



TOWN OF CONCORD

Planning Board

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Filed with the Town Clerk

August , 2021

**DECISION ON REMAND
FOR A
DEFINITIVE SUBDIVISION PLAN
AND
CERTIFICATE OF APPROVAL**

MAIN STREET

DECISION of the Planning Board (“the Board”) on the Definitive Subdivision Plan application of Symes Development & Permitting LLC (“Symes” or “the Applicant”), for a sixteen lot subdivision of land at 11B, 146B and 1442 Main Street, and 110 Highland Street (Parcels 2407, 2408, 2409, 2409-1) pursuant to the Land Court’s judgment and remand order (“Remand Order”) of June 23, 2021 in *Symes Development & Permitting LLC v. Concord Planning Board et al.*, 21 MISC 000021 (HPS).

After causing notice of the time and place of the remand public hearing and of the subject matter thereof to be published in *The Concord Journal* on August 5, 2021 and August 12, 2021, posted and mailed to the Applicant, abutters and other parties in interest as required by law, the remand public hearing was opened on August 24, 2021.

As part of the public record, the Board took into consideration the Land Court’s Remand Order remand order of June 23, 2021, as well as the record of the Board’s prior hearing on this definitive subdivision plan, which culminated in a decision dated December 30, 2020.- Symes challenged certain conditions in the December 30 decision, and the Land Court’s Remand Order annulled certain of those conditions. The Board’s decision below is consistent with the Remand Order.

The Board reviewed and deliberated on the following:

I. Project Description & Site Information

The Project Site (Site) is approximately 7.97 acres, comprised of four lots: two existing Approval Not Required lots (140 Main St. & 110 Highland St.) that have an existing dwelling and two undeveloped lots. The Site is located on the north side of Main Street in the Residence C Zoning District with the rear of the Site within the Wetland Conservancy District. The Fitchburg Commuter Rail line abuts the northern property boundary. Town water, sewer, and electric, as well as gas service is available from Main Street.

The Definitive Subdivision Plan is for 18 lots, comprised of Lots 1 through 16 and Lot A1 and D1, with a proposed 26-foot-wide roadway with two cul-de-sacs.¹ Lot E and Lot F are existing ANR lots that will require temporary grading easements to construct the new road and maintain sight lines.

Stormwater drainage will be handled through the use of catch basins and subsurface drainage system with outfalls directed towards two sediment forebays that will have overflows to the non-jurisdictional isolated wetland. The grading for the roadway, utilities, stormwater drainage and all of the Lots will require the removal of approximately 60,840 cubic yards (c.y.) of earth from the Site. The project requires the demolition of two existing dwellings.

All 18 lots, as well as Lot E and Lot F, will be served by Town water and electric. Lot 1-16 and Lot A1 will have private on-site sewage disposal systems. Lot D1, Lot E, and Lot F are proposed to be served by Town sewer.

A water main will be extended from the existing water main in Main Street down the entire length of Road A, from Road A down the length of Road B and then across Lot 13 and Lot A1 and connect to the existing water main in Highland Street.

The Site is generally flat along Main Street and then begins to slope upwards to a level plateau then slope steeply down to an isolated vegetated wetland and up again to the Commuter Rail line. The Site is generally wooded, becoming denser towards the rear.

To the south, west and east are existing residential properties, including the Center Village PRD and all are located in the Residence C Zoning District. Across the Commuter Rail line to the north is the Conant Street mixed use residential/commercial development and Rideout Playground. To the northeast is the Junction Square, a commercial and professional office complex in the West Concord Business Zoning District.

II. Zoning Bylaw Lot Requirements

The property is located within the Residence C Zoning District, which requires:

1. Minimum Lot Area = 10,000 SF – **All of the lots have over 10,000 s.f. of area.**
2. Minimum Lot Frontage = 80 LF – **All of the lots have over 80 feet of frontage.**
3. Minimum Lot Frontage Exception = 80 LF – **not being utilized**
4. Minimum Lot Width = 64 LF – **All of the lots are over 64 feet of lot width.**
5. Minimum Front Yard Setback = 20 feet – **The Plan does not show building envelopes.**
6. Minimum Side Yard Setback = 15 feet – **The Plan does not show building envelopes.**
7. Minimum Rear Yard Setback = 30 feet – **The Plan does not show building envelopes.**
8. Minimum Corner Clearance = 10 feet – **Not applicable.**
9. Maximum Height = 35 feet – **Insufficient information to make a determination.**

¹ The Applicant has contended that the subdivision covers only Lots 1 through 16. In the opinion of the Board, Lots A1 and D1 are also part of the subdivision because the borders and dimensions of these lots would be adjusted by the Definitive Subdivision Plan.

III. Subdivision Rules and Regulations

On May 6, 2020, the Planning Board issued a Preliminary Plan Decision with the following conditions for submission of the Definitive Subdivision Plan:

1. *The Preliminary Plan is granted without any waivers and any Definitive Plan will require an Earth Removal Special Permit from the Zoning Board of Appeals.*

Following the December 30 decision, the Applicant has not applied for or received an Earth Removal Special Permit from the Zoning Board of Appeals. The Zoning Board is yet to render a decision on the Earth Removal Special Permit application. Consistent with the Remand Order, this decision no longer requires This Definitive Plan Decision will incorporate this requirement as a condition of approval the Applicant to obtain an Earth Removal Special Permit prior to the Board's endorsement of the Definitive Subdivision Plan.

2. *The Preliminary Plan shows a compliant cul-de-sac that appears to be feasible for adequate emergency vehicle access. The Definitive Plan shall include detailed plans showing the road section, proposed curbing, hydrant location, the cul-de-sac turning radius, as well as, information regarding on-street parking in order to make any final determination on whether adequate emergency vehicle access is provided.*
3. *The Definitive Plan shall be subject to the Town of Concord Stormwater Regulations and demonstrate that the project is constructed with appropriate stormwater Best Management Practices to meet state and local stormwater management standards. The Definitive Plan shall have no increase in stormwater rate or runoff volume for up to and including the 100-year event and also provide water quality treatment at all design points.*
4. *The Applicant shall provide drainage calculations demonstrating that the groundwater will not impact abutting developed properties or the newly developed properties.*
5. *The drainage pipe layout does not clearly define whether stormwater from the sediment forebay flows into the underground system or if the underground system flows into the forebay. The Definitive Plan shall clarify this and include inflows, invert elevations and pipe slopes.*
6. *The Definitive Plan shall define "DVMH" structure.*
7. *The drainage/infiltration system under the center island in the cul-de-sac presents a maintenance issue for the Town. If the Applicant intends to petition the Town to have the road accepted as a public way, then the system shall be revised to be in full compliance with the Subdivision Rules and Regulations and the Concord Public Works Design Standards. If the roadway and all utilities are intended to remain private, the Applicant shall provide detailed information on the maintenance.*
8. *The Definitive Plan shall provide the design speed of the roadway so that the roadway dimensions can be confirmed.*

For Condition 2 through Condition 8, the Concord Public Works (CPW) Engineering Division outlined various issues and concerns in an October 8th memo. The Applicant provided additional information and revised plans from October 27th to November 12th. In a memo dated December 2, 2020, the CPW Engineering Division stated they had

completed their review of the revised plans and material and have found that all previous issues and concerns with the plans and stormwater drainage have been addressed with recommended conditions of approval.

9. *Pursuant to Subdivision Rules and Regulations Section 6.10.1, sidewalks shall be provided on one side of the street. The Definitive Plan shall show a sidewalk going all of the way around the cul-de-sacs.*

The revised plans show a sidewalk from Main Street around the Road A and Road B cul-de-sacs.

10. *Pursuant to Subdivision Rules and Regulations Section 6.13.10, where it is necessary to carry drainage across lots within the subdivision, adequate easements shall be provided. The Definitive Plan shall show the location and dimensions of all easements for the stormwater drainage system located on individual lots.*

The revised plans show the location and dimensions of the stormwater drainage system easements.

11. *The Engineering Division reserves the right to comment on future submittals related to any new or previously submitted information provided to the Town for review including the Definitive Subdivision Plan and supporting documentation.*

In a memo dated December 2, 2020, the CPW Engineering Division stated they had completed their review of the revised plans and material and have found that all previous issues and concerns with the plans and stormwater drainage have been addressed with recommended conditions of approval.

12. *The Applicant is advised that the proposed water and sewer service connections shown on the plan do not meet the requirements of the Water and Sewer Use Rules and Regulations, and the Water and Sewer Design and Construction Standards, and Subdivision Rules and Regulations. Any deviations from the Water/Sewer Divisions Rules and Regulations, requires review and approval by the Public Works Commission. Public Works Commission review will only be considered at such time that the proposed development has received support through approvals from other Concord Town Boards.*

The CPW Water/Sewer Division has reviewed the revised plans and additional information and determined issues and concerns raised in the September 2nd letter have been addressed and recommends conditions of approval required regarding final design.

13. *The Subdivision Rules and Regulations 6.14.3 requires reasonable provisions be made for extension of the water main to adjoining property, including easements, as necessary. The Water Use Rules and Regulations require that for a lot to be eligible for water service the lot must front a water main in a public or private way. A Subdivision seeking connection to the municipal water system will require the applicant to submit an application for a Water Main Extension in order to create frontage to a water main. Any approval of a water main extension will require that a water system loop be created. The proposed common water main shown on the plan set "dead ends" in each of the two proposed cul-de-sac's and does not provide a system loop.*

The CPW Water/Sewer Division has reviewed the revised plans and additional information and determined issues and concerns raised in the September 2nd letter have been addressed and recommends conditions of approval required regarding final design.

14. *The Applicant will be required to submit to the Concord Board of Health a Request for Title 5 Building Review (Form S) to identify any potential increase in wastewater flow and associated Sewer Improvement Fee. Based on existing wastewater capacity constraints, flow increases over 1,000 gallons per day will be administratively denied by the Water/Sewer Superintendent. An appeal may be made to the Public Works Commission seeking relief for an increase in flow over 1,000 gallons per day.*

This Definitive Plan Decision incorporates the submission of a Request for Title 5 Building Review as a condition of approval prior to the commencement of site work.

15. *The Applicant shall provide to the Fire Department for review three alternative names for the new subdivision road. All homes that front on the roadway shall have their own street address, separate from Main Street.*

The Fire Department has reviewed the proposed names submitted by the Applicant and does not have any issues with them except for Hayes Circle since there is already a Hayes Road. The Historical Commission has not provided any feedback on the proposed names. The Applicant shall receive approval from the Historical Commission on the selection of a road name for Road A and Road B from the following names with the use of Road, Lane, Way or Circle; Fowler, Hayden, Hogan, Carter and Sullivan.

16. *The Definitive Plan shall incorporate the proper amount of hydrants and/or hydrants appropriately placed throughout the development.*

The revised plans show four hydrants within 400 feet of each other, which has been found acceptable to the Fire Department.

17. *The Applicant shall provide the Fire Department for review and approval a NFPA 241 construction safety plan. This standard shall apply to structures in the course of construction, alteration, or demolition, including those in underground locations. This standard is intended to prescribe minimum safeguards for construction, alteration, and demolition operations in order to provide reasonable safety to life and property from fire during such operations.*

The Definitive Plan Decision incorporates the submission and approval of a NFPA 241 plan as a condition of approval prior to the commencement of any site work.

18. *The Definitive Plan shall require approval from the Army Corps of Engineers, or documentation that the Army Corps of Engineers has determined the isolated wetland is not jurisdictional as a federally isolated wetland.*

The isolated vegetated wetland is jurisdictional under the Army Corps of Engineers (ACOE) and was assigned a File Number: NAE-2020-00193 earlier on January 17, 2020. This was in response to the submittal by the Applicant of a Self-Verification Form for the General Permits for Massachusetts associated with a previously proposed PRD development. Additional correspondence with the ACOE Project Manager will be conducted by the Applicant in association with the final design plans.

The Natural Resources Director recommends that prior to endorsement of the Plan, the Natural Resources Commission approves the boundary of the Isolated Wetland and the Applicant provides confirmation of ACOE Self-Verification for the Definitive Subdivision Plan.

19. *Individual sewage disposal systems shall be designed, permitted and constructed in accordance with:*

- a. *Title 5 of the State Environmental Code, 310 CMR 15.000, Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, and*
- b. *Concord Board of Health regulation, Minimum Requirements for the Disposal of Sanitary Sewage in Unsewered Areas.*

The Definitive Plan Decision incorporates the submission and approval of each individual sewage disposal system as a condition of approval prior to the issuance of any building permit for each lot.

20. *Town water shall be available.*

The CPW Water/Sewer Division has reviewed the revised plans and additional information and determined issues and concerns raised in the September 2nd letter have been addressed and recommends conditions of approval required regarding final design.

21. *Any wells for domestic water, irrigation purposes, or heat pump use, shall be designed, permitted and constructed in accordance with the Concord Board of Health regulation, Minimum Sanitation Standard for Private and Semi-Public Water Supply.*

22. *No underground fuel storage systems shall be installed without a variance granted by the Board of Health in accordance with Section 4 of the Underground Storage Tank Bylaw adopted by the April 1993 Town Meeting.*

23. *Tree stumps and wood wastes generated by land-clearing operations shall not be buried on site. (DEP's solid waste regulations 310 CMR 16.05(3) (d) and 310 CMR 19.013(1) (h) prohibit stump dumps on lots being developed for sale.)*

24. *All proposed lots as part of the subdivision shall comply with the Town's Underground Utility By-Law.*

Condition 21 through Condition 24 has been incorporated into the Definitive Plan Decision as a condition of approval.

25. *Prior to the submission of the Definitive Plan, the Applicant shall coordinate with CMLP to determine which pole or poles the new underground duct bank will rise and connect to the existing overhead system.*

26. *The Definitive Plan, as depicted in the plan set dated March 4, 2020, shall be designed in full conformance with CMLP standard requirements.*

The CMLP Engineering Division has reviewed the revised plans and additional information and does not have any issues. Recommended conditions of approval have been incorporated into this Decision.

Subdivision Rules & Regs. Section 5.4 Site Evaluation

A Site Evaluation shall be submitted for all subdivisions which create frontage for six or more lots. The Board may require that certain elements of the site evaluation be prepared by qualified experts. The Board may require that certain of the following information is necessary to evaluate a plan for less than six (6) lots as well, because of special circumstances relating to the location, natural features, or the proposal itself.

5.4.2 A Narrative Statement

(a) Impact of the subdivision upon surface and groundwater quality and level;

The Plans show each subdivision road will be provided with deep sump hooded catch basins, and an offline sediment forebay to collect and treat the first 1-inch of runoff from impervious surfaces. The combination of the catch basins and sediment forebay will maintain the groundwater quality associated with each street. The remainder of each storm event is then routed to a subsurface infiltration system under the cul-de-sac islands. Each system has been sized to store and recharge the necessary runoff volume to maintain existing conditions. This recharge of stormwater runoff associated with the streets and the roof drywells will maintain the level of groundwater in this subcatchment.

The Board asked for specific information regarding the removal of the significant amount of earth and all of the trees and vegetation on the site and the impact to the overall groundwater recharge for the site and impacts to abutting properties.

In a memo dated December 2, 2020, the CPW Engineering Division stated they had completed their review of the revised plans and material and have found that all previous issues and concerns with the plans and stormwater drainage have been addressed with recommended conditions of approval.

The Town Planner notes that Lot E and Lot F are not part of the Definitive Subdivision Plan, but grading easements on Lot E and Lot F are required to construct the new road and maintain sight lines. Additionally, Lot E and Lot F are shown to have various utilities and driveway access from the new subdivision roadway. As such, the runoff from Lot E and Lot F has been included in the revised Stormwater Report watersheds.

(b) Effects upon important wildlife habitats, outstanding botanical features, scenic or historic sites or buildings;

The construction of the roadways, utilities, stormwater drainage and house lots results in the removal of almost all of the existing vegetation within both the road layout and within each typical minimum lot area, except within the isolated vegetative wetland.

The Site is not mapped as Estimated Habitats of Rare Wildlife or Priority Habitats of Rare Species by the Division of Fisheries & Wildlife Natural Heritage and Endangered Species Program (NHESP) according to the current NHESP Atlas. The Site does not contain any certified or potential vernal pools according to the NHESP. The Applicant's professional wetland scientist conducted a detailed investigation of the Site to evaluate the isolated vegetated wetland (IVW) to determine if it may be functioning as a vernal pool. The IVW did not meet the certification criteria detailed in the NHESP Guidelines for the Certification of Vernal Pool Habitat. The IVW is very shallow and underlain with well drained sandy soils and

does not appear to hold water long enough to support vernal pool species. In most areas, the IVW was less than knee deep. The professional wetland scientist walked the remainder of the property and no unique wildlife habitat components were noted.

The Site contains an existing dwelling at 1440 Main Street that the Historical Commission found to be Preferably Preserved and issued a Demolition Delay that expired on December 18, 2018.

(c) Capability of soils, vegetative cover, and proposed erosion control measures to support proposed development without erosion, silting or other instability;

The application states that the capability of soil and vegetative cover is very good to support the proposed development, through implementation of the provisions specific to this Site to protect against erosion, silting, and other soil instability. The revised plans include erosion control measures based upon the proposed grading and the CPW specifications.

The Board requested specific information regarding the capability of soils to support the development without erosion, silting or other instability due to the removal of all of the existing trees and vegetation and the impact the removal of the significant amount of earth and proposed slope will have on abutting properties.

In a memo dated December 2, 2020, the CPW Engineering Division stated they had completed their review of the revised plans and material and have found that all previous issues and concerns with the plans and stormwater drainage have been addressed with recommended conditions of approval.

(d) Estimated increase of peak run-off caused by altered surface conditions, and methods to be used to return water to the ground;

The revised stormwater drainage report dated November 2nd asserts that there will not be an increase of peak run-off due to the implementation of the subsurface infiltration systems to store and recharge runoff.

In a memo dated December 2, 2020, the CPW Engineering Division stated they had completed their review of the revised plans and material and have found that all previous issues and concerns with the plans and stormwater drainage have been addressed with recommended conditions of approval.

(e) Description of proposed alterations of wetlands or flood plain areas;

The application states that the onsite isolated vegetated wetland does not have a buffer zone, therefore a permit under Chapter 131 Wetlands Protection Act is not required. Also there will not be any alteration to the flood plain. The proposed filling of a portion of this isolated vegetated wetland will be completed in accordance with the provisions of the U.S. Army Corp. of Engineers. The isolated vegetated wetland was assigned a File Number: NAE-2020-00193 by the ACOE on January 17, 2020). This was in response to the submittal by the Applicant of a Self-Verification Form for the General Permits for Massachusetts associated with a previously proposed PRD development. Additional correspondence with the ACOE Project Manager will be conducted by the Applicant in association with the final design plans for the conventional subdivision.

The Natural Resources Director recommends that prior to endorsement of the Plan, the Natural Resources Commission approves the boundary of the isolated vegetative wetland and the Applicant provides confirmation of ACOE Self-Verification for the Definitive Subdivision Plan.

(f) A report estimating the traffic flow at peak periods in relation to existing traffic on the streets in and adjacent to the subdivision, and the effect of the project on public services such as water, sewer, schools, police, fire, waste disposal, and recreational facilities;

The Supplemental Access Assessment conducted by the Applicant's traffic engineer estimates the vehicle trips and vehicle travel speeds and has determined that the proposed subdivision will not have a significant impact on adjacent roadways. Lot E and Lot F are shown to have various utilities and driveway access from the new subdivision roadway and were included in the traffic analysis. The CPW Engineering Division has reviewed this assessment and has no objections to the information provided.

There will be an increase in public services demand associated with creation of eighteen (18) four-bedroom residential dwelling units as follows:

- Town Water - 7,920 gallons per day (18 x 440 gpd/dwelling).
- Town sewer – No-impact due to private septic systems on each lot. ANR lots will maintain available access rights to sewer connections associated with the three existing parcels.
- Standard obligations per dwelling unit for schools, police, fire, waste disposal and recreational facilities.

(g) A summary tabulation of the total area being subdivided, the total area of all lots, the total area dedicated for streets and drainage or utilities, and the total area reserved for recreation, parks or other open land;

The application provides the following chart:

Definitive Plan – July 14, 2020 (Sheet 2 of 12)	Area (sq. ft. +/-)
Total Area Subdivided	347,300
Total Area of Subdivision Lots (1-16)	259,519
Total Area of Lots A1 & D1	22,899
Total Area of Streets (ROAD A & B)	64,876
Total Area Reserved for recreation, parks, open land	0

(h) A projection of the direct, current Town costs and revenues associated with this development;

One Time Revenue Permit Fees: 16 x \$4500 = \$81,000.

Annual Revenue 18 dwellings @ \$1,350,000 = \$24,300,000 x \$14.23 tax rate per \$1,000 = \$345,789.

Average estimated vehicle value @ \$30,000 per household, 16 x \$30,000 x \$25 per \$1,000 = \$13,500

Total annual estimated revenue is \$359,289.

Costs for the town would be the same as all other residences within the town, police, fire, DPW and schools. New growth revenue for 2021 is budgeted at \$900,000 in the Finance Committee Report for the September 2020 Town Meeting. The Town's Budget & Purchasing Director estimates that the annual cost of Town services per household is \$15,374. The Applicant estimates the Town expense for this project is \$276,732. It is not known whether this estimate includes the Concord Public School or Regional High School costs.

(i) An analysis of the sight distances at the intersections of the proposed street(s) with any other street(s);

The Applicant's Traffic Engineer has reviewed the Applicant's plan that illustrates the sight lines at the Project Site driveway intersection with Main Street and states that it will meet the recommended sight distance for safe operation of the access based on an approach speed of 40 miles per hour (mph) along Main Street (305 feet is recommended), which is higher than both the measured 85th percentile vehicle travel speed documented in the July 2018 Transportation Impact Assessment (38 mph) and the posted speed limit (30 mph). As such, access to the Site for construction vehicles by way of the proposed roadway intersection with Main Street can be afforded in a safe manner. The Police Department recommends the use of a police detail, which the Applicant shall bear the cost, for trucking activities that have the potential to impact Main Street and to facilitate the safe movement of trucks in and out of the Site and pedestrians on the sidewalk.

In a July 30, 2020 memo, the Assistant Fire Chief notes that the Department operates a ladder truck where the grade of the roadway should not exceed a seven to eight degree slope, in particularly the entrance into the subdivision. Anything greater would cause the ladder truck to bottom out. The roadways are designed with a 5% to 7% grade. The revised plans have been found acceptable to the Fire Department.

(j) Impact of the subdivision on any historical or cultural resources located within one hundred (100) feet of the proposed development as identified in the Survey of Historical and Architectural Resources and Historic Resources Masterplan;

The subdivision construction will not have a direct impact on any historical or cultural resources identified in the Survey of Historical and Architectural Resources and Historic Resources Masterplan. The Site contains an existing dwelling at 1440 Main Street, which the Historical Commission has found to be Preferably Preserved and issued a Demolition Delay that expired on December 18, 2018.

(k) Impact of the subdivision on any open space or natural resources located within one hundred (100) feet of the proposed development as identified in the Town of Concord Open Space Plan.

The subdivision construction will not have a direct impact on any open space or natural resources identified in the Open Space Plan. The Board requested information on the impact of the subdivision on the wetland that extends onto the abutting property. The Applicant's engineer states the rate and volume increases indicated are to an arbitrary interior analysis point along the edge of isolated vegetated wetland (IVW) flags. The Order of Resource Area Delineation Plan shows the existing topography and locations of the five depressions within

this IVW. This does not represent an increase in runoff at the boundary to the upgradient Junction Square Condominium.

Runoff from Junction Square discharges onto the Site along the northeasterly boundary to a low area (Depression Areas #5, #4 & #3) located partially within the Junction Square Open Space Parcel and within the Site. The minor increases in question are collected by Depression Areas (#1 & #2) where the storm events are mitigated in separate low areas located completely within the Site, thus resulting in no increase in runoff at the Site boundary.

The Natural Resources Director recommends that prior to endorsement of the Plan, the Natural Resources Commission approves the boundary of the isolated vegetated wetland.

Subdivision Rules & Regulations Section 5.5: Action by the Board

After the Public Hearing, the Board will approve, modify and approve, or disapprove the plan as submitted. Criteria for action by the Board shall be the following:

(a) Completeness and technical adequacy of the plans and supporting materials;

The Board finds that Town staff has closely reviewed each iteration of the Definitive Subdivision Plan and further finds that the plans are complete and technically adequate subject to recommended conditions of approval which have been incorporated into this Decision.

(b) Determination that development at the proposed location does not entail unwarranted hazard to safety, health and convenience of future residents of the development or of others because of possible traffic hazards, or environmental degradation which could be avoided or ameliorated through an alternative plan;

Town staff has closely reviewed each iteration of the Definitive Subdivision Plan. The Board of Health, the Natural Resources Commission, the Fire Department, CMLP and CPW Engineering and Water/Sewer Divisions, among others, have reviewed the Definitive Subdivision Plan for issues of “flooding, improper drainage or adverse drainage, adverse topography, poor soils, bedrock, [and] location of utility easements” and the measures the Applicant has proposed to address these issues. The Board finds that consistent with recommendations from Town staff, this Decision includes conditions that would limit harm to the safety, health and general welfare of present and future residents of the subdivision and neighboring areas.

(c) Conformity with the design and construction standards described in these Rules and Regulations and practices, specifications and standards required and approved by Concord Public Works;

Consistent with its specific findings below, the Board finds that the Definitive Subdivision Plan conforms with the design and construction standards specified in Section 6 of the Rules & Regulations.

(d) Conformity with all applicable zoning requirements;

The Board finds that the laying out of all of the lots is in conformance with all applicable Zoning Requirements.

(e) *Consistency with the purposes of the Subdivision Control Law as described in G.L. c. 41, section 81-M.*

As detailed in this Decision and subject to the conditions of approval, the Board finds that the Definitive Subdivision Plan is consistent with the purposes of the Subdivision Control Law as described in G.L. c. 41, section 81-M.

Subdivision Rules & Regulations Section 6 Design Standards

6.2.1 Protection of Natural Features: In laying out a subdivision, the subdivider shall give due regard for all natural features such as large trees, watercourses, scenic or historic spots, aquifers, flood plains, habitats of rare or endangered species, and similar community assets which, if preserved, would add attractiveness and value to the subdivision. These features shall be left undisturbed wherever practical and the Board may waive design requirements in order to protect important natural features.

Many trees fitting the Tree Protection Bylaw’s definition of a large tree (diameter breast height of 6 inches) are not shown on the Plans. The Board asked for specific information regarding the impact on the Site and to abutting properties due to the removal of the significant amount of earth and all of the trees and vegetation on the site, the impact to the overall groundwater recharge, and the impact to the abutting property due to stormwater drainage being directed to the wetland and impacts to abutting properties.

The Board finds that while the Tree Preservation Bylaw does not apply to the work required for the construction of the subdivision roadway as shown on Plan Sheet 5, it does apply to the construction of the individual lots as shown on Plan Sheet 6. As the Applicant acknowledged in a letter dated November 13, 2020, any removal of trees from the subdivision tract that is not necessary for the construction of the subdivision roadways and associated utilities—for example, to grade the individual lots—requires compliance with the Tree Preservation Bylaw. The Applicant was reminded at the December 8, 2020 meeting that if they intend to grade for the roadway, utilities, stormwater drainage, and the lots at the same time, an application under the Tree Preservation Bylaw is required prior to the commencement of any site work.

The Board finds that identified or regulatory “watercourses, scenic or historic spots, aquifers, flood plains, [and] habitats of rare or endangered species” are not present at the Site. The Board finds that given the requirements for the layout of streets and utilities as required in the Subdivision Rules and Regulations, it is not practical to significantly leave undisturbed the natural features of the Site. The Board further finds that conditional on the Applicant’s compliance with the Tree Preservation Bylaw, the Applicant will have given due regard to the natural features of the Site.

6.2.2 Unsuitable Land: Land which the Planning Board finds to be unsuitable for development due to flooding, improper drainage or adverse drainage, adverse topography, poor soils, bedrock, location of utility easements, or other features which the Board has reason to believe would be harmful to the safety, health and general welfare of the present or future inhabitants of the subdivision and/or its surrounding area, shall not be subdivided or developed unless adequate measures are formulated by the subdivider and approved by the Board to eliminate any short-term or long-term impacts created by development of the unsuitable land.

Due to the steep topography, the Plan requires the removal of approximately 60,840 c.y. of earth from the Site for the construction of the roadways, utilities, stormwater drainage and lots. Town staff has noted, and the Applicant has acknowledged, that an Earth Removal Permit from the Zoning Board of Appeals is required for the development of the Plan ~~and recommends a condition requiring approval and recording of that Permit prior to endorsement of the Plan.~~ The Board acknowledges that it has not provided any input or recommendation to the Zoning Board of Appeals regarding the findings required for the granting of an Earth Removal Permit.

The Board requested and the Applicant has provided detailed information on the size and number of trucks required to remove this volume of earth and the duration required for the completion of the earth removal, as well as other mitigating measures proposed to minimize the long- and short-term impacts created by development of this land. The Applicant has also added the Street Topographic Plan (Sheet 5) to show minimal cut grading necessary to construct subdivision roadway, with labels pointing out where proposed grades match existing grades within turnaround area per regulations. The Site Topographic Plan (Sheet 6) has been adjusted to minimize grading on Lots 1-5 along the boundary with Center Village. The house footprints have been reduced on Lots 1, 2 & 5, with a garage under now proposed on Lot 4 to reduce extent of cut volume. Additionally, the Applicant's attorney has provided a second opinion dated October 27th regarding the applicability of this Section.

Town staff has closely reviewed each iteration of the Definitive Subdivision Plan. The Board of Health, the Natural Resources Commission, the Fire Department, CMLP and CPW Engineering and Water/Sewer Divisions, among others, have reviewed the Definitive Subdivision Plan for issues of "flooding, improper drainage or adverse drainage, adverse topography, poor soils, bedrock, [and] location of utility easements" and the measures the Applicant has proposed to address these issues. Consistent with recommendations from Town staff, this Decision includes conditions that would limit harm to the safety, health and general welfare of present and future residents of the subdivision and neighboring areas.

The Board finds that the land in the subdivision tract is not unsuitable for development, so long as the Applicant complies with the recommendations of Town staff as incorporated in the conditions of this Decision. The Board further finds that the conditions in this Decision are "adequate measures...to eliminate any short-term or long-term impacts" pursuant to Section 6.2.2. This finding is conditional on the Applicant's receipt from the Zoning Board of Appeals, pursuant to Zoning Bylaw Section 7.2 Earth Removal Bylaw, a Special Permit and compliance with any conditions of approval. The Planning Board has not provided input to the Zoning Board of Appeals regarding any Earth Removal Special Permit application.

Section 6.20 Reservation of Land for Public Purposes

The Planning Board may require the designation of a portion of the subdivision tract for reservation for a period of three years for municipal purposes. Reservation of land shall not be unreasonable in relation to the size of the tract being subdivided and to the prospective uses of the reserved land.

In a November 13, 2020 letter, the Applicant acknowledged the Board's authority to reserve land for a park and offered ANR Lot E or Lot F, which are outside of the subdivision. Additionally, the Applicant agreed to allow public access to the sidewalk along Road A and Road B. A public access easement will be required.

The Board has determined that reserving land in the subdivision tract for use as a public park is consistent with Section 6.20 and the public interest. Given the size of the subdivision and its location in a denser neighborhood, the reservation of Lot A1 for a public park along with a 5-foot-wide public access easement from Road B across Lot 13 to Lot A1 is within the public interest. Additionally, the Board finds that the reservation of Lot 6 allows for the preservation of a portion of the Site in a primarily undisturbed manner that will provide a connection between the isolated vegetative wetland and the adjacent Town-owned open space land, as well as direct public access from the sidewalks within the subdivision to the Town-owned open space.

The Board specifically finds the following:

1. Lot A1 is preferable to Lot E or Lot F because it is located on a local street (Highland Street), which has less traffic and slower vehicle speed;
2. Lot A1 provides better access for the abutting neighborhoods since it is not located in the interior of the subdivision off Road A or Road B;
3. The public access easement across Lot 13 allows for pedestrian connectivity between the subdivision lots to the public park and provides a more direct route to Highland Street, West Concord Village and the West Concord Commuter Rail Station;
4. The sizes of Lots A1 and Lot 6 are reasonable in relation to the size of the tract being subdivided, and;
5. Reserving Lots A1 and Lot 6 is reasonable for their prospective uses as a small, public park to serve the residents of the new subdivision, the Highland Street neighborhood, and adjoining neighborhoods (Lot A1) and a primarily undisturbed area of open space (Lot 6).

Section 6.21 Reservation of Land for Housing Purposes

~~In order to serve the public purposes of the Inclusionary Housing Bylaw adopted by the 1992 Town Meeting as Article 61 of addressing the Town's affordable housing needs and of encouraging the availability of housing in the Town for persons of all income levels, the Planning Board shall require, as a condition of approval of each new residential subdivision, the reservation of land within the subdivision for purchase by the Town or its designee, in accordance with the following specific requirements, procedures and exceptions:~~

~~6.21.1 — Minimum Tract Size: — The requirement for reservation of land shall apply to all tracts containing at least five (5) times the area required for a single family house lot in the underlying zoning district.~~

~~The subdivision tract is 347,300 s.f. and located in the Residence C Zoning District, which requires 10,000 s.f. per lot. Under Section 6.21.1, a subdivision containing more than 50,000 s.f. requires the reservation of land for affordable housing purposes, unless that reservation meets one of the exceptions noted in Section 6.21.2.~~

~~6.21.2 — Minimum Area To Be Reserved: — With the exceptions stated in this paragraph, no less than ten (10) percent of each residential subdivision to which the reservation requirements~~

~~applies shall be reserved for purchase by the Town or its designee for housing purposes. The exceptions are as follows:~~

- ~~(a) If reservation of ten (10) percent of the subdivision tract area would reduce by more than twenty (20) percent the number of lots that could otherwise be created by the subdivision, then the Planning Board may designate less than ten (10) percent of the area, but not less than one half (1/2) acre of buildable land, for reservation. If reserving one half (1/2) acre of buildable land would reduce by more than twenty (20) percent the number of lots that could otherwise be created, then no area shall be designated for reservation.~~
- ~~(b) The Planning Board may designate less than ten (10) percent of the subdivision tract area for reservation if it determines that reserving ten (10) percent of the area would result in a subdivision layout that would be deleterious to the Town.~~

The reservation of 10% of the subdivision tract is 34,730 s.f. The Definitive Plan is proposing 18 lots, 20% of which is 3.6 units. The reservation of 3 lots is not more than 20% the number of lots that could otherwise be created by the subdivision.

~~6.21.3 — Designation of Lots: — After such consideration of comments from other Town boards and committees as the Planning Board deems appropriate, the Planning Board shall designate on the subdivision plan the specific portion of the tract to be reserved. Such land may be in one or more locations within the subdivision as the Board may determine.~~

~~— In determining the areas to be designated for reservation, the Planning Board shall consider, at a minimum, the following characteristics of the land:~~

- ~~(a) Suitability of soils for location of on-site sewage disposal systems;~~
- ~~(b) Availability of Town sewer;~~
- ~~Availability of Town water;~~
- ~~(d) Relationship of the lots or area to be reserved to the location and type of vehicular and pedestrian circulation;~~
- ~~(e) Topography;~~
- ~~(e) Location of the area(s) to be reserved in relation to wetlands, floodplain, and other surface water and groundwater resources, and;~~
- ~~(e) Location of the area(s) to be reserved in relation to existing and proposed open space, active recreation areas, and trail networks.~~

~~— The area or areas designated by the Planning Board for reservation shall be shown as one (1) or more lots on the Definitive Subdivision Plan approved and endorsed by the Planning Board.~~

The Board finds that the Section 6.21 applies to the subdivision tract because it satisfies the minimum tract size requirement of Section 6.21.1. The Board further notes that the Applicant declined to state a preference for which lots it would prefer the Board to reserve for affordable housing purposes. The Applicant has neither requested a waiver from this section, nor has it proposed an “option in lieu of reservation” pursuant to Section 6.21.12.

~~The Town Planner believes that the affordable lots should be dispersed throughout the subdivision and recommended Lot 5, Lot 13 and Lot 16. In a December 21, 2020 letter, the Concord Housing Development Corporation agrees with reserving lots dispersed throughout the subdivision is preferable to reserving contiguous lots and recommends reserving Lot 5, Lot 10 and Lot 13. The CHDC recommends Lot 10 because it may offer the possibility for the development of a duplex unit since the lot is over 10,000 s.f.~~

~~The Board determines that Lots 7, Lot 13 and Lot 16 shall be reserved for affordable housing pursuant to Section 6.21. The Board has considered the characteristics in Section 6.21.3(a)-(g) and finds as follows:~~

- ~~1. Town sewer is not available to these Lots and the Applicant has provided information that documents the soils on site are suitable for an on-site septic system;~~
- ~~2. Town water is available to all of the Lots;~~
- ~~3. Adequate vehicular and pedestrian circulation is provided;~~
- ~~4. Given the significant level of grading and amount of earth required to be removed from the site, the existing steep topography of these lots is not any greater than other lots;~~
- ~~5. Lot 13 and Lot 16 are not adjacent to the isolated vegetative wetland. Lot 7 is adjacent to the wetland, but has sufficient area to allow for the development of a single family dwelling or a duplex unit, and;~~
- ~~6. The Lots have direct access to the sidewalks within the subdivision that will connect to a public sidewalk to Main St. which provides connectivity to existing open space, active recreation areas and trail networks in West Concord.~~

Subdivision Rules & Regulation Waivers

Under MGL c. 41§ 81R, the Planning Board may grant waivers of its regulations that are “in the public interest and not inconsistent with the intent and purpose of the subdivision control law.” The Applicant has not requested any waivers to the Subdivision Rules & Regulations.

However, the Board finds that it is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and the Board’s Subdivision Rules and Regulations to waive the requirement under Section 6.8.1 for a minimum pavement width of 26 feet for a local street in the Residence C Zoning District. Instead, this Decision ~~to~~ requires a pavement width of 24 feet for Road A from Main Street to the intersection with Road B and a pavement width of 22 feet for Road B and the remainder of Road A.

The Board finds that the reduction in pavement width provides the following:

1. Reduction in the total amount of impervious coverage and stormwater runoff;
2. A wider grass strip between the pavement and the sidewalk increasing pedestrian safety and providing additional snow storage area, and;
3. Additional space for street trees to grow and thrive to help off-set the removal of almost all of the existing vegetation onsite.

The Assistant Fire Chief has stated that he does not have any issues with the reduction in the width of the pavement if vehicles are prohibited from parking on the sidewalk side of Road A and Road

B so as to maintain adequate emergency vehicle access. The Board has included this restriction as a condition of approval.

If the Applicant plans to reduce the size of the drainage system due to the reduction in the pavement width, the Applicant is required to submit revised drainage plans and stormwater drainage calculations for CPW Engineering Division's review and approval prior to the Board's endorsement of the Definitive Plan.

It is hereby certified by the Board that, after deliberation ~~on~~ the project and consideration of the record, ~~and~~ comments heard during the remand public hearing, and the Land Court's remand order of June 23, 2021, the Board voted _____ to _____ (Ms. Ferguson-~~Yes~~; Mr. Flint-~~Yes~~; Ms. Miller-~~Yes~~; Mr. Bosdet-~~Yes~~; Mr. ~~Sayegh~~Boardman-~~No~~; Ms. Orvedal-~~No~~; Ms. McEaney-~~Absent~~) to **GRANT** approval of a 18-lot Definitive Subdivision Plan entitled "Center & Main Definitive Subdivision Plan, Concord, Massachusetts", with a final revision date of November 12, 2020 and consisting of 14 Sheets, subject to a waiver to the pavement width and the following conditions of approval:

1. Approval is based on the following plans prepared for Symes Development & Permitting LLC by Williams Sparages, 189 North Main Street, Suite 101, Middleton, MA 01949 as amended by Condition #9:
 - a. Index Sheet; Sheet 1 with a final revision date of November 12, 2020
 - b. Definitive Plan; Sheet 2 with a revision date of October 29, 2020
 - c. Definitive Plan Profile Road A; Sheet 3 with a revision date of November 12, 2020
 - d. Definitive Plan Profile Road B; Sheet 4 with a revision date of November 12, 2020
 - e. Definitive Street Topographic Plan; Sheet 5 with a revision date of October 29, 2020
 - f. Definitive Site Topographic Plan; Sheet 6 with a revision date of November 12, 2020
 - g. Definitive Utility Plan; Sheet 7 with a revision date of November 12, 2020
 - h. Construction Details, Sheet 8 to 12 with a revision date of November 12, 2020
 - i. Stormwater Pollution Prevention Plan, Sheets 13 & 14 with a revision date of November 12, 2020
2. Any wells for domestic water, irrigation purposes, or heat pump use, shall be designed, permitted and constructed in accordance with the Concord Board of Health regulation, Minimum Sanitation Standard for Private and Semi-Public Water Supply.
3. No underground fuel storage systems shall be installed without a variance granted by the Board of Health in accordance with Section 4 of the Underground Storage Tank Bylaw adopted by the April 1993 Town Meeting.
4. Tree stumps and wood wastes generated by land-clearing operations shall not be buried on site. DEP's solid waste regulations 310 CMR 16.05(3)(d) and 310 CMR 19.013(1)(h) prohibits stump dumps on lots being developed for sale.
5. All proposed lots as part of the subdivision shall comply with the Town's Underground Utility By-Law

6. **For the construction of the subdivision and lots, the idling or parking of any construction or contractor vehicles on Main Street and Highland Street is prohibited.** The Applicant shall park all construction equipment and vehicles on the site for the construction of the road and lots.
7. **Prior to the Endorsement of the Definitive Plan,** the Applicant shall receive approval from the Historical Commission on the selection of a road name for Road A and Road B from the following names with the use of Road, Lane, Way or Circle; Fowler, Hayden, Hogan, Carter and Sullivan.
8. **Prior to the Endorsement of the Definitive Plan,** the Applicant shall submit to CPW Engineering Division for review and approval revised plans and details showing an emergency overflow on both sediment forebays. If the Applicant reduces the size of the drainage system due to the reduction in the pavement width, the Applicant shall also submit for review and approval revised drainage plans and stormwater drainage calculations.
9. **Prior to the Endorsement of the Definitive Plan,** the Applicant shall provide the Town Planner revised Plans showing the following:
 - a. The road names as approved by the Historical Commission;
 - b. A notation stating the native species of street trees to be planted.
 - c. A notation that identifies Lot A1 and Lot 6 as a reserved area for a public purpose under the Planning Board's Subdivision Rules & Regulations Section 6.20 ~~and Lot 7, Lot 13 and Lot 16 as reserved area for affordable housing under the Planning Board's Subdivision Rules & Regulations Section 6.21,~~ said notation stating that no ~~streets, utilities, buildings, or other improvements~~ may be ~~made, built or installed~~ ~~erected~~ within the reserved area without the Planning Board's approval until a release of reservation signed by the Planning Board is recorded in the South Middlesex Registry of Deeds or, if the reserved area is registered land, is filed with the Land Court.
 - d. A notation that states public access shall be permitted on the sidewalks along Road A and Road B and a 5-foot public access easement on Lot 13 to Lot A1.
 - e. The boundary of the isolated vegetative wetland as approved by the Natural Resources Commission.
 - f. Modifications as required by CPW Engineering Division under Condition #8.
10. **Prior to the Endorsement of the Definitive Plan,** the Applicant shall provide to the Board for approval a Performance Guarantee for the construction of the roadway, stormwater drainage system and municipal utilities in a manner consistent to MGL Ch. 41, Sec. 81-U. The Performance Guarantee shall provide for a schedule of disbursements which may be made to the Applicant upon completion of various stages of the work and shall also provide that in the event the work is not completed within the time agreed to by the Applicant that any funds remaining shall be available to the Town for completion of the outstanding work.
11. **Prior to the Endorsement of the Definitive Plan,** the Applicant shall provide to the Natural Resources Director and the Town Planner confirmation of the Army Corp of Engineers Self-Verification for the Definitive Subdivision Plan.

12. Prior to the endorsement of the Definitive Plan, the Applicant shall show the location of a 20-foot wide (15-foot wide is acceptable in cross country locations on Lots 13, 14, and A1) water utility easement on the plan for review by the CPW Water/Sewer Division. The water utility easement will be granted to the Town to allow for the Town to access the private way to operate, inspect, maintain and repair Town owned water utility infrastructure as needed.

~~13. Prior to the endorsement of the Definitive Plan, the Applicant shall receive an Earth Removal Permit from the Zoning Board of Appeals and record the decision with the Middlesex South Registry of Deeds.~~

~~14.~~**13. Prior to the commencement of any site work**, the Applicant shall record with the Middlesex South Registry of Deeds the Endorsed Definitive Plan and this Decision. The Applicant shall provide 9 copies of the recorded Decision and complete full size set of prints of the recorded Plan, as well as an electronic pdf copy to the Town Planner for distribution to other Town Departments. The Applicant shall also provide an AutoCAD file of the Definitive Plans to the CPW Engineering Division. If at any time the construction of the subdivision is not in compliance with this Certificate of Approval and/or the Subdivision Rules and Regulations, the Board may order that work on the subdivision be stopped and request that the Building Commissioner defer the issuance of any Building Permits or Certificates of Occupancy until the non-compliance is corrected.

~~15.~~**14. Prior to the commencement of any site work**, the Applicant shall submit to the Town Planner for distribution to Town Departments for review and approval a Construction Sequencing and Safety Plan for the construction of the subdivision and lots. The plan shall include the location of construction material delivery and laydown areas, location of construction employee parking areas, locations where construction vehicles will enter and exit the site, and safety protection measures employed to protect the movement of pedestrians and vehicles within the site and along the adjacent public ways, construction vehicle parking restrictions on Main Street and Highland Street, and hours of operation. The plan shall be developed for all phases required during construction. The Police Chief shall make a determination as to whether police details are required and the frequency of required details, which the Applicant shall bear the cost.

~~16.~~**15. Prior to the commencement of any site work**, the Applicant shall file with the Town Planner for review and approval a Tree Preservation and Removal application for each individual Lot. In addition to the items required to be shown on the Tree Mitigation Plan as required under the Bylaw, the Applicant shall also show in a differentiating lighter color the grading shown on Definitive Plan Sheet 5. This information will assist in determining which Protected Trees on the lot are required to be mitigated.

~~17.~~**16. Prior to the commencement of any site work**, the Applicant shall install the erosion and sedimentation controls and all safety measures as shown on the approved Construction Safety Plan and coordinate through the Town Planner a pre-construction meeting with Town staff to review proposed work and safety protocols.:

~~18.~~**17. Prior to the commencement of any site work**, the Applicant's contractor shall file a Right-of-Way (ROW) permit and a Driveway Permit Application with the CPW Engineering Division for the proposed work within Main Street ROW. All work within ROW shall conform to the Concord Public Works Design & Construction Standards & Details (CPW-Standards).

19.18. Prior to the commencement of any site work, the Applicant shall provide a copy of the EPA's Notice of Intent General Permit and executed Stormwater Pollution Prevention Plan (SWPP), and the Erosion Control Plan (ECP), to the CPW Engineering Division for review and approval. Both a hard copy and electronic (pdf) copy shall be provided to CPW Engineering Division. The Applicant shall be required to have an environmental monitor on site to ensure proper operations of all sediment and erosion control measures throughout the duration of the project. The name and resume of the qualified independent environmental monitor shall be provided to the CPW Engineering Division and Natural Resources Director for review and approval at least three weeks in advance of the start of any site work. At a minimum, the independent environmental monitor shall be a "qualified personnel" with a minimum of 3 years professional environmental experience in construction monitoring and shall meet the qualifications outlined in sec. 4.4.1 of the EPA Construction General Permit. The site evaluation/inspection reports generated by an environmental monitor shall be provided to CPW Engineering Division and the Natural Resources Director, at the frequency detailed in the SWPPP (i.e. weekly, after storms). The Applicant shall work with CPW Engineering Division and Natural Resources Director to establish an approved monitoring protocol and to ensure that all noted staff is being provided with the information above.

20.19. Prior to the commencement of any site work, the Applicant shall submit to CPW Engineering Division a letter stating that the cut slope adjacent to Lots #3 and Lot #4 will not adversely affect the zone of influence of the housing units in the "Center Village, Inc." development. The letter shall be certified by a Professional Geotechnical Engineer or someone with qualified experience in the geotechnical field.

21.20. Prior to the commencement of any site work, the Applicant shall submit and receive a Removal Permit under the Public Shade Tree Bylaw for the removal of the trees and vegetation that obstruct the line of sight triangle as shown on the "MAIN STREET AT ROAD A SIGHT DISTANCE STUDY FIG 1" plan dated October 24, 2020.

22.21. Prior to commencement of any site work, the Applicant shall meet with CPW Water/Sewer Division to review the proposed scope of water/sewer utility work and sufficiently demonstrate that:

- a. Water and sewer service infrastructure can be designed and constructed in accordance with the Water/Sewer Division's design and construction standards (including 3-way valve connections to existing Town water infrastructure, sewer service connection criteria, etc.), and
- b. water demands can be minimized via demand management tools that may be codified in a water use impact report (conservation plan) and Water Customer Data Sheet, and
- c. lawn irrigation system(s), if proposed, can be installed in accordance with the Town of Concord Rules and Regulations Governing Water Use and Connection. A lawn irrigation system is subject to an additional connection fee and shall be registered with the Water/Sewer Division and be operated in accordance with the Town of Concord Water Use Restriction Bylaw.

23.22. Prior to commencement of any site work, the Applicant shall submit to the Concord Board of Health a Request for Title 5 Building Review (Form S) to identify any potential increase in wastewater flow and associated Sewer Improvement Fee. Based on existing

wastewater capacity constraints, flow increases over 1,000 gallons per day will be administratively denied by the Water/Sewer Superintendent. An appeal may be made to the Public Works Commission seeking relief for an increase in flow over 1,000 gallons per day.

24.23. Prior to the commencement of any site work, the Applicant shall submit to the Fire Department for review and approval a 241 Construction Fire Safety Plan and a site-specific COVID-19 Safety Plan, in accordance with Massachusetts guidelines.

25.24. Prior to back-filling all infiltration units, the applicant shall request and have CPW Engineering Division conduct an inspection to verify that the installation of all infiltration units was conducted in a manner consistent with the approved plans. Per CPW Design and Construction Standard 2.2.3.E.5 and Standard 3 of the Massachusetts Stormwater Handbook soils information from test pits within the footprint of all proposed Stormwater management facilities shall be documented. Soils information shall include but not be limited to soil descriptions, depth to seasonal high groundwater, depth to bedrock, and percolation rates. Soils information shall be based on deep hole tests logged by a Massachusetts Registered Soil Evaluator and witnessed by CPW Engineering Division.

26.25. At each of the following phases or steps in the construction of the road improvements, the Applicant shall submit to CPW Engineering Division an inspection report from a design engineer with stamped certification that the work has been completed within substantial compliance with the approved design and specifications:

- a. Following preparations of the street subgrade and shoulders;
- b. Following spreading and compaction of the gravel base, prior to application of the binder course on the street;
- c. Immediately prior to and during the application and compaction of the surface course on the street and, if required, on the sidewalk, and;
- d. Following completion of all improvements and installation of bounds.

27.26. Prior to the issuance of any Building Permit, the Applicant shall coordinate with the Police Department and Concord Municipal Light Plant (“CMLP”) an inspection of the roadway entrance onto Main Street to determine whether a new street light is required for safety purposes. If it is determined a light is needed, it shall be installed at the expense of the Applicant **prior to the issuance of the first Certificate of Occupancy**.

28.27. Prior to the issuance of any Building Permit, the Applicant shall provide CMLP a digital copy of the Definitive Utility Plan in AutoCAD format. This will allow CMLP to issue an electric distribution and Town fiber communication design, and issue an estimate for CMLP’s portion of the construction costs

29.28. Prior to the issuance of any Building Permit, the Applicant shall provide CMLP with an electrical load letter including proposed service sizes in order to properly size the transformer.

30.29. Prior to issuance of a Building Permit, the Applicant shall submit to the CPW Water/Sewer Division for review and approval, an application for the proposed water and sewer infrastructure installation. The application shall include the following;

- a. Identification of a Water/Sewer Division licensed “drain layer” who will be responsible for water and sewer infrastructure installation activities.

- b. Two full size copies of the approved water and sewer utility plan. (Note: separate applications must be provided for the water main as well as for service to each individual dwelling unit proposed to be served by Town water and sewer.)
- c. For each separate building proposed to be served by Town water, a plumbing plan shall be provided including:
 - i. Meter bypass detail (with allowance for Water/Sewer Division issued security lock),
 - ii. Design Data Sheets for all required cross-connection control devices. The devices shall not be installed without approval from the Water/Sewer Division.
- d. An approved water use impact report and conservation plan which will determine sizing of the water meter and water system connection fee.
- e. The approved Title 5 Building Review (Form S) and associated Finding - demonstrating right to connect to the municipal sewer system, and payment of any associated Sewer Improvement Fee.

31.30. Prior to the issuance of a Building Permit for each lot utilizing a private onsite sewage disposal system, the Applicant shall submit to the Health Division for review and approval individual sewage disposal systems plans designed, permitted and constructed in accordance with:

- a. Title 5 of the State Environmental Code, 310 CMR 15.000, Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage, and;
- b. Concord Board of Health Regulation, Minimum Requirements for the Disposal of Sanitary Sewage in Unsewered Areas.

32.31. Prior to the issuance of a Building Permit for each lot, the Applicant shall receive approval from the CMLP Meter Supervisor for all proposed metering locations.

33.32. Prior to the issuance of a Building Permit for each lot, the Applicant shall submit to the CPW Engineering Division and the Building Inspections Division for approval a grading and drainage plan stamped by a professional engineer that shows the grading, roof drains, perimeter drains, and infiltration system sizing required to meet or exceed the approved stormwater calculations under this decision. The plans shall include information such as inverts, pipe size, pipe slope, pipe material, infiltration chamber sizing, and all other pertinent information.

34.33. Prior to the issuance of a Building Permit for Lot #7, Lot #10, and Lot #11, the Applicant shall submit to the CPW Engineering Division for approval a grading and drainage plan stamped by a professional engineer that shows the grading bioretention areas that are sized to meet or exceed the approved stormwater calculations under this Decision. Details of the bioretention areas shall also be included.

35.34. Prior to the issuance of a Building Permit for Lot E and Lot F, the Applicant shall submit a plan showing the proposed driveway location. If either lot's driveway accesses Main Street, the Applicant shall file a Driveway Permit Application and if necessary a ROW permit with the CPW Engineering Division for the proposed lot work and driveway within Main Street ROW.

36.35. Prior to the issuance of any Certificate of Occupancy, the Applicant shall provide to the CPW Water/Sewer Division, for review and approval, a suitable utility easement for the proposed water distribution system. The Applicant shall record the easement with the Middlesex South Registry of Deeds and shall provide copies of the recorded documents to the Water/Sewer Division and the Town Planner. It should be noted that individual water (and sewer) services are owned and maintained by the property owner(s) and will require approval from the Water/Sewer Superintendent.

37.36. Prior to issuance of the first Certificate of Occupancy, the Applicant shall provide to CPW Engineering review and approval the Long Term Operations and Maintenance Plan (LTOMP) in both a hard copy and electronic (pdf) copy. In addition, a LTOMP shall be submitted for each individual lot that is the responsibility of the homeowner. At the time the LTOMP is submitted for review, the applicant shall also provide draft deed or homeowners association documents which outline permanent maintenance responsibilities in perpetuity. Any inspection or monitoring reports required in all of the LTOMP shall be submitted to the CPW Engineering and the Natural Resources Director annually.

38.37. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall provide to the Town Planner and CPW Engineering Division for review and approval the Homeowner Association Documents. The Documents shall contain at a minimum language to address the following:

- a. Provisions to allow the Town to enter onto the site to maintain or repair stormwater measures if the determination is made that these measures (i.e., swales, detention basins, subsurface infiltration) are not being properly managed or maintained, and the Homeowner Association shall be responsible for reimbursing the Town for the expense of such work.
- b. Statement that the roadway will remain a private way now and in the future with no obligation placed upon the Town in terms of maintenance, repairs, plowing or acceptance as a public way.
- c. Statement that the Trustees of the Homeowner Association shall have permanent maintenance responsibilities in perpetuity of all elements of the on-site stormwater drainage system, including all catch basins, infiltration chambers, drainage manholes, pipes, sediment forebays, bioretention areas, and all appurtenances thereto.
- d. Requirement that the Trustees agree to perform the operational maintenance on all the stormwater drainage and reporting requirement as specified in the Long-Term Operations and Maintenance Plan (LTOMP).
- e. No parking on the sidewalk side of Road A and Road B so as to allow adequate emergency vehicle access.
- f. Statement regarding the perpetual public access to the sidewalks on Road A and Road B
- g. Responsibilities for the maintenance and care of the street trees.

39.38. Prior to the issuance of the first Certificate of Occupancy, the Applicant shall submit to the Town Planner the documentation and materials to be used for the training of Homeowner Association Trustees regarding the responsibilities with being a trustee. The documentation

shall include a draft affidavit that is to be signed by each trustee following the completion of the training.

~~40.39.~~ **Prior to issuance of any Certificate of Occupancy**, the Applicant shall submit to the CPW Water/Sewer Division a full-size record drawing (Arch D), created in accordance with Division standards, for review prior to finalizing the drawing. Once the draft is approved, the Applicant shall submit to the Water/Sewer Division a full-size (Arch D) hard copy of the final record drawing along with electronic copies in the form of CAD and pdf files.

~~41.40.~~ **Prior to issuance of any Certificate of Occupancy**, the Applicant shall submit to the CPW Water/Sewer Division Water Demand Minimization Affidavit(s) to demonstrate work was performed in accordance with the approved demand mitigation measures.

~~42.41.~~ **Prior to the issuance of the Certificate of Occupancy for each lot**, the Applicant shall provide to the Building Inspections Division for review and approval a final grading plan for each lot showing it has been completed in accordance with the Definitive Plan, and the entire lot recovered with topsoil for an average depth of at least six (6) inches, except for that portion of the lot where the grade has not been changed or the vegetation seriously damaged. The topsoil shall be stabilized by seeding and/or sodding.

~~43.42.~~ **Prior to the issuance of the Certificate of Occupancy for each lot**, all drainage and utilities applicable to the lot being occupied shall be installed and the roadway completed to binder course to access the unit to the satisfaction of Concord Public Works and CMLP. The Applicant shall request an inspection from CMLP, CPW Engineering and Water-Sewer Divisions a minimum of three weeks prior to applying for occupancy to ensure adequate review time.

~~44.43.~~ **Prior to the issuance of the Certificate of Occupancy for each lot**, the Applicant shall install all required mitigation planting required under a Tree Preservation and Removal Permit to the satisfaction of the Town's Reviewing Agent.

~~45.44.~~ **Prior to the issuance of any Certificate of Occupancy for any lot utilizing an on-site sewage disposal system**, the Applicant shall provide to the Health Division the Certificate of Compliance for the on-site sewage disposal system.

~~46.45.~~ **Prior to the issuance of the last Certificate of Occupancy**, the Applicant shall provide to the Town Planner for review and approval a suitable public access easement along the sidewalk in the subdivision and a 5-foot public access easement on Lot 13 to Lot A1. The Applicant shall record the easement with the Middlesex South Registry of Deeds and shall provide copies of the recorded documents to the Town Planner.

~~47.46.~~ **Prior to the issuance of the last Certificate of Occupancy**, the Applicant shall provide to CMLP Engineering Division for review and approval a suitable utility easement for the proposed underground electric distribution system, including Town fiber communication system. The Applicant shall record the easement with the Middlesex South Registry of Deeds and shall provide copies of the recorded documents to CMLP and the Town Planner. It should be noted that the individual underground electric services are owned and maintained by the property owner(s) and will require approval from the Town of Concord Electrical Inspector.

~~48.47.~~ The Board may, ~~at its discretion~~, grant ~~up to three (3)~~ partial releases from the required Performance Guarantee for partial completion of improvements provided that:

- a. No reduction shall reduce the Performance Guarantee to a value below the estimated cost of completing the unfinished portions of the improvements.
- b. No lots shall be released from a Restrictive Covenant unless construction of ways and installation of services for those lots have been completed or another form of security has been substituted, sufficient to complete said way and service. Form F shall be submitted when applying for a release of lots from a Restrictive Covenant.

~~c. No partial release of the Performance Guarantee shall be granted until the Board has received written verification from the CPW Engineering Division that substantially more than fifty (50) per cent of the required improvements have been completed satisfactorily.~~

~~d.c. No partial release shall reduce the security by more than fifty (50) per cent of the amount being held at the time the release is requested.~~

49.48. Prior to the partial release of the Performance Guarantee, the Applicant shall submit an interim as-built plan to CPW Engineering Division, CMLP Engineering Division, Building Inspections Division and Town Planner of the site including grading, elevations of all drainage infrastructure (i.e. inverts, rims, measurement from finished grade down to the bottom of the sump for all CDS and Stormceptor units, etc.), driveway/parking grades, pavement, pavement marking, signage, utilities, structures, building elevations, and other pertinent information. The plan must be stamped by a Professional Engineer. A certification letter signed by a Professional Engineer shall outline any deviations from the design plans and certify that there will be no negative impacts as a result of those deviations. This submittal should be provided a minimum of two weeks prior to applying for occupancy to ensure adequate review time. One hard copy and one electronic copy, in the form of both AutoCAD and PDF Files, shall be provided to CPW Engineering Division. Additionally, to ease in review, the as-built items shall be bold while all other plan items shall be screened down.

50.49. Prior to the final release of the Performance Guarantee, the Applicant shall provide to the Building Inspections Division, CPW Engineering Division and Town Planner a copy of the recorded Homeowners Association documents.

51.50. Prior to the final release of the Performance Guarantee, the Town Planner shall verify that all street trees shown on the Definitive Plan have been installed. Any proposed minor modification or substitutions shall be reviewed and approved by the Town Planner prior to installation.

52.51. Prior to the final release of the Performance Guarantee, the Applicant shall submit a final as-built plan to CPW Engineering Division, CMLP Engineering Division, Building Inspections Division and Town Planner of the site including grading, elevations of all drainage infrastructure (i.e. inverts, rims, measurement from finished grade down to the bottom of the sump for all CDS and Stormceptor units, etc.), driveway/parking grades, pavement, pavement marking, signage, utilities, structures, building elevations, and other pertinent information. The plan must be stamped by a Professional Engineer. A certification letter signed by a Professional Engineer shall outline any deviations from the design plans and certify that there will be no negative impacts as a result of those deviations. This submittal should be provided a minimum of two weeks prior to applying for occupancy to ensure adequate review time. One hard copy and one electronic copy, in the form of both AutoCAD and PDF Files, shall be provided to CPW Engineering Division. Additionally, to ease in review, the as-built items shall be bold while all other plan items shall be screened down. However, even though all improvements covered by the Performance Guarantee have been completed, the Board may, upon recommendation of the CPW Engineering Division, refuse to release the Performance Guarantee if completion of construction on any remaining undeveloped or partially developed lots poses a substantial risk or injury to the covered improvements.

54.52. The Board reserves the right to make modifications and amendments to the Plans and specifications approved herein, after written notice to the applicant and to owners of lots in the subdivision, provided that in the opinion of the Board any such modifications and amendments are consistent with the character of the land being subdivided and with the Town generally. However, if the Board determines that the modifications and amendments represent a substantial change, the Board's approval will not be granted prior to a noticed public hearing.

55.53. Construction of all ways and installation of municipal services shall be completed within three years of the date of approval. If the construction and installation has not been completed within the three-year period, the approval shall automatically lapse and no way shall be laid out, construction or opened for public use unless and until a new Definitive Plan application has been filed in accordance with the Rules and Regulations then in effect and the new plan has been approved by the Board.

56.54. Failure of the Applicant to record the Definitive Plan within six (6) months of its endorsement by the Board; or to comply with the construction schedule incorporated into the performance agreement or to initiate construction of improvements or sell lots in a subdivision within seven years of the approval of the Definitive Plan; or to comply with all applicable Zoning Bylaw requirements and requirements of the Natural Resources Commission under the Wetlands Protection Act; or to comply with the approved plans and any conditions of approval, shall constitute reason for the Board to consider rescission of its approval in accordance with the requirements and procedures set forth in G.L.c. 41, Section 81-W.

On Behalf of the CONCORD PLANNING BOARD

Elizabeth Hughes, Town Planner

Decision filed with the Office of the Town Clerk:

Kaari Mai Tari, Town Clerk

Date

I, Kaari Mai Tari, Town Clerk for the Town of Concord, Massachusetts hereby certify that no notice of appeal was received during the twenty days next after receipt of this Definitive Plan Decision by the Concord Planning Board, or, if an appeal was taken, that a final decree has been entered by the court sustaining the approval of the Definitive Plan Decision or the appeal taken has been dismissed by the court.

Kaari Mai Tari, Town Clerk

Date