Harold Hyman, 19 Black Horse Drive, 1/22/16.
- Peter Henry, 15 Ticonderoga Road, 1/22/16.
- Robert Schneider, Braebrook Road, 1/22/16.
- Reid Blute, Pulte Homes of New England, LLC, 1/22/16.
- Betsy Purcell, 69 Charter Road, 1/22/16.
- Larry Kerpelman, 9 Puritan Road, 1/22/16.
- Ellen de Lemos Forte, 3 Perkins Lane, 1/22/16.
- David Didricksen, 25 Lincoln Drive, 1/22/16.
- Maurice and G. Helen Berrigan, 21 Oakwood Road, 1/23/16.
- Julie Greenspan, 8 Overlook Drive, 1/23/16.
- Kathy Jackson, 142 Willow Street, 1/23/16.
- Frances Harris, Oneida Road, 1/23/16.
- Gary Mazzola, 32 Parkland Lane, 1/24/16.
- Corinne Hogseth, 61 Seminole Road, 1/25/16.
- Letter dated 1/25/16 from Residents of the Residences at Quail Ridge with +/-128 signatures.
- 2 Abel Jones Place Barry Elkin, 57 Skyline Drive, 5/10/16 and undated.
- Kevin Clayton, 9/20/16.
- Robert Sekuler, 17 Parkland Lane, 1/17/16, 1/25/16, 9/14/16, 10/25/16, 10/28/16 and two undated items.
- Robert Kingan, 30 Parkland Lane, undated.
- Carolyn Kiely, 11 Parkland Lane, 1/25/16 (hearing presentation and "Testimony in Opposition"), 1/30/16, 2/4/16, 3/21/16, 5/4/16, 7/8/16, 9/12/16, 10/6/16, 10/11/16, 11/1/16 (hearing presentation); 1/18/17 (hearing presentation).
- Neal Fishman, 7/17/16.
- Concord 1/25/16, 9/12/16, 11/1/16 and 1/18/17 hearing presentations.
- Richard Reine, Concord Director of Public Works to Carolyn Kiely, 5/16/16.
- Littleton Conservation Trust, 1/22/16 and 2/1/16.
- Littleton Conservation Trust to EOEEA Secretary Beaton, 9/22/16.
- Donald MacIver, president & trustee, Littleton Conservation Trust, 1/22/16.
- Emily McDowell, 2/3/16.
- Linda Rhen, 168 Skyline Drive, 1/17/16, 2/4/16, 9/5/16 (with photos attached), and 10/31/16.
- Barry Elkin, Carolyn Kiely & Robert Sekuler, 6/4/16 and 1/18/17.
- Friends of Pine Hawk, c/o Acton Memorial Library, 486 Main Street, 9/9/16, with attachments, and 11/1/16 (hearing presentation).
- Alissa Weiss as President, The Breezy Point Homeowners Association, 9/9/16, with attachment.

- Nigel and Vera Godley, 10 Wood Lane, 9/8/16.
- Jim Kirkman, 5 Jesse Drive, 9/8/16.
- Alissa Weiss, 6 Breezy Point Road, 9/9/16.
- Ro Pinto, 9/12/16.
- Acton Historical Commission letter to Secretary Matthew Beaton, EOEEA, 9/16/16.
- Acton Board of Selectmen to Acton Water District Manager, dated 9/21/16.
- Letter from Paul F. Ormond, PE., Energy Efficiency Engineer, Massachusetts Department of Energy Resources to EOEEA Secretary Beaton, 9/23/16.
- Paul C. Millett, P.E, Environmental Partners Group, Inc. to EOEEA Secretary Beaton, 9/30/16.
- Nigel Godley to Senator James B. Eldridge, 10/13/16.
- George Downs, 29 Duggan Road, 10/21/16.
- Kim Kastens, 10/22/16, and 1/18/17 (with hearing presentation).
- Gregory S. Davis, 27 Parkland Lane, 10/20/16.
- James Engell, 14 Breezy Point Road, 10/26/16.
- James Engell to Purvi Patel, EOEEA MEPA Office, 9/22/16 and 10/24/16.
- Ainslie Brennan to Editor of The Concord Journal and the Beacon, undated.
- Wei Yang, 9 Breezy Point Road, 10/30/16.
- Lingchuan Wu, 11 Breezy Point Road, 10/31/16.
- Brona Simon, Mass. Historical Commission to Alan Cathcart, Town of Concord, 10/27/16.
- Peng Luo and June Wang, 7 Breezy Point Road, 10/30/16.
- Acton Water Supply District, hearing presentation, 11/1/16.
- Ron Beck, 80 Esterbrook Road, 11/2/16.
- Bernie Dennis, 42 Greenside Lane, 11/2/16.
- Terra Friedrichs, 11/2/16.
- Correspondence between Melissa Simoncini, Concord Water Department and Evan Carloni, Acton Health Department, dated 11/4/16 and 11/9/16.
- Lisa Lapinski, 525 Acorn Park Drive, 11/1/16.
- Donald and Lilian Stokes, 90 Skyline Drive, undated ("Nagog Pond Wildlife Report 2016").
- Geoff Mamlet, 2 Gregory Lane, 11/19/16 and 1/18/17.
- Bob Ferrara et. al., undated, addressed "To the Editor."
- Daniel Wells, M.S., Goddard Consulting LLC, "Peer Review of Wildlife Habitat Impacts, Town of Concord Nagog Pond Water Treatment Plant Project", prepared for Acton Board of Selectmen, dated 12/7/16.
- Daniel Wells, M.S., Goddard Consulting LLC, "Supplemental Peer Review of Wildlife Habitat Impacts, Town of Concord Nagog Pond Water Treatment Plant Project", prepared for Acton Board of Selectmen, dated 1/11/17.
- Ann M. Sullivan, 11 Quail Ridge Drive, 1/11/17.
- Dean Shu and Shin Lee, 102 Skyline Drive, 1/11/17.
- Jim and Pat Butler, 63 Skyline Drive, 1/12/17.
- Renate Winter, 29 Parkland Lane, 1/12/17.
- John Kovach, 1/12/17.
- Basil Chigas, 315 Nagog Hill Road, 1/16/17.
- Margaret Nichols, 21 Parkland Lane, 1/16/17.
- Richard Burpee, 158 Skyline Drive, 1/16/17.
- Tracy and John Lawrence, 138 Skyline Drive, 1/16/17.
- Jeff D. Clymer and Acorn Park Condominium Association Board of Trustees, 5

- Walnut Street and Corresponding Condominiums, 1/17/17.
- Pralay Som, 91 Skyline Drive, 1/17/17.
- Ann Glesnes, 39 Greenside Lane, 1/18/17.
- Response from Selectmen Peter Berry to Carolyn Kiely, 1/17/17.
- Robert Sekuler, 17 Parkland Lane, 1/18/17.
- E-mail from Richard Friend, MassDEP to Jeff Roelofs, Counsel to the Board, dated 10/31/16, Subject: Concord Water Management Act clarification.
- All other correspondence in this matter received by the Town via e-mail or otherwise, whether or not listed herein, as included in the Board's record.

1.7 Other:

- Concord hearing schedule change request, dated 12/4/15.
- Agreements on Time Extension, ultimately continuing the hearing through January 18, 2017 and extending the Board's decision deadline to 90 days thereafter.
- Conservation Commission Order of Conditions, 1/6/16 (MassDEP 85-1188).
- DEIR Certificate of the Secretary of Energy and Environmental Affairs dated September 30, 2016 (EEA No: 15446).
- FEIR Certificate of the Secretary of Energy and Environmental Affairs dated November 10, 2016 (EEA No: 15446).
- Town of Acton Open Space and Recreation Plan 2014-2021.
- Town of Acton Comprehensive Community Plan, Acton 2020.
- Nagog Treatment Plant GIS aerial map, 11/1/2016.
- Alan Cathcart, Concord to Nagog Pond Watershed Residents, 6/1/2004.

Materials Submitted During the 1st Remand Public Hearing in November 2017

1.8 Application package entitled "Application for Modification of Special Permit Decision on Remand, Nagog Pond Water Treatment Plant, Site Plan Special Permit/Use Special Permit #11/20/2015-459", from Peter F. Durning of Mackie & Shea P.C., dated 10/27/17, with a cover letter, and the following exhibits A through E:

- A. A copy of the complaint (Town of Concord v. Acton Board of Selectmen, 17 MISC 205 (2017))
- B. Proposed Draft Modified Special Permit Decision
- C. Copy of the Order Remanding Case
- D. A letter from Board of Underwater Archaeological Resources
- E. A memorandum summarizing recent security issues at the Water Treatment Plant

1.9 Agreement on Time Extension, Amended 11/20/17.

1.10 Interdepartmental communication was received from:

- Acton Planning Department, dated 11/16/17

1.11 Acton Water Supply District Presentation, 11/20/17

1.12 Correspondence from & presentations by Parties in Interest and others:

- Carolyn Kiely, 11 Parkland Lane, 11/06/17, 11/19/17 and presentation 11/20/17
- Alison Field-Juma, Executive Director, OARS, 11/16/17, 11/17/17
- Kim Kastens, 294 Pope Road, 11/15/17, 11/19/17 and presentation 11/20/17
- Alissa Weiss, 11/16/17
- Barry Elkin, 57 Skyline Drive, 11/16/17 and presentation (undated)
- Byron V. Hartunian, M.D., 21 Parkland Lane, 11/16/17
- James Engell and Ainslie Brennan, 11/16/17

- James Snyder-Grant, 18 Half Moon Hill, 11/16/17
- Ron Beck, 80 Esterbrook Road, 11/16/17
- Terra Friedrichs, 11/15/17
- Ainslie Brennan, 11/17/17 twice
- Robert and Anne Kingan, 11/17/17, 11/21/17
- Basil Chigas, 315 Nagog Hill, 11/17/17
- Lucy Kirshner, 35 Parker Street, 11/17/17 and presentation 11/20/17
- Robert Hurdle, 510 Acorn Park, 11/17/17
- Mary Lynn Miller, MD , 11/18/17 twice
- Michael Brandt, 71 Skyline Drive, 11/18/17
- Robert Sekuler, 17 Parkland Lane, 11/18/17, 11/20/17 and presentation 11/16/17
- Sally Thompson, 14 Freedom Farme Road, 11/18/17
- Susan Jick, 15 Half Moon Hill, 11/18/17
- Anping Liu, 8 Monument Place, 11/19/17
- Charlie Kadlec, 11/19/17
- Franny Osman, 11/19/17
- Patricia Macy, 11/19/17
- Renee Robins, Windsor Ave, 11/19/17
- Ro Pinto, 43 Hammond Street, 11/19/17
- Robert John Boren, 11/19/17
- Steve Long, 11/19/17
- Amy Zhu, Walnut Street, 11/20/17
- Anette Lochrie, 11/20/17
- Danny Factor, 11 Davis Road #A5, 11/20/17
- Dennis Caristi, 11/20/17
- Greg Voss, 8 Mohawk Drive, 11/20//17
- Jane Ceraso, 11/20/17
- John Sonner, 76 Maple Street, 11/20/17
- Karen Boutet and Alan Nidle, 67 Hammond Street, 11/20/17
- Karen Herther, 10 Macleod Lane, 11/20/17
- Mary L. Winroth, 27 Mohegan Road, 11/20/17
- Michael Boss, 3 McKinley Drive, 11/20/17
- Ralph W. Lowry, 68 Skyline Drive, 11/20/17
- Shirley Ming, 4 Chestnut Street, 11/20/17
- Shuiying Qiu, 11/20/17
- Yuewu Xiao, 11/20/17
- Kim Kastens, Nagog Brook Water Monitoring Data from Quail Ridge Golf Course, 11/18/17
- Steve Long, Presentation, 8 Church Street, 11/18/17

Materials Submitted During the 2nd Remand Hearing in March/April 2018

- 1.13 Various written communications from interested parties and the Applicant related to residents' procedural/religious objection to the public hearing being conducted on March 29, 2018.
- 1.14 Intermunicipal Water Supply Agreement dated March 27, 2018, as fully executed.
- 1.15 Agreement on Time Extension dated April 5, 2018.

- 1.16 Letter from Peter F. Durning, Mackie Shea, P.C. (applicant's counsel) dated April 23, 2018 with attachments.
- 1.17 Interdepartmental communication was received from:
 - Acton Planning Department, dated 4/20/2018
- 1.18 Correspondence from & presentations by Parties in Interest and others:
 - Kim Kastens, 294 Pope Road, 4/18/18 email and 4/26/18 presentation and statement
 - Carolyn Kiely, 11 Parkland Lane, 4/26/18 request to present
 - Nigel Godley, 10 Wood Lane, 4/25/18 email

The "Plan" or "Plans": Exhibits 1.1 through 1.4 (including the most recent version of each item as revised during the hearing) are hereinafter referred to collectively as the Plan or Plans.

2 FINDINGS AND CONCLUSIONS

Based upon its review of the record of proceedings, including the written materials and comments presented at the 2016, 2017 and 2018 public hearing sessions by the Applicant, Acton officials and interested residents, the Board's original March 2017 decision and findings therein, and the Board's deliberations, the Board finds as follows:

- 2.1 The Site is located within the Residence 8 (R-8) and Residence 10/8 (R10/8) zoning districts, Groundwater Protection Overlay District Zone 4, partially in the Affordable Housing Overlay Sub-district A, and partially in the Flood Plain Overlay District.
- 2.2 The Site measures approximately 60 acres on land in Acton, plus Nagog Pond, which is partially in Acton and partially in Littleton. Access to the Site is provided via Acorn Park Drive and Hazelnut Street. The Site is partially developed by the existing dam/intake structure, disinfection facility, and associated appurtenances, but the majority of the Site is undeveloped forested land.
- 2.3 The Town of Concord proposes to expand and upgrade its existing water treatment facility at Nagog Pond. The current facility provides ozone water treatment and is housed within a ±1,300 sq.ft. single-story building. Concord is currently operating under a Filtration Avoidance Waiver under the federal/state Surface Water Treatment Rule. The project is proposed to bring the treatment facility into compliance with current Federal and State drinking water requirements and to improve the quality and reliability of the Nagog Pond water supply. The proposed expansion and upgrade would replace the existing plant with a new, modernized facility with multiple water treatment levels and methods including filtration, ozone treatment, disinfection, pH adjustment, and fluoridation. The new plant would be housed within a ±9,300 sq.ft. building on a ±7,200 sq.ft. footprint that includes related control rooms, tanks, storage areas, and staff accommodations. The proposed project also involves replacement of the 16" deteriorated intake pipe from Nagog Pond with a new 16" intake pipe (and associated surrounding site improvements), widening of the access road, and installation of a 6-ft. high perimeter fence over a distance of ±0.7 mile with a minimum ground clearance of 10-12 inches. Power supply will be from the grid; back-up generators will be installed at the facility. Previously-proposed solar PV system and gas fired power generators are no longer proposed. The Applicant represented that the plant's design capacity will remain at 1.5 mgd, equivalent to the existing facility – although Concord's withdrawal levels have been significantly below 1.5 mgd in recent years due to regulatory constraints associated with the Surface Water Treatment Rule.
- 2.4 Nagog Pond is a registered withdrawal source for Concord within the State's drinking

water program and the Water Management Act, M.G.L. c. 21G, § 5. Concord's use of Nagog Pond as a drinking water supply was established by an Act of the Massachusetts Legislature in 1884. That Act also acknowledged the rights of Acton and Littleton to use the waters of Nagog Pond. Concord has been using Nagog Pond as a water supply since the early 1900s.

- 2.5 The existing water intake pipe (like the dam) was constructed over 100 years ago. The existing water treatment facility was built in 1995 pursuant to a Variance decision issued by the Zoning Board of Appeals (ZBA) in 1994 (1994 Variance) and a Special Permit and Site Plan Special Permit decision issued by the Board of Selectmen in 1995 (#8/25/94-346) (hereinafter 1995 Special Permit).
- 2.6 In its 1994 Variance decision, the ZBA noted as follows: "Protection of water resources is a specific goal of the Acton Master Plan. Granting appropriate variances to allow the construction of the disinfection facility is consistent with the objectives of the Master Plan."
- 2.7 In the 1995 Special Permit decision, the Board of Selectmen granted the requested Site Plan Special Permit, Special Use Permit, and Flood Plain Special Permit, subject to certain modifications, conditions and limitations, having found, among other things, as follows:
 1. "[Will p]rotect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
* * * * [findings 2-4 omitted here] * * * *
 5. Is consistent with the Master Plan.
 6. Is in harmony with the purpose and intent of this Bylaw.
 7. Will not be detrimental or injurious to the neighborhood in which it is to take place.
 8. Is appropriate for the site and complies with all applicable requirements of this Bylaw.
- 2.8 Concord maintains a water main from Nagog Pond along Great Road in Acton into the Town of Concord. Certain property owners (residents and businesses) along Great Road rely on water supplied by Concord. Some Great Road property owners have had a difficult time securing new or expanded water service from Concord. Concord has implemented a water supply policy that is more restrictive for Acton customers along Great Road than for similarly situated Concord customers – apparently based on capacity concerns and its restricted use of Nagog Pond in recent years.
- 2.9 The Bylaw classifies Concord's use of the Site as "Other Public Use" as defined in section 3.4.7. This land use may be allowed subject to a use special permit from the Board under Bylaw section 10.3 (subject to all applicable dimensional requirements of the underlying zoning districts). The Board's special permit scope and authority also includes relevant matters within the applicable overlay zoning districts: Groundwater Protection Overlay District and Flood Plain Overlay District. The existing facility has the requisite special permit. Concord is seeking a new special permit for the expansion and upgrade.
- 2.10 The proposed work also requires, and Concord has applied for, a site plan special permit under Bylaw section 10.4 (with certain waivers) and a finding as related to the fence within the Floodway under Bylaw Section 3.1, Table of Principal Uses (Use 3.4.7), Note #4.
- 2.11 In its 1994 Variance decision, the Acton Board of Appeals granted certain variances

related to Concord's proposed use of the Site. The currently-proposed expansion, improvements, and changes as described in the special permit now before the Board either do not alter the premises on which the variances were granted, do not exceed the scope of the variances that were granted, are within the scope of the Board's special permit authority pursuant to Bylaw sections 3.1 and 3.4.7, or are no longer applicable under the Bylaw as amended to the current date.

- 2.12** Bylaw section 3.1 (Table of Principal Uses), Note #4 provides that for an "Other Public Use" (Use 3.4.7), prior to issuing a special permit, the Board must make a finding regarding compliance with certain requirements for work in the Floodway and Floodway Fringe and Groundwater Protection District.
- 2.13** Floodway Finding – Note #4, Section 3.1: The Board finds that the Plans demonstrate compliance with Bylaw sections 4.1.8.1 and 4.1.9 - matters related to work in the Floodway.
- 2.14** The Bylaw requirements of sections 4.3.8 through 4.3.10 are not applicable in this case where the use is not nonconforming and the Site is located in Zone 4 of the Groundwater Protection District.
- 2.15** The Plans demonstrate compliance with the dimensional requirements of the Bylaw including setbacks, building height, floor area ratio, and open space, and with the requirements for parking and parking lot design.
- 2.16** 10.4.3.4 Sidewalk – WAIVER: Bylaw section 10.4.3.4 requires that a sidewalk be provided along the entire frontage of a lot. The Board is authorized to waive this requirement (subsection d). Concord has requested a waiver of this requirement pursuant to Bylaw section 10.4.3.4(d). The Board finds that requiring a sidewalk is not necessary for the safe movement of pedestrians and bicyclists. Therefore, the Board hereby grants a waiver from Bylaw section 10.4.3.4 (sidewalk) and, consistent with its usual practice in connection with sidewalk waivers, hereby requires Concord to donate \$10,500 to Acton's sidewalk fund (based on the Site having approximately 210 linear feet of frontage on Nagog Hill Road and using the Engineering Dept.'s \$50.00/linear foot average cost estimate for retrofitting existing streets with sidewalks, not including the cost of R.O.W. takings).
- 2.17** Concord proposes a ±0.7 mile long fence to improve security and access control to the proposed facility and certain adjacent land areas. There is significant wildlife on the Site and surrounding area. Concord had originally proposed a taller and much longer fence and larger enclosure, which would have posed a significant impediment to the free movement of wildlife in the area and would have had an adverse aesthetic impact on the neighborhood. Based on the revised fence design and location and the opinions expressed by Concord's wildlife consultant and the Board's peer review wildlife consultant, the Board does not believe the fence as designed, located and proposed to be maintained, and as conditioned in this approval, will result in adverse wildlife impacts. Moreover, given its proposed 6 ft. height, more limited length, color and material (black, vinyl coated rails, posts and mesh) and setbacks from adjacent properties, any aesthetic impact that the fence may have on neighboring properties is minimal.
- 2.18** Acton's archaeological sensitive maps suggest a high likelihood of Native American and early colonial settlement in the area of the proposed construction work and fence installation. The Applicant's archaeological consultant and the Acton and Massachusetts Historical Commissions agree that portions of the Site where improvements are proposed are archaeologically sensitive areas. The Massachusetts Historical Commission ("MHC") has determined that an intensive (locational) archaeological survey

must be conducted pursuant to 950 CMR 70 prior to any work beginning and has issued a permit for the same. To the extent required by other permits that Concord must obtain, including a Section 404 permit from the U.S. Army Corps of Engineers, Concord must also comply with Section 106 of the National Historic Preservation Act of 1996, as amended (36 CFR 800).

The Massachusetts Board of Underwater Archaeological Resources issued a letter dated November 13, 2015 stating that it “conducted a preliminary review of its files and secondary literature sources to identify known and potential submerged cultural resources in the proposed project area[, and that n]o record of any underwater archaeological resources was found,” but requiring Concord to take steps to limit adverse impacts and to notify it, the MHC, and other appropriate agencies immediately if cultural resources are encountered in accordance with its “Policy Guidance for the Discovery of Unanticipated Archeological Resources.”

2.19 There will be chemical deliveries and removal of residuals. In its application, Concord estimates: “Seven chemical deliveries per month are anticipated with no more than two deliveries per day and residuals management may occur twice per week. Conservatively, a total of 10 to 15 trip ends per day are anticipated for the water treatment plant with an occasional increase for additional maintenance.” Vehicle access to the plant is via Acorn Park Drive and adjacent local streets. These streets are in a residential neighborhood. Through this decision the Board is imposing time restrictions on these deliveries based on the time periods in which Acton Water District gets its chemical deliveries.

2.20 During the hearing and in a memorandum to the Board, the Acton Water District commented that “Concord’s proposed higher level of treatment of the Nagog Pond waters could benefit our community if three conditions are met.”

- Concord’s continuation of providing water service in the vicinity of Great Road in Acton and adding new or expanded service as needed;
- Inclusion of future short or long term supply to the District via existing or new interconnections, if needed. This would be with the understanding that short term emergency needs would be automatically agreed upon;
- The uses of the waters of Nagog Pond that were in the 1884 Act of the Massachusetts Legislature be confirmed with a clear plan on how those rights can be exercised.

2.21 With respect to water services on Great Road, the Board acknowledges Concord’s concerns about the reliability and quality of Nagog Pond water and understands that its restrictions on Acton customer service may be rooted in those concerns. The Board also acknowledges that Acton has prepared community development plans and approved development projects along Great Road, but consultations and contacts with the Concord Water Department on the topic of Great Road water service have been very limited and often non-existent. The Board anticipates that, upon the completion of the new treatment plant, Concord will have greater confidence in the adequacy and sufficiency of the Nagog Pond water supply. The Board strongly believes that the towns of Acton and Concord will benefit from resolving the water service concerns along Great Road and anticipates working with Concord towards a resolution of the issues prior to completion of construction of the proposed water treatment plant. Among other things, with this Nagog Pond facility approved, the Board expects that Concord will (1) provide full existing, new, and expanded water service to all properties along Great Road in Acton that have direct Great Road access to Concord’s water service but do not have direct Great Road access to service from the Acton Water District; and (2) offer water

supply to its customers in the Acton service area in the same manner, under the same terms, under the same conditions, and for the same cost as to its customers in its Concord service area. The Board believes these water supply issues are best addressed outside the context of this special permit and in an intermunicipal agreement between the towns of Concord and Acton. An intermunicipal agreement addressing these issues was approved by Concord and the Acton Board of Selectmen in March 2018 and was supported by the Acton Water District. However, that agreement did not take effect because it was not supported at Acton's Annual Town Meeting.

- 2.22** Nagog Brook, which drains Nagog Pond, is a coldwater fishery resource that is sensitive to water quality and quantity. Water levels in Nagog Pond and the related flow levels within Nagog Brook are also associated with the environment within and adjacent to the pond and brook. Nagog Brook traverses the Conant I well field about 1 mile below the pond. During the public hearing, residents expressed concerns that Concord's expanded facility would lead to an increase of Concord's reliance on Nagog Pond, an increase in Concord's withdrawals from Nagog Pond as compared to recent and historic withdrawal rates/volumes and that the increased withdrawals may lead to lower water levels in Nagog Pond and lower flows in Nagog Brook – either or both of which may (1) adversely affect the water quality and/or environment in and near the pond and/or brook, and (2) adversely affect recharge levels within the watershed and, particularly, in the vicinity of the Conant I wellhead. The Acton Water District, in comments dated November 1, 2016, stated: "Based on the hydrology and location of our wells, we do not see a direct correlation between water withdrawn from Nagog Pond and effects on our nearest well, Conant I well (599 Main St)." Furthermore, the Board also understands that water withdrawal rates are subject to State regulations and limitations, with consideration of regional issues and impacts to water supplies and quality.
- 2.23** Section 10.3.5 Special Permit Findings: The Board finds that the proposed use, as presented in the Plans and as modified, conditioned and limited in this decision:

10.3.5.1 Is consistent with the Master Plan.

The proposed use is consistent with Acton's 2020 Master Plan ("Acton 2020"), specifically in preserving and protecting the quality of water that currently serves Concord and Acton properties, and in preserving open space. Acton 2020, which sets forth several broad goals with implementation strategies for each, is a decision-making tool for Town officials and residents to use in guiding future growth and development. The central component of Acton 2020 is the Roadmap for Guiding Growth, which reflects residents' various desires and concerns, including preserving open space and creating a plan that is responsive to environmental concerns. Acton 2020 recognizes that growth can be guided, but not fully avoided. The focus of the Roadmap, therefore, is on maximizing open space and minimizing developed land by, among other things, steering growth away from open space to village centers. One of the Master Plan's stated goals is to ensure environmental sustainability, with one related objective being to protect the quality and quantity of Acton's water. The Master Plan also acknowledges Concord's historic use of Nagog Pond as a water supply and Acton's current reliance on groundwater supplies. The two communities thus have a shared interest in developing reliable water supplies within the watershed in which they are both located. Concord's proposal for an advanced treatment plant will improve the reliability of Nagog Pond as a water supply, which in turn will benefit the limited number of users in Acton, as well as those in Concord. When combined with the conditions imposed in this

decision and the state withdrawal limitations, wetlands protection and other regulations that apply, the BOS finds that Concord's proposed improved treatment and use of Nagog Pond is consistent with the Master Plan's objective of protecting the quality and quantity of Acton's water.

The proposed facility, as conditioned and limited through this decision, is also consistent with the Master Plan's objective of protecting open space. The proposed facility will be located in an area previously disturbed for the existing facility and will not require any new clearing. Concord's acquisition and historical maintenance of a large expanse of land adjacent to Nagog Pond also serve to preserve the land in its natural state and prevent the development that otherwise might occur under different ownership.

10.3.5.2 Is in harmony with the purpose and intent of this Bylaw.

Among other things, Concord's proposed project (as limited and conditioned in this decision) advances the Bylaw's objectives of facilitating the adequate provision of public services and protecting and enhancing the quality and quantity of Acton's surface water resources and to protect open space (as discussed in the preceding section).

10.3.5.3 Will not be detrimental or injurious to the neighborhood in which it is to take place.

Residents have expressed concerns related to a variety of potential adverse impacts to the neighborhood associated with the proposed facility including, but not limited to traffic, noise, aesthetics and impaired property values. The Board acknowledges that the project will have some increased impact on the neighborhood in comparison to the smaller scale existing facility. However, in a setting consisting of some 60 acres of almost entirely undisturbed wooded open space, the Board finds that the impact of the Project as approved and conditioned in this decision, will not rise to the level of being "detrimental or injurious to the neighborhood."

10.3.5.4 Is appropriate for the site in question

Among other considerations, the Site is adjacent to Nagog Pond and the associated water intake infrastructure, Concord has used Nagog Pond as a water supply since the early 1900s, Concord has assembled a large area of land in connection with its protection and use of Nagog Pond, and Concord has operated a treatment facility at this Site since 1995 pursuant to the Board's 1995 Special Permit decision (granted based on similar special permit findings). The Board acknowledges that the facility now proposed by Concord is larger than the existing facility and involves some different characteristics and operations, and that the neighborhood has changed since 1995, including residential development closer to the existing facility. The Board does not believe that these changes are so significant as to render the proposed facility inappropriate for this Site. Furthermore, whatever the feasibility of Concord's building a treatment facility at a Concord location to treat water piped from Nagog Pond, which Concord has indicated would entail additional costs and challenges, the Board does not view the feasibility or preferability of constructing the facility somewhere else as relevant to the question of whether the use is appropriate for this Site within the meaning of section 10.3.5.4.

10.3.5.5 Complies with all applicable requirements of this Bylaw.

See the findings related to zoning requirements and compliance, above.

- 2.24** Section 10.4.3 Site Plan Special Permit Design Standards: The Board finds that the proposed use and associated Plans, as modified, conditioned and limited in this decision, fully comply with the Site Plan Special Permit Design Standards set forth in Bylaw section 10.4.3, to the extent applicable, with the exception of section 10.4.3.4 (sidewalks), for which a waiver is granted through this decision. The Board notes that the Plans sufficiently demonstrate that the proposed facility will comply with the lighting requirements of sections 10.4.3.2 and 10.6. However, through this decision, the Board is requiring Plan Modifications that will provide additional details related to the lighting prior to construction (see Plan Modifications section below).
- 2.25** Section 10.4.5 Site Plan Special Permit Findings: The Board also finds that, "to the degree reasonable," the proposed use and associated Plan(s), as modified, conditioned and limited in this decision:
- 10.4.5.1 Is consistent with the Master Plan (see above Findings and related discussion).
 - 10.4.5.2 Protects the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment (see above Findings and related discussion).
 - 10.4.5.3 Provides for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site (see above Findings and related discussion).
 - 10.4.5.4 Provides an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises (see above Findings and related discussion).
 - 10.4.5.5 Provides adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site (see above Findings and related discussion).
 - 10.4.5.6 Will not derogate from the intent of this Bylaw to limit the adverse effects of the USE and development of land on the surface and groundwater resources of the Town of Acton (see above Findings and related discussion).
 - 10.4.5.7 Complies with all applicable requirements of this Bylaw (see above Findings and related discussion).
- 2.26** The Board has received comments from various Town departments, which are listed in Exhibits 1.5, 1.10 and 1.17 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.27** The Board received and heard comments from abutters and other individuals and groups with interest; they are listed in Exhibits 1.6, 1.12 and 1.18 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.

3 BOARD ACTION

3.1 BOARD VOTES

On March 23, 2017, after deliberations, the Board voted to grant the requested (1) Special Permit for Other Public Use, (2) Site Plan Special Permit with Waiver (sidewalk, as noted above), and (3) Floodway Finding pursuant to Note #4 of the Section 3.1 Table of Principal Uses – subject to the Plan Modifications, Conditions and Limitations set forth in the original March 2017 decision. The vote was 5 for and 0 against to approve that original Decision.

On April 26, 2018, based on the information presented during the 2017 and 2018 remand public hearings and after deliberations, the Board voted to approve this Modified Decision – subject to the Plan Modifications, Conditions and Limitations set forth in this Modified Decision. The vote was 4 in favor (Selectmen Green, Adachi, Berry and Benson) and 1 against (Selectmen Gardner) to approve this Modified Decision.

3.2 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer (ZEO) confirms that the Plans are revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the ZEO. Where approvals are required from persons or agencies other than the ZEO, the Applicant shall be responsible for providing evidence of such approvals to the ZEO. Please submit all Plan Modifications electronically unless otherwise noted.

- 3.2.1 Provide updated and corrected storm water calculations. In the calculations, assume that catch basins are not available for storm water storage.
- 3.2.2 Provide a more detailed Outdoor Lighting Plan with specifications for the luminaires, lamp types, power limits and other details to confirm compliance with Bylaw section 10.6.
- 3.2.3 Provide documentation of any project changes that may be required by the MHC or may otherwise be advisable after completion of the Intensive Archaeological Survey. Any material plan changes resulting from this Survey or MHC's review and approval of the Survey shall require further Board approval.
- 3.2.4 The Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with all requirements of the Rules, and to address all departmental comments received by the Board in a manner that resolves any concerns raised therein.

3.3 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns.

- 3.3.1 Compliance with the Plans and this Decision: The Applicant shall construct, operate and manage its proposed facility and the Site in accordance with this Decision and the Plans approved hereunder. The Applicant shall provide reasonable access to Acton officials to the Site for purposes of monitoring compliance with the Plans and this Decision.
- 3.3.2 Enforcement: The Town of Acton may elect to enforce compliance with this Site Plan Special Permit and Special Permit using any and all powers available to it under the law.
- 3.3.3 Improvements/Activities Limited to Those Approved: Improvements to and activities at the Site shall be limited to those shown on the Plans and approved in this Decision. Any additional or modified improvements or activities at the Site

shall be subject to the Board's further review and approval.

3.3.4 Archaeological Resources:

1. Prior to commencing any construction or site work associated with the proposed facility (including the fence) at the Site, Concord's archaeological consultant shall (A) complete an intensive archaeological survey in the areas designated for the proposed infiltration system and security fence (the "Intensive Archaeological Survey") and prepare a mitigation plan, (B) secure MHC's approval of the survey and mitigation plan, and (C) provide a copy of MHC's approval to the Board.
2. As part of the Intensive Archaeological Survey, Concord's archaeological consultant shall solicit input from local archaeologists and/or historians – including the Acton Historical Society ("AHS"), Acton Historical Commission ("AHC"), Mashpee Wampanoag Tribe and Friends of Pine Hawk – and, if requested by any of those organizations, shall allow qualified individuals identified by them to accompany Concord's archaeological consultant on the Site to observe the archaeological consultant's work.
3. If the Intensive Archaeological Survey reveals evidence of, or a high likelihood of, the presence of Native American or early colonial artifacts in areas to be impacted by its project, the Applicant shall develop and implement a mitigation program. At least 45 days prior to submitting the survey results and proposed mitigation program to the MHC, the Applicant shall provide copies of the survey results and proposed mitigation program to the AHS, the AHC, the Mashpee Wampanoag Tribe and Friends of Pine Hawk and shall provide those entities a reasonable opportunity to review and comment.
4. The Applicant shall also allow reasonable access to the Site throughout the duration of construction to a qualified consultant approved or recommended by MHC.
5. Concord shall undertake appropriate efforts to identify and protect archaeological resources within Nagog Pond as related to its replacement of the intake pipe and proposed temporary dewatering of a portion of the pond. Concord's archaeological consultant shall conduct monthly site visits and provide training and consultation services to the Resident Inspector for the project, who will directly observe those aspects of the intake pipe replacement work within the de-watered area of Nagog Pond that involve an excavation or disturbance to the pond bottom that could result in the exposure of archaeological sensitive material. Consistent with the recommendation in the Board of Underwater Archaeological Resources' November 23, 2015 letter, if Concord encounters any submerged or terrestrial cultural resources during the course of replacing the intake, it will "take steps to limit adverse affects and notify the [Board of Underwater Archaeological Resources] and the Massachusetts Historical Commission, as well as other appropriate agencies including the Board of Selectmen and the Mashpee Wampanoag Tribe, immediately in accordance with the Board's *Policy Guidance for the Discovery of Unanticipated Archaeological Resources*," and shall otherwise comply with the all state and federal laws and policies pertaining to such discoveries, including Section 106 of the National Historic Preservation Act of 1996, as amended (36 CFR 800).

3.3.5 Fence Installation, Maintenance and Reporting:

1. The Applicant shall install and maintain the fence in accordance with the Plans – in compliance with the construction protocol, timing and other details presented in the Plans. Among other things:

- Installation shall occur between August and March.
 - Installation shall avoid mature trees to the maximum extent feasible.
 - Actual ground disturbance during installation shall be limited to the posts, to be separated by a maximum of 10 feet.
 - Concord shall implement an Operations and Maintenance Plan, as described in the January 6, 2017 letter from LEC Environmental, Inc. to monitor and maintain clear round clearance under the fence – including full perimeter inspection at least once a month to maintain the 10-12” clearance and keep the fencing free of vegetation or debris, and inspection of the fence crossing the Floodway weekly during the spring months to remove any potential debris.
2. Annual Reporting: Annually, by April 1, for three years after the fence is in place, the Applicant shall provide the Board with a report documenting the fence maintenance work completed by the Applicant during the preceding year. The Applicant shall provide reasonable access to representatives of Acton’s Land Steward Committee and Natural Resources Department to inspect the fence and adjacent areas for as long as the fence is in place.

3.3.6 Chemical Deliveries and Residuals Removal:

1. Time Restrictions: Deliveries of chemicals to the plant and removals of residual matters from the plant shall routinely occur only on weekdays, excluding federal holidays, between the hours of 8 AM – 2:30 PM (which is designed to match the Acton Water District’s routine delivery times and to avoid routine deliveries during typical school pickup and drop-off times).
2. Routes: Vehicles making deliveries of chemicals to the plant and removing residuals from the plant shall access the facility via the northwestern portion of Acorn Park Drive and via Hazelnut Street – and shall not be permitted to use the southeastern portion of Acorn Park Drive, Quail Ridge Drive or Skyline Drive (except that portion between Hazelnut Street and the facility drive).
3. Notice to Vendors: In addition to informing vendors about the time and route restrictions in subsections 1 and 2 above, Concord shall include the following language in any contracts awarded to vendors retained to supply bulk chemicals to or residual pick-ups from this Site; “contractor shall take reasonable steps to ensure that all drivers delivering chemicals to or removing residuals from any facility served under this contract shall be aware of, and comply with, all applicable laws related to their use of the public and private roadways approaching these sites, including speed limits.”

3.3.7 Withdrawal Reporting: Concord shall provide a copy of its Individual Surface Water Source Statistics report for Nagog Pond from its Public Water Supply Annual Statistical Report with annual and monthly withdrawal data for Nagog Pond to the Acton Water District and Acton Health Department contemporaneously with the submission of the Annual Statistical Report to the Bureau of Water Resources Drinking Water Program at MassDEP.

3.3.8 Protection of Environment and Natural Resources: The Applicant shall construct and operate its facility (i) in compliance with applicable state and federal laws and regulations (existing and future) regarding the protection of the environment and natural resources, including, but not limited to, the Massachusetts Water Management Act, and (ii) otherwise in a manner that appropriately prevents significant damage to the environment in or adjacent to Nagog Pond. The Board acknowledges the Applicant’s position that

subsection (ii) may be preempted by state law or otherwise beyond the Board's authority, either on its face or as it may in the future be enforced. Although the Board disagrees, the Board further acknowledges that Concord's acceptance of subsection (ii), by choosing not to appeal it and resolve that dispute at this juncture, shall not be interpreted as a waiver of any challenge that Concord may have to the validity or enforceability of subsection (ii) in any future enforcement action.

- 3.3.9 Water Supply Coordination and Planning: The Applicant shall participate actively and in good faith in periodic meetings with the Acton Water District and the Town of Acton to discuss the short and long-term water supply needs and functions of both communities and to discuss mutual aid, assistance and coordination in support of each town's short-term and long-term water supply needs and functions. The Applicant shall also work cooperatively and in good faith with the Acton Water District and the Town of Acton in the event that either Concord or Acton faces water supply emergencies.
- 3.3.10 Coordination Regarding Trails: Within 45 days of this Decision becoming final, the Applicant shall engage in active and good faith discussions with the Acton Natural Resources/Conservation Department and the Acton Land Stewardship Committee regarding: (1) the use by pedestrians of designated trails on Concord's water supply land and Acton's adjacent conservation land, (2) establishing a connection between Breezy Point and Acton's Nagog Hill conservation land parcel, and (3) the provision of enforcement and resource protection along the designated trails by Acton, including the Acton Police Department and Natural Resources Department. It is understood that during and after such good faith discussions, Concord may, in the exercise of its discretion to assure a safe and clean public water supply, impose restrictions on public access to its land at Nagog Pond, including, but not limited to prohibiting such public access.
- 3.3.11 Construction Period:
1. Building Permit: No work on the Site shall begin prior to the issuance of a building permit.
 2. Roadway Monitoring, Repairs and Surety:
 - a. Prior to the start of construction, the Applicant shall inspect and submit to the Acton DPW Director a report and video survey documenting the general conditions of the public and private roadways between Great Road and the site that will be utilized by construction vehicles.
 - b. During construction, the Applicant shall monitor and periodically document the conditions of the roadways.
 - c. The Applicant shall be responsible for repairing any damage to the roadways to the extent such damage can be directly attributed to the Applicant, its employees, contractors or suppliers during the construction period.
 - d. Construction vehicles shall not access the Site via the southeastern portion of Acorn Park Drive, Quail Ridge Drive or Skyline Drive (except that portion between Hazelnut Street and the facility drive).
 - e. After construction and prior to issuance of an occupancy permit, the Applicant shall conduct a post-construction inspection and submit to the Acton DPW Director a report and video survey documenting the general conditions of the subject public and private roadways.
 3. Independent Construction Monitor: To help Acton monitor and address issues that may arise during the construction period, Acton's ZEO or other designee of the

Board shall retain a qualified consultant to act as an independent construction monitor to the Board and ZEO, with a focus on those aspects of construction activities with the greatest potential to impact the surrounding neighborhoods (e.g. construction traffic, potential roadway impacts, noise, hours of construction, etc...). The Applicant shall reimburse Acton for the reasonable fees/costs associated with those services up to a maximum of \$ 15,000 in the first 12-month construction period, and \$10,000 in each subsequent 12-month construction period (for the avoidance of doubt, any remainder from the funds available in one 12-month period shall not be carried over for use in any subsequent period). The scope of services shall be reasonable and shall be discussed with the Applicant, but ultimately determined by the Acton ZEO, with the scope (e.g. frequency of inspections) anticipated to vary depending on the nature and level of construction activity occurring during any particular period of time. To facilitate these efforts, Concord shall provide the Acton ZEO with a detailed construction schedule to project milestones and levels of construction activity and the independent construction monitor's scope shall be finalized prior to the start of site work.

4. Erosion Controls: The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.
 5. Work Times: All construction activity on the Site relating to this Special Permit shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm and Saturday 8:00am – 5:00pm. No work is permitted on Sundays & Holidays.
 6. Minimize Neighborhood Impacts: Every reasonable attempt consistent with standard construction management practices shall be made to minimize any adverse construction conditions and impacts to neighboring and abutting properties (such as, but not limited to, dust, noise, etc.).
 7. Communication Plan with Neighbors: Prior to commencement of construction, the Applicant shall work in good faith with the surrounding neighbors to develop a communication program that will afford the neighbors meaningful opportunities to anticipate construction schedules and activities, to obtain construction-related information during construction, to communicate any construction-related concerns and to facilitate efforts to resolve any issues that may arise during construction.
 8. Bald Eagle Habitat: Concord shall undertake reasonable efforts to avoid disturbance of nesting bald eagles, as provided in the National Bald Eagle Management Guidelines and as officials of the U.S. Department of Fish and Wildlife and Massachusetts Division of Fisheries and Wildlife may additionally require.
- 3.3.12 Post-Construction Noise Monitoring: After construction and prior to issuance of a certificate of occupancy, the Applicant shall conduct an acoustical study to confirm that the facility, including emergency generators while operating, comply with applicable sound regulations (as the Applicant represented that they would during this process). If that study concludes that further noise attenuation is required (e.g. sound enclosures or walls), the Applicant shall be responsible for proposing and implementing such measures subject to the prior approval of the Board.
- 3.3.13 As-Built Plans and Certification of Compliance: Prior to the issuance of the certificate of

occupancy for the approved facility, the Applicant shall submit an as-built plan stamped and certified by a Massachusetts Licensed Surveyor and a Professional Engineer showing the buildings, pavement, drainage, utilities, etc. and certifying that the Site development has been inspected and completed in substantial conformance with the approved Plans, approved Plan Modifications and this Decision. Any non-conforming features shall be clearly noted.

- 3.3.14 Water Service Lines: All water service lines that bring Acton Water District supplied water to the facility shall be installed in accordance with the specifications of the Acton Water Supply District. Subject to Acton Water District's discretion and approval and to the extent feasible, the water service for the facility may access the Acton Water District water main located on Skyline Drive.
- 3.3.15 Recording of Decision: This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

3.4 LIMITATIONS

The authority granted to the Applicant under this special permit is limited as follows:

- 3.4.1 Acton's Right to Use Nagog Pond: Issues regarding the respective rights of Acton, Concord and Littleton to use Nagog Pond as a drinking water supply are complex and are beyond the scope of this permitting process or decision. The Board's issuance of this decision is not intended to diminish, limit, or advance in any way Acton's legal authority to use Nagog Pond as a water supply in the future.
- 3.4.2 Except as specifically provided herein, this decision does not limit or negate the applicability of any other portion of the Bylaw or Rules.
- 3.4.3 This special permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.4.4 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.4.5 This Site Plan Special Permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.
- 3.4.6 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

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4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, s. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk (with notice of the appeal filed with the Town Clerk within the same 20-day period).

The Town of Acton Board of Selectmen



Katie Green, Chair

This is to certify that the 20-day appeal period on this decision has passed and there have been no notices of appeal filed with this office.

Eva Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Owner
Design Review Board

Building Commissioner
Engineering Department
Natural Resources Dept.
Police Chief
Historical Commission
EDC

Health Department
Tree Warden
Town Manager
Acton Water District
Assessors Department