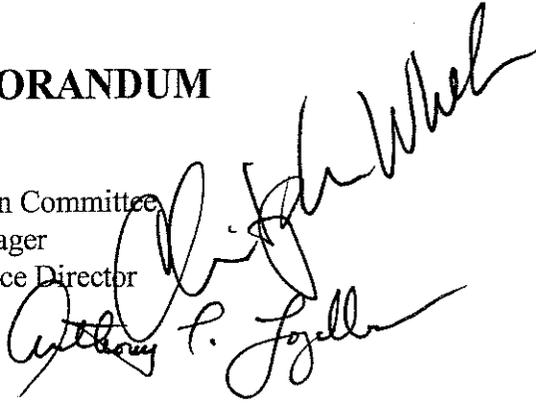


## MEMORANDUM

**TO:** Mr. John Clymer, Chair  
Concord Community Preservation Committee  
**FROM:** Christopher Whelan, Town Manager  
and Anthony Logalbo, Finance Director  
**DATE:** June 9, 2008



**SUBJECT: New Playing Fields at CCHS – Status Report**

This correspondence provides the Concord Community Preservation Committee (CPC) an up-date on the status of the Playing Fields Project at Concord-Carlisle Regional High School. As you may be aware, the project is expected to be fully completed by the end of June, and a dedication ceremony was held on Sunday, June 8. The Recreation Commission, the Friends of Concord Carlisle Fields (FCCF) and we are most grateful for the CPC's substantial support for new playing fields which will be utilized by both High School athletes as well as residents of all ages after school hours.

In this memo, we specifically respond to the Committee's May 4, 2007 letter to me identifying the conditions under which CPC funding that was appropriated for this project by the 2007 Annual Town Meeting may be expended.

***Condition #1 – Demonstrate that adequate funding is in place for this project.***

The construction project was divided into two phases: the site clearing phase and the construction phase. The contract for Phase 1, including all change orders, totaled \$483,511. The contract for Phase 2, to build the two artificial turf fields, was \$2,635,750 (inclusive of amendment #1). Between the CPC funding of \$1.5 million, the town Capital Plan funding of \$1.5 million, and the initial FCCF donation of \$200,000, sufficient funds were available in the town treasury to enable me to execute the construction contracts.

During the construction process, several change orders were initiated adding to the scope of the work, including the rehabilitation of the "JV Field" located between the existing High School tennis courts and the newly constructed fields parking area. With all change orders executed as of this date, and including in-kind donation of professional services, the total price for the new fields is \$3,820,261. Attached hereto is a financial summary prepared by Concord's Finance Department. The Town Manager cannot execute a contract or contract amendment unless sufficient funds are on-hand in the treasury, as certified by the Town Accountant or Finance Director, which I believe is the underlying intent of this specific condition.

In addition to the Phase I and Phase II contracts, \$15,000 has been received as a donation specifically earmarked for tree replacement. Johanna Hunter, a former member of the Natural Resources Commission, has been developing a Tree Replacement Program in conjunction with staff at the High School. However, because the CCHS campus is likely to undergo some building renovation or replacement in the next 5 to 10 years, it will be necessary to carefully

think through the tree replanting program to ensure that resources committed now to tree replacement are not wasted at the time that work on the High School is undertaken.

***Condition #2 – Obtain all necessary preconstruction permits and approvals for this project.***

This project required a Special Permit from the Concord Board of Appeals to create impervious areas within the “Groundwater Conservancy District”; the Special Permit was granted on April 9, 2007. During the spring of 2008, the decision was made to include the “JV Field” as part of the project, consistent with the several references made to the JV Field in the CPC funding application. (See Project Application Dated September 29, 2006; page 1 “Project Summary” which describes a “comprehensive field development plan”; also page 4, Item 1 referring to “One Grass Field (Not Lighted to avoid overuse); and page 7 indicating “Two of the three fields contemplated for the CCHS site would be ‘turfed’.) Building Commissioner John Minty was consulted prior to construction and determined that no modification of the Special Permit was required.

The Concord Natural Resources Commission was consulted regarding the drainage basin located near the School Bus Storage facility and provided a written determination that the drainage basin was not a resource area subject to review under the Wetlands Protection Act.

***Condition #3 - Enact a written agreement between the Town of Concord and the Concord-Carlisle Regional School District regarding the creation, maintenance, and use of these recreational fields.***

An Intergovernmental Agreement between the Regional School District and the Town was executed on June 15, 2007, prior to any construction activity. The Agreement governs construction, use, and maintenance of the new playing fields and is attached hereto.

Though not a CPC condition, a separate Memorandum of Agreement has been negotiated by the Town and the Friends of Concord-Carlisle Fields, a non-profit organization, concerning the maintenance of the fields. That agreement, which is in final form but has not yet been executed, requires FCCF to provide all annual maintenance funding, estimated at approximately \$70,000 per year, in the form of a donation to the Town. The Town, through the Recreation and Public Works Departments, will draw upon these donated funds to carry out all maintenance activities. FCCF has also agreed to set aside funding on an annual basis for the future replacement of the “turf” surface.

The JV Field area was not included in the original Intergovernmental Agreement and is not funded with CPC funds. However it is worth noting that an amendment to the Intergovernmental Agreement has been drafted and circulated that would include the JV Field with the other areas of the High School campus governed by the Agreement.

***Condition #4 – CPA funds may be expended during the actual construction phase of the project through monthly or other periodic requisitions.***

The periodic requisition of CPC funds has been coordinated through the Finance Department, CPC staff, and the CPC chair. This process has worked as intended by the Committee.

***Condition #5 – Acknowledge the “Community Preservation Fund” support for this project in all press releases, publicity materials, news and written or oral announcements.***

CPA funding for the Playing Fields Project has been acknowledged via a sign which is prominently displayed at the High School construction site, on the Town’s website describing the “public-private partnership” funding the project, and on the website of FCCF. We will also ask that CPC funding be specifically referred to during the official dedication ceremony on June 8.

***Condition #6 - ... (This project must be completed within 30 months following Town Meeting approval.***

The project is expected to be completed by June 30, 2008, about 14 months following the 2007 Annual Town Meeting, when the CPA appropriation was approved by the voters. It is expected that some minor modifications and enhancement of the fields will be accomplished during the summer of 2008 as the fields are put to use; but we hereby certify the contract under which the CPC funding was expended will be fully completed as of June 30, 2008.

Please let me know if you have any questions about this project. Thank you once again for the Committee’s very strong support for this project.

Cc: Board of Selectmen  
Regional School Committee

Attachments:

ZBA Special Permit  
Intergovernmental Agreement  
Also include a copy of the NRC’s Negative Determination of Applicability

# Memo to Community Preservation Committee

## Addendum A

### CCHS Playing Fields Project – Revenue and Expenditures

	Town	CPA	FCCF	Total
<b>Phase 1</b>				
Site Clearing - R.A.D. Corp	\$ 483,511			\$ 483,511
<b>Phase 2</b>				
Construction of Two New Artificial Turf Fields with Access Road, Parking				
Site Clearing - R.A.D. Corp	<u>\$1,016,489</u>	<u>\$1,500,000</u>	<u>\$ 119,261</u>	\$2,635,750
<b>SUBTOTAL</b>	\$1,500,000	\$1,500,000	\$ 119,261	\$3,119,261
<b>Other Phase 2</b>				
JV field, restroom building, tree replacement				
a) Donations in Town treasury	-0-	-0-	\$ 295,739	
b) FCCF in-kind contributions to date	-0-	-0-	300,000	
c) Cash donation pending	-0-	-0-	100,000	
d) In-kind donations pending	-0-	-0-	20,000	
<b>TOTAL CCHS Fields Project</b>	\$1,500,000	\$1,500,000	\$ 835,000	\$3,835,000
<b>Phase 3</b>				
Baseball Fields	-0-	-0-	\$ 665,000	\$ 665,000
<b>GRAND TOTAL</b>	<u>\$1,500,000</u>	<u>\$1,500,000</u>	<u>\$1,500,000</u>	<u>\$4,500,000</u>

#### Summary of Donated Funding

Design Services	\$ 250,000
Other Professional Services	50,000
Cash Donations Rec'd by Town Treasurer	415,000
 Total Donations Received & in-kind to-date	 \$ 715,000
 Cash donation pending for restroom bldg.	 \$ 100,000
In-kind donation projected for Phase 2	20,000
 TOTAL CCHS Playing Fields project	 \$ 835,000



**TOWN OF CONCORD  
BOARD OF APPEALS**

141 KEYES ROAD, CONCORD, MASSACHUSETTS 01742

TEL. (978) 318-3295 FAX (978) 318-3291

April 9, 2007

Town of Concord  
500 Walden Street  
Concord, MA 01742

Gentlemen:

This is to notify you that your application, under Sections 7.6 and 11.6, to construct playing fields and parking within the Groundwater Conservancy District at 500 Walden Street, Concord, Massachusetts has been granted and the decision has this day been filed with the Town Clerk. The 20-day appeals period begins today. When the 20-day statutory appeals period has elapsed, you will receive a *certified copy* of the decision.

Pursuant to the Zoning Act, Chapter 40A of the Massachusetts General Laws, a special permit does not become effective until the *certified copy* of the decision is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording your special permit is \$75.00.

It is your responsibility to record the Board's decision with the Registry of Deeds. The Middlesex County South Registry of Deeds is located at the corner of Cambridge Street and Third Street in East Cambridge, Massachusetts, or you may record your decision by mail. The mailing address is "Registry of Deeds, Box 68, East Cambridge, MA 02141." Alternatively, you may record your permit at the Middlesex South Satellite Recording Office at the Middlesex North Registry of Deeds in Lowell. Information is enclosed.

Very truly yours,

Paula Trebino, Clerk  
Board of Appeals  
Enclosures

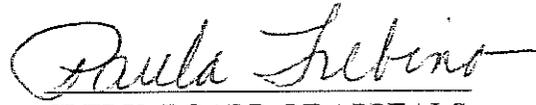
**TOWN OF CONCORD**

**BOARD OF APPEALS**

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**TOWN HOUSE**

Please take notice that in the matter of the APPLICATION OF THE TOWN OF CONCORD for a Special Permit and Site Plan Review, under sections 7.5, 7.6, 7.7 and 11.6, for earth removal and to construct playing fields and parking in the Groundwater Conservancy District at 500 Walden Street, Concord, Massachusetts, the Board of Appeals has this day rendered a decision GRANTING said application, and the record therein has this day been filed with the Town Clerk, Town House, Concord, Massachusetts. Appeals, if any, shall be made pursuant to Section 17 of the Zoning Act, Chapter 40A of the Massachusetts General Laws, and shall be filed within 20 days after the date of this notice.

  
CLERK, BOARD OF APPEALS

April 9, 2007  
DATE

The following notices were published in *THE CONCORD JOURNAL* in the issues of November 30, 2006, December 7, 2006, March 1, 2007 and March 8, 2007, and a copy of said notices were sent by mail to each of the aforementioned parties in interest and property owners.

ZBA/500 WALDEN ST.  
LEGAL NOTICE  
Board of Appeals  
Public Hearing

A public hearing of the Concord Zoning Board of Appeals will be held on Thursday, December 14, 2006, in the Hearing Room, Town House, Monument Square, Concord, Massachusetts, at 8:10 P.M. on an application by Chris Whelan, Concord Town Manager, for a Special Permit and Site Plan Review, under Sections 7.5, 7.6, 7.7 and 11.6 for earth removal and to construct playing fields and a parking lot in the Groundwater Conservancy District at 500 Walden Street.

AD#11195803  
Concord Journal 11/30, 12/7/06

ZBA/500 WALDEN ST.  
LEGAL NOTICE  
Board of Appeals  
Public Hearing

A Continuance of a public hearing of the Concord Zoning Board of Appeals will be held on Thursday, March 15, 2007, in the Hearing Room, Town House, Monument Square, Concord, Massachusetts, at 7:30 P.M. on an application by the Town of Concord for a Special Permit and Site Plan Review, under Sections 7.5, 7.6, 7.7 and 11.6 for earth removal and to construct playing fields and a parking lot in the Groundwater Conservancy District at 500 Walden Street.

AD#11251307  
Concord Journal 3/1, 3/8/07

A hearing on said application was held at the time and place above specified.

The following persons appeared in support of the appeal:

John N. Fossett of 244 Hunters Ridge Road  
Peter Castrichini of 247 Monsen Road

The following persons appeared in opposition thereto:

Steven Damalas of 125 Bristers Hill Road  
Kenneth Hecht of 71 Bristers Hill Road  
Patricia Hecht of 71 Bristers Hill Road

The Planning Board reported its action on the matter as follows:

See Letter dated March 12, 2007.

The Board thereupon took the following action:

VOTED: To amend the application of The Town of Concord, for a Special Permit and Site Plan Review, under sections 7.5, 7.6, 7.7 and 11.6, for earth removal and to construct playing fields and parking in the Groundwater Conservancy District at 500 Walden Street, Concord, Massachusetts, to read:

Application of The Town of Concord, for a Special Permit, under sections 7.6 and 11.6, to construct playing fields and parking in the Groundwater Conservancy District at 500 Walden Street, Concord, Massachusetts .

The members of the Board voted thereon as follows:

BOUZHA S. COOKMAN	GRANTED
ALICE KAUFMAN	GRANTED
ROBERTO M. BRACERAS	GRANTED

VOTED: To grant the application of The Town of Concord, for a Special Permit under sections 7.6 and 11.6, to construct playing fields and parking within the Groundwater Conservancy District at 500 Walden Street, Concord, Massachusetts, adopting the Planning Board's recommendation of March 12, 2007, and in accordance with the following conditions:

1) Approval is based upon the following plans:

- Sheet 1 Cover Sheet
- Sheet 2 Record Conditions Plan, dated January 2007 and prepared by Meridian Associates, 152 Conant Street, Beverly, MA

The following plans prepared by Uniterra Consulting, 12 Barberry Road, Lexington, MA:

- Sheet 3 Site Layout Plan, dated January 30, 2007
- Sheet 4 Grading and Utilities Plan dated March 8, 2007
- Sheet 5 Erosion Control Plan dated January 30, 2007
- Sheet 6 Detail Sheet A dated January 30, 2007
- Sheet 7 Detail Sheet B dated January 30, 2007
- Sheet 8 Detail Sheet C dated January 30, 2007
- Sheet 9 Detail Sheet D dated January 30, 2007
- and Proposed Conditions Drainage Map Figure 2 Plan dated 1/30/07
  
- Sheet 10 Planting Plan prepared by Symmes, Maini & McKee Associates, 1000 Massachusetts Avenue, Cambridge, MA dated 2/2/07
  
- Sheet 11 Site Lighting Plan (Access Road and Parking) prepared by South Shore Engineering Team Inc., 720 Washington Street, College Park – Yale Bldg., Hanover, MA dated 1/29/07

2) **Prior to start of construction**, the applicant shall provide the Planning Division for review and written confirmation of compliance plans showing the following:

- a. Revise the traffic islands in the parking area to create a one-way travel flow through the parking area.
- b. Expand or increase the pedestrian area adjacent to the parking area "exit".
- c. Designate one side of the new access driveway as a fire lane, allowing parking along the other side of the driveway.
- d. Add shrubs/small evergreen trees between the gravel pathway and the playing fields to provide some screening from the fields, especially where the project cleared away any natural vegetation such as along the northern edge of the fields.

- 3) **Prior to issuance of a building permit**, Applicant shall provide the CMLP a digital copy (AutoCAD version) of the site plan to review the area in determining the best location for a transformer and other electric facilities. Any such costs for line extensions will be covered by the contractor/property owner.
- 4) **Prior to issuance of a final certificate of occupancy**, Applicant shall provide written confirmation that the playing fields will not be lit unless being used and that all field lighting will be extinguished at the earlier of 10:00 p.m. or within a half-hour of completion of the last scheduled event.
- 5) **Prior to issuance of a final certificate of occupancy**, Applicant shall provide the Fire and Police Departments with keys/controller to enable 24 hour access to the playing fields, if a locked gate or barrier is used.
- 6) **Prior to issuance of a final certificate of occupancy**, Applicant shall submit a trash management plan, including a recycling plan.
- 7) **Prior to issuance of a final certificate of occupancy**, Planning Staff shall review the landscape installation.
- 8) **Prior to the start of earth removal activities**, the Applicant is encouraged to meet with the Chief of Police to determine the days of operation (Monday through Saturday is recommended); hours of operation (7:00 a.m. to 5:00 p.m. M-F and 8:00 a.m. to 5:00 p.m. on Saturday is recommended); the trucking route and type of vehicle.

The members of the Board voted thereon as follows:

BOUZHA S. COOKMAN	GRANTED
ALICE KAUFMAN	GRANTED
ROBERTO M. BRACERAS	GRANTED

The Board assigns the following as the reasons for the foregoing finding, ruling and decision:

The Application was amended during the Public Hearing after hearing from John Minty, Town of Concord Building Commissioner, that the Concord Zoning Bylaw exempts municipalities from the requirement of obtaining special permits for earth removal, according to sec. 7.5.1 of the Bylaw, and from site plan approval, according to sec. 4.4.1 and Table 1. of the Bylaw.

The Board further found:

The Town of Concord, the Applicant (herein “the Town”) is a municipality and the selected site is the Concord-Carlisle Regional High School, a public educational institution located at 500

Walden Street, Concord. It serves approximately 1,240 students from the towns of Concord and Carlisle, in addition to a small number of non-resident students. The School's campus consists of 93.7 acres south of Walden Street and north of Route 2.

The Project for which special permits are requested consist of the construction of (1) two artificial turf multi-purpose playing fields with lighting; (2) an internal driveway; (3) a gravel parking area for one-hundred and four parking spaces; (4) landscaping; and (5) stormwater drainage controls, (collectively (1) through (5) called the "Project") on land located within the Groundwater Conservancy District. The Project is being constructed on land under the purview of the Concord-Carlisle Regional School Committee and will directly impact approximately eight and one half (8.5) acres of the site that is currently wooded.

The Town's position that it needed additional athletic facilities was uncontested. Further, the Zoning Bylaw, as well as decided law, makes clear that athletic facilities are part of an educational use. The Town noted that the location of the playing fields elsewhere on the School campus was not possible due to the master planning activities of the School Committee and the plan to construct a new high school facility while keeping the existing facility in use, and, locating these fields on other Town-owned land would not provide the same level of benefit to the community and to the students.

The parking and interior driveway are sized, spaced and located in areas deemed appropriate and necessary to support the Project.

The playing fields will be lighted for nighttime use and may be used during the winter. There is adequate room for snow removal and snow storage. The Town has agreed not to use any fungicides or pesticides on the playing fields.

In reviewing the Project with regard to the underlying Groundwater Conservancy District, the Board found that the Zoning Bylaw requires a special permit for any institutional use and for any government use which exceeds the maximum lot coverage permitted in the Zoning Bylaw. The School property is 93.7 acres of which 22% of the lot area is covered by impervious surfaces. The underlying zoning is Residence A, which does not have a maximum permitted lot coverage. The impervious lot coverage will increase by 46,200 sq. ft., which brings the total impervious lot coverage to 23.1 % of the 93.7 acres; therefore a special permit is required.

The Zoning Bylaw also prohibits removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table elevation within the Groundwater Conservancy District, with the exception for substances that are removed and re-deposited. The Board learned that no groundwater was encountered in the soil borings taken. The lowest finished grade of the playing fields and of the parking area will be approximately 30 feet (or greater) above the groundwater elevations shown on the Town's groundwater maps. There will be no permanent removal of earth within four feet of the historical high groundwater table elevation. The Board was presented with evidence that the soils on the site are predominantly sand and gravel (based on extensive soil exploration of the site) which are ideal in terms of stormwater management and groundwater recharge.

The Board heard testimony from a citizen with concerns about the high temperatures of the turf field surface and it was determined that a maintenance system will be in place to indicate when the irrigation system should be used to cool the fields.

The Board also heard testimony from a citizen with concerns that turf fields may be considered an impervious surface. It was determined by the Board that turf fields are a permeable surface.

Finally, the Board heard testimony from a number of citizens, who oppose the Project based on the effect the Project will have on the habitat and wildlife of Walden Woods. The Board determined that the design retains an existing wildlife corridor. The Board also received a recommendation from The Natural Resources Commission which stated, "...believe that the proposed project poses no threat to wetland resource areas, and that this portion of Walden Woods is already fragmented by Route 2 and residential development". The Board also received a written determination from the Concord Historical Commission which stated "...the location of Thoreau's Laurel Glen is east of Bristers Hill Road and thus would not be affected by the proposed fields which are proposed on the west side of Bristers Hill Road and ..... the land has already been significantly disturbed and ... it's value as an historic landscape is therefore minimal".

In considering the Concord Zoning Bylaw, the Board determined:

**Pursuant to Sec. 7.6.7.1 of the Concord Zoning Bylaw**

The Town of Concord proposed to build playing fields and associated access road/parking on the Concord Carlisle High School campus on land within the Groundwater Conservancy District which is a use permitted subject to review by the Concord Zoning Board of Appeals. A written application for a special permit was submitted to the Board, with copies to the Planning Board, Public Works Commission, the Natural Resources Commission and the Board of Health.

The application was accompanied by the following submissions:

(a) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;

**There will be no chemicals, pesticides, herbicides, fertilizers, fuels or other potentially hazardous materials stored on the premises.**

(b) For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Fire Department, and Board of Health. The plan shall include:

i. Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;

ii. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces; and

iii. Evidence of compliance with any local, state and/or federal regulations.

There will be no chemicals, pesticides, herbicides, fertilizers, fuels or other potentially hazardous materials stored on the premises.

(c) Proposed down-gradient location(s) for groundwater monitoring well(s), should the Board deem the activity a potential groundwater threat.

**There is no significant risk for a spill that would be a potential groundwater threat; therefore no installation of groundwater monitoring wells is recommended.**

**Pursuant to Sec. 7.6.7.2 of the Concord Zoning Bylaw**

The Planning Board, Public Works Commission, the Natural Resources Commission and Board of Health submitted to the Board written recommendations including an evaluation that the project:

(a) Minimizes any adverse effects to the existing or potential quality or quantity of water that is available in the Groundwater Conservancy District;

**The applicant has taken steps to minimize any adverse effects to the existing quality of water that is available in the Groundwater Conservancy District.**

(b) Is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed;

**The grading required for the proposed project will require disturbance of the existing soils and topography, but there is no disturbance to any water-related natural characteristics. The applicant has taken steps to maintain at least a 3:1 slope in most areas.**

(c) Provides a system of artificial recharge of precipitation that will not result in the degradation of groundwater quality; and

**The applicant is proposing to recharge stormwater runoff through a series of leaching catch basins and stormwater recharge areas. An Operations and Maintenance Plan has been provided that outlines the inspection and cleaning of the basins, trenches and swales. These measures provide a system of artificial recharge that will not result in the degradation of groundwater quality. Additional recharge is possible by directing runoff from the turf playing fields to an infiltration system because this runoff is generally cleaner and requires less treatment.**

(d) Where a portion of the lot is located partially outside the Groundwater Conservancy District, site design shall, to the extent feasible, locate potential pollution sources, such as on-site disposal systems, outside the district boundaries.

**The whole site is within the Groundwater Conservancy District.**

**Pursuant to Sec. 7.6.7.3 of the Concord Zoning Bylaw**

The special permit was granted, and the Board imposed conditions and safeguards as public safety, welfare and convenience required. The Board gave due consideration to the reports of the Planning Board, Natural Resources Commission, Public Works Commission and the Board of

Health, and the decision of the Board did not differ from the recommendations of the Planning Board, the Public Works Commission, the Natural Resources Commission, or the Board of Health.

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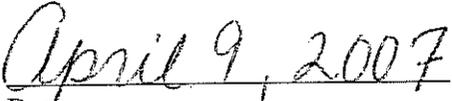
**Pursuant to Sec. 11.6 of the Concord Zoning Bylaw**

The Board determined that the proposed use is in harmony with the purpose and intent of the Bylaw and that it will not be detrimental or injurious to the neighborhood in which it takes place.

A TRUE COPY: ATTEST



Clerk, Board of Appeals

  
Date

Filed with Town Clerk

500 Walden

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE TOWN OF CONCORD  
AND  
CONCORD-CARLISLE REGIONAL SCHOOL DISTRICT**

This Agreement is entered into pursuant to Sections 3 and 4A of Chapter 40 of the General Laws of Massachusetts, as amended, and pursuant to the vote under Article 32 of the 2007 Annual Concord Town Meeting. This Agreement is entered into between the Town of Concord (the "Town"), acting by and through its Town Manager, and the Concord-Carlisle Regional School District (the "District"), acting by and through its Regional School Committee, to be referred to hereinafter as the "Parties".

**INTRODUCTION**

The District owns the campus of the Concord-Carlisle Regional High School on Walden Street, Concord, MA (the "Site"). The Parties desire to enter into this Agreement pursuant to which the District shall agree to allow the Town, in compliance with applicable law, to design, construct, utilize and maintain playing fields and accessory improvements on a portion of the Site for joint use by the Town and the District.

Now, therefore, in consideration of the mutual promises herein contained, it is hereby agreed as follows:

**AGREEMENT**

1. DATE OF AGREEMENT: June 15, 2007
2. DISTRICT'S ADDRESS: School Administration Building  
Meriam Road  
Concord, MA 01742
3. TOWN'S ADDRESS: 22 Monument Square  
Concord, MA 01742
4. PRIMARY PREMISES: Approximately 8.8 acres of land located on the Site as shown as "Area A" on the plan attached hereto as **Exhibit A** and made a part hereof (the "Plan").
5. AREA B PREMISES: Approximately 2 acres of land located on the Site as shown as "Area B" on the Plan. The Area B Premises and the Primary Premises are together referred to herein as the "Premises."

Wherever in this Agreement the term "Premises" is used, said term encompasses any and all playing fields, access roads, parking facilities, and other improvements built or to be built thereon, as the same may from time to time be

altered, reduced, enlarged or increased in accordance with the terms of this Agreement.

6. SITE. The Site is shown on the plan attached hereto as **Exhibit B** and made a part hereof.
7. TERM: The term of this Agreement shall be for twenty-five (25) years, commencing on June 15, 2007 (the "Commencement Date") and ending at 11:59 p.m. on June 14, 2032, unless extended or sooner terminated pursuant to any provision hereof (the "Term").
8. PERMITTED USES: Subject to the terms and conditions of this Agreement, the Premises may be used: (i) by the Town for the construction, maintenance and use of the Playing Fields (as defined below) and for uses normal and accessory thereto, including without limitation parking uses, and for no other purposes, unless the District otherwise explicitly agrees in writing and (ii) by the District for the use of the Playing Fields and for uses normal and accessory thereto, including without limitation parking uses, and for no other purposes, unless the Town otherwise explicitly agrees in writing. Any use of the Premises shall be in accordance with the provisions of **Exhibit C** attached hereto and incorporated herein by reference. Notwithstanding anything set forth herein to the contrary, the Town shall have no right to use the Premises prior to the commencement of construction pursuant to Section 11 hereof.
9. PERMITS: The Town shall obtain and maintain all necessary permits, licenses and approvals (including, without limitation, any special permits, variances or other zoning relief, any subdivision approval and any other building code or land use matters) required to allow the Permitted Uses on the Premises, including without limitation the design and construction of the Playing Fields (collectively, the "Permits"). The District shall reasonably cooperate with the Town in the Town's efforts to obtain the Permits. Notwithstanding the foregoing, the District will be responsible for obtaining any use-specific permits and approvals that may be required for a particular use that has not been permitted or approved.
10. PRIORITY FOR USE OF PREMISES: The Town and the District shall have priority rights to use the Premises as provided in **Exhibit C**; provided that, notwithstanding anything set forth herein to the contrary, the District shall be entitled to use the parking areas built or to be built on the Premises at any time so long as during all times when the Town has priority to use the Premises sufficient parking remains available for the Town's use of the Premises. Any change in these arrangements shall be subject to the written approval of the Town and the District.
11. CONSTRUCTION ACTIVITY:
  - (a) As of the date of this Agreement, the Town intends to construct two artificial turf playing fields on the Primary Premises. The Town shall be

permitted, however, to substitute a natural grass playing field for either or both of the artificial turf playing fields in the Town's reasonable discretion (such turf or grass fields, the "Playing Fields"). The Town shall have the right, but no obligation, to construct, expand or renovate the Playing Fields and to install accessory lighting, scoreboards, restrooms, a shed or storage building, access ways, parking areas, utilities, and other related improvements, provided that all such construction is in compliance with applicable law and the terms and conditions of this Agreement. If construction is undertaken by the Town on the Premises, such construction: (i) shall include at a minimum construction of (1) the Playing Fields with accessory lighting (2) the access road and parking area for at least 100 cars to be built on the Area B Premises as indicated on the Plan and (3) a strip of land of reasonable width between the Playing Fields and Route 2 and between the Playing Fields and the neighboring properties as contemplated by the Zoning Plans (as defined below) (collectively, the "Minimum Improvements"); (ii) shall be done in a good and workmanlike manner and in accordance with applicable laws, including but not limited to applicable bid laws and land use codes and regulations; and (iii) shall be prosecuted diligently through to completion as soon as reasonably possible in order to minimize, to the extent feasible, disruption to the District's activities on the Site, provided that the Town's obligation to diligently prosecute such construction shall not apply to the extent of any delays in permitting or construction resulting from an appeal or litigation brought by a third party in an attempt to restrict or prohibit construction at the Premises ("Third Party Delays"). Notwithstanding anything set forth herein to the contrary, if any construction is undertaken by the Town on the Premises, the Minimum Improvements once commenced must be completed as soon as reasonably possible and, in any event, by December 31, 2010, provided that such date shall be reasonably extended for any Third Party Delays (the "Outside Completion Date"). The Town's failure to complete the Minimum Improvements by the Outside Construction Date, as such date may be extended as provided above, shall constitute an event of default under this Agreement entitling the District to the remedies set forth in Section 28. In the event that construction is not commenced before the Outside Completion Date, this Agreement shall become void without recourse to the parties, and neither the Town nor anyone claiming under them shall have any further right to use the Premises.

- (b) The Town's construction activity on the Premises shall be substantially in accordance with the plans (the "Zoning Plans") that were submitted to the Zoning Board of Appeals for the Town in conjunction with a Town request for a special permit for the Playing Field construction (the relevant special permit decision was filed with the Concord Town Clerk on April 9, 2007). To the extent the Minimum Improvements or any other construction permitted hereunder is not covered by the Zoning

Plans, the Town shall submit detailed plans for all such construction to the District for the District's approval, not to be unreasonably withheld or delayed, prior to the commencement of any such construction. Any material changes to the Zoning Plans or any other approved construction plans and any material alterations of the Playing Fields or other improvements to the Premises after the same are constructed shall be permitted in accordance with applicable law and with the prior written approval of the District, which approval shall not be unreasonably withheld or delayed, after presentation of detailed plans showing any such changes and/or alterations and an explanation of the reasons therefore from the Town to the District.

- (c) All construction activity conducted by or on behalf of the Town on the Premises and the Site (as described below) shall be subject to site coordination, reasonable hour of operation requirements, and any other reasonable restrictions or requirements set forth by the District in written notice to the Town, including but not limited to the following restrictions: (i) all construction vehicles shall enter and exit via the Walden Street entrance to the Site and (ii) except as otherwise permitted by the District in writing, no construction vehicles shall enter or exit the Site from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m. on weekdays during the school year.
- (d) During construction, the Town, at its expense, agrees to use reasonable efforts to relocate the portion of the cross-country course currently located on the Premises to another location on the Site substantially as provided in the Zoning Plans.

## 12. UTILITIES.

- (a) In connection with construction performed by the Town pursuant to Section 11, the Town shall have the right to maintain, repair, and replace in the Premises and on the Site utility lines, pipes, conduits and the like to serve the Premises, provided that any such work affecting the Site independent of the Premises shall require prior written approval of the District, which approval shall not be unreasonably withheld or delayed. All such activities shall be performed in accordance with applicable laws and at the Town's expense.
- (b) The Town and the District shall pay promptly and in a timely manner for each Party's proportionate share of all utilities furnished to the Premises beginning on the Commencement Date, including, but not limited to water and electricity charges. Provided that utilities furnished to the Premises are separately metered, utility bills will be delivered to the Town, and each Party's proportionate share of all utilities shall be reasonably determined by the Town based on each Party's designated usage times and the use of electricity, if any, for lighting the Playing

Fields during such times. If utilities are not separately metered, each Party's proportionate share of all utilities shall be reasonably determined by the District based on each Party's designated usage times and the use of electricity, if any, for lighting the Playing Fields during such times.

13. EASEMENTS AND COVENANTS. The Town's rights to use the Premises is subject to and with the benefit of all covenants, restrictions, easements, encumbrances, rights, and agreements of record to the extent in force and applicable, and it is subject to zoning, environmental and building laws, ordinances and regulations and such other laws, ordinances and regulations as may from time to time be applicable to the Premises and any facilities constructed thereon.
14. APPURTENANT RIGHTS. In connection with its Permitted Use of the Premises, the Town (and all persons claiming under the Town, including the Town's contractors, employees, agents, vendors, guests, and other Town invitees) shall have the nonexclusive right (in compliance with applicable law) to use (i) roadways, driveways, curbs, curb cuts, and all other similar facilities and areas of the Site necessary for access to and from the Premises, subject to the restrictions on access set forth in Section 11(c) above, and (ii) any parking areas on the Site provided that sufficient parking remains for the District's other uses at the Site.
15. TITLE. The District covenants that, as of the date of this Agreement, the District is the owner in fee simple of the Premises.
16. TERM OF AGREEMENT; TERMINATION RIGHT. This Agreement shall remain in effect for the Term. Provided that the Town is not in default of under this Agreement, the Term may be extended for one or more additional periods, if mutually agreed by the parties in writing and subject to compliance with applicable law; the Town shall promptly reply to any extension request by the District, and the District shall promptly reply to any extension request by the Town. Provided that the Town (i) has completed the Minimum Improvements as well as all other construction that has been commenced on the Premises (in accordance with Section 11 hereof) and after using diligent efforts to fund the Town's maintenance and repair obligations under this Agreement the Town is unable to fund such obligations, or (ii) has not commenced any construction on the Premises, then the Town may elect, upon written notice to the District, to terminate this Agreement without recourse to the Parties, and neither the Town nor anyone claiming under the Town shall have any further right to use the Premises.
17. ACCEPTANCE OF PREMISES. The Town agrees that, except as set forth herein, the Premises are being delivered "as is." The District shall not be responsible for any costs associated with the design, construction or maintenance of the Premises, and no representations or warranties, express or implied, respecting the condition of the Premises and no promises to alter, repair or

improve the Premises either before or after the execution hereof have been made by the District or its agents to the Town, unless the same are contained herein.

18. REAL PROPERTY TAXES. The Town shall not be subject to any real property taxes with respect to the Premises to the maximum extent permitted by law.
19. ADDITIONAL COVENANTS. The Town further agrees to conform to the following provisions during the Term:
  - (a) The Town will provide or contract for the removal of trash and refuse from the Premises. The Town and the District shall pay promptly and in a timely manner for each Party's proportionate share of the cost of all trash and refuse removal services furnished to the Premises beginning on the Commencement Date, as reasonably determined by the Town based on each Party's designated usage times. The Town shall be permitted by the District to use a dumpster or similar container, and the Town agrees to keep the area and vicinity where the dumpster is located in appropriately clean condition.
  - (b) The Town shall be responsible for security related to the use of the Premises, including without limitation reasonable safety measures, whenever the Premises are being used by the Town (or its guests or invitees), and the District shall be responsible for security related to the use of the Premises, including without limitation reasonable safety measures, whenever the Premises are being used by the District (or its guests or invitees).
20. TRANSFER OF RIGHTS. Notwithstanding anything set forth herein to the contrary, the Town covenants and agrees that it will not grant rights to use the Premises to any third party, except that the Town may, in compliance with applicable law and this Agreement, grant rights to its contractors to enter on the Premises to design, construct and maintain the Playing Fields and any related improvements and, if the Playing Fields (including any related improvements) are constructed, the Town may, in compliance with applicable law, grant rights to use the Playing Fields (including any related improvements) to its guests and invitees on a per use basis.
21. MAINTENANCE AND REPAIR
  - (a) The Town, at its cost and in compliance with all applicable laws, shall maintain and repair the Premises in a manner that is consistent with the maintenance of similar playing fields, parking areas and related improvements in the greater-Boston area.
  - (b) The Town shall line one or both of the Playing Fields to accommodate football, soccer and lacrosse. Provided that the District gives the Town notice of the District's intent to use the Playing Fields for field hockey reasonably in advance of the field hockey season, the Town shall line

one field to accommodate field hockey for the field hockey season as well. Any other lining shall be completed by the mutual agreement of the Town and the District.

- (c) Notwithstanding the preceding Section 21(a), the District shall be responsible for (i) the removal of snow and ice from the walkways, driveways and parking areas in the Premises and (ii) the reasonable costs for any maintenance, repairs or other expenses required as a direct result of any non-athletic use of the Playing Fields by the District. Except as expressly provided herein, the District shall have no obligation to maintain or repair the Premises.
- (d) The Parties may agree to an arrangement whereby the Town's maintenance responsibilities under this Agreement are performed by the District and a fair and reasonable fee is assessed to the Town therefor.

22. ALTERATIONS AND IMPROVEMENTS. After completion of the construction contemplated in Section 11 above, the Town shall be entitled to make alterations and improvements on the Premises; provided that any material alteration or improvement on the Premises shall require the prior written consent of the District in accordance with Section 11(b), which consent shall not be unreasonably withheld or delayed. Any and all alterations or improvements made or constructed by or on behalf of the Town on the Premises shall remain the property of the Town for the Term; provided that, at the end of the Term, all such alterations and improvements shall be and become the property of the District and may be retained by the District or disposed of by the District.

23. AREA B PREMISES RELOCATION.

- (a) Notwithstanding anything set forth herein to the contrary, the Area B Premises may be required by the District in the future for the replacement or expansion of the school buildings on the Site. If this is the case, the District shall be entitled to terminate the Town's right to use of the Area B Premises beginning no earlier than one (1) year from the Town's receipt of written notice of such termination from the District. In the event that the District terminates any such right to use the Area B Premises, to the extent permitted by law, the District will replace any parking lot and access road constructed by the Town on the Area B Premises with a substantially equivalent number of parking spaces and an access road (if necessary) at another location on the Site within a reasonable distance from the Primary Premises, such replacement to be at the District's cost and completed within a reasonable amount of time. From and after the completion of any such replacement parking spaces and access road as provided in this Section, the area of any such replacement parking spaces and access road shall be considered the Area B Premises for the purposes hereof, and the plans

attached hereto shall be amended accordingly at the District's cost and expense.

- (b) Except as provided in Subsection (a) above, in no event shall any construction performed by the District or on the District's behalf at the Site unreasonably interfere with the use by the Town of the Premises after the construction of the Playing Fields; provided that, in the event that any construction performed by the District or on the District's behalf at the Site unreasonably interferes with access to or parking at the Primary Premises, the District shall be permitted to provide temporary parking and access to the Primary Premises during any such construction.

24. SURRENDER. At the end of the Term, the Town shall surrender to the District the Premises in good order and repair, except for ordinary wear and tear.

25. PUBLIC LIABILITY INSURANCE

- (a) The Town and the District shall each keep in force from and after the date of this Agreement throughout the Term: (a) a Commercial General Liability insurance policy or policies protecting the Town and the District against liability to the public or to any guest or invitee of the Town or the District with limits (including excess or umbrella policies) not less than \$1,000,000.00 per occurrence and not less than \$3,000,000.00 in the annual aggregate; and (b) insurance protecting against liability under Worker's Compensation Laws with limits at least as required by statute. The Town shall keep in force, from and after the date of this Agreement throughout the Term, "All Risk" property insurance covering any improvements on the Premises.
- (b) The Town and the District hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage, All Risks or other insurance now or hereafter existing for the benefit of the respective Party but only to the extent of the net insurance proceeds payable under such policies and only to the extent permitted by their respective insurance policies. If available, each Party shall use reasonable efforts to obtain any special endorsements required by their insurer to evidence compliance with the aforementioned waiver, provided that such special endorsements are available at no more than a nominal additional cost.
- (c) The Town and the District agree to use and occupy the Premises at the Town and the District's own risk. Except as otherwise provided herein, the District shall have no responsibility or liability for any loss of or damage to the Playing Fields or other improvements to the Premises other than such loss or damage arising out of the negligence of the

District or its contractors, students, employees, officers, officials, board members, agents, guests and invitees.

- (d) The Town shall require any and all contractors performing work at or on the Premises or the Site to furnish to the District prior to the commencement of any work by any of said contractors evidence of liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00), with respect to bodily injury and property damage liability insurance.

26. FIRE AND CASUALTY. In the event that any improvements on the Premises, including without limitation the Playing Fields, shall be partially or substantially damaged by fire or other casualty during the Term hereof, neither the Town nor the District shall have the obligation to restore the damaged improvements. If, however, the Town elects not to restore, it shall so notify the District in writing within ninety (90) days of the damage, and the Town shall raze the damaged improvements and remove all debris at its expense within ninety (90) days of giving notice not to restore, after which time this Agreement shall terminate and be of no further force or effect. If the Town elects to repair or restore the damaged improvements, it shall so notify the District in writing within ninety (90) days of the damage, and the Town shall restore the damaged improvements at its expense within ninety (90) days of giving notice to restore, and this Agreement shall remain in full force and effect.
27. EMINENT DOMAIN. If the Premises, or any material portion thereof as determined by the Town in its reasonable discretion, shall be taken by condemnation or right of eminent domain, the Town shall be entitled to terminate this Agreement, provided that such notice is given not later than thirty (30) days after the Town shall have received written notice that a taking has occurred. With respect to the amount of any award, whether pro tanto or final for any taking, the Town hereby waives all rights in any such awards, except awards to the Town for unamortized value of the Town's improvements on the Premises (including site work), and any separate awards which may be made for the Town's relocation expenses, business interruption and the like.
28. DEFAULT AND REMEDIES: If the Town should fail to comply with or breach any of the terms of this Agreement and shall not cure such failure or breach within: (i) 30 days after written notice of such default from the District to the Town, or (ii) if such failure or breach is of such a nature that the cure of the same will, with the exercise of reasonably diligent efforts, take longer than 30 days to cure and provided the Town commences such cure within such 30 days, 90 days after written notice of such default from the District to the Town, then the District may: (i) perform the Town's obligations hereunder and charge the cost for those obligations to the Town or (ii) declare the Town in default under this Agreement, terminate this Agreement and/or otherwise exercise such rights and remedies as may be available at law and in equity arising from such default by the Town.

If the District should fail to comply with or breach any of the terms of this Agreement and shall not cure such failure or breach within: (i) 30 days after written notice of such default from the Town to the District, or (ii) if such failure or breach is of such a nature that the cure of the same will, with the exercise of reasonably diligent efforts, take longer than 30 days to cure and provided the Town commences such cure within such 30 days, 90 days after written notice of such default from the Town to the District, then the Town may: (i) perform the District's obligations hereunder and charge the cost for those obligations to the District or (ii) declare the District in default under this Agreement, terminate this Agreement and/or otherwise exercise such rights and remedies as may be available at law and in equity arising from such default by the District.

29. MISCELLANEOUS PROVISIONS

- (a) Waiver. Failure on the part of either Party to complain of any action or non-action on the part of the other, no matter how long or often the same may continue, shall not be deemed to be a waiver of any rights hereunder. Further, no waiver at any time of any of the provisions hereof by either Party shall be construed as a waiver of any of the other provisions hereof; and a waiver at any time by either Party of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the District to or of any action by the Town requiring the District's consent or approval shall not be deemed to waive or render unnecessary the District's consent or approval to or of any subsequent similar act by the Town and vice versa.
- (b) Mechanic's Liens. The Town shall pay promptly for any work done (or material or service furnished) by or on behalf of the Town on or about the Premises or the Site, and the Town shall not permit or suffer any lien to attach to the Premises, the Site, or any other premises owned by the District. The Town shall immediately discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanic's, materialmen's, or other lien against the Premises or the Site, any other premises owned by the District, the District and/or the District's interest therein, which liens may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished to or for the Town in, upon or about the Premises or the Site.
- (c) Invalidity of Particular Provisions. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and

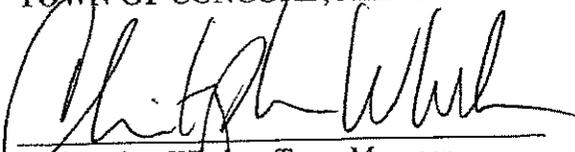
provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

- (d) Governing Law. This Agreement shall be governed exclusively by the provisions hereof and by the laws of the Commonwealth of Massachusetts, as the same may from time to time exist.
- (e) Section Headings. The section headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
- (f) Limitation of Liability. It is specifically agreed that the District's employees, officers, officials and board members shall never be personally liable for any judgment under or related to this Agreement. In addition, it is specifically agreed that the Town's employees, officers, officials and board members shall never be personally liable for any judgment under or related to this Agreement.

[remainder of page intentionally left blank]

WITNESS the execution hereof, under seal, in any number of counterpart copies, each of which counterpart copies shall be deemed to be an original for all purposes as of the day and year first above written.

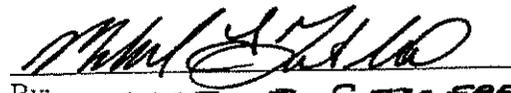
TOWN OF CONCORD, MASSACHUSETTS



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Christopher Wheelan, Town Manager

CONCORD - CARLISLE REGIONAL  
SCHOOL DISTRICT



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By: MICHAEL E. FITZGERALD  
Its: CHAIRMAN, CONCORD-CARLISLE  
REGIONAL SCHOOL COMMITTEE

EXHIBIT A

PLAN OF THE PREMISES

UNIVERSAL CONSULTING, LLC  
12 BERRY ROAD  
LESTER, MA 02421  
TEL: (781) 321-5000  
FAX: (781) 661-7023  
www.universal.ma

CONCORD-CARLISLE REGIONAL HIGH SCHOOL  
CONCORD, MA  
EXHIBIT A

SCALE: 1"=100'  
DATE: 5/24/07  
Figure

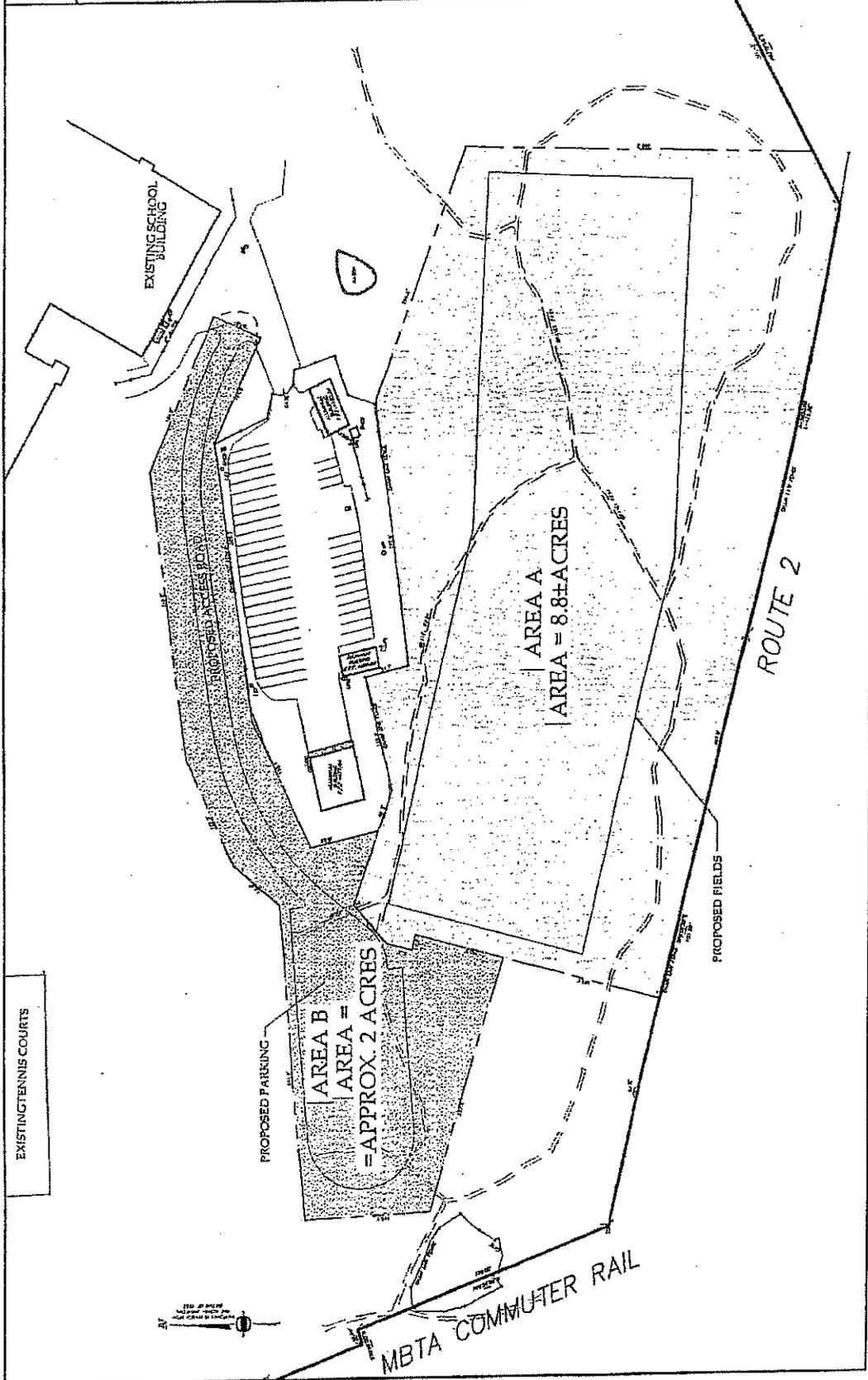


EXHIBIT B  
PLAN OF THE SITE



## EXHIBIT C

### FIELD OPERATION

The Concord-Carlisle Regional School District and the Town of Concord have agreed on the following terms and conditions with respect to the use of the Premises:

1. Unless otherwise controlled by law (other than an ordinance passed by the Town), the Playing Fields may be used from 7 a.m. until 9:30 p.m. on a daily basis (in addition, field users will be permitted to leave the Playing Fields between 9:30 p.m. and 9:45 p.m.).
2. The District will have priority with respect to the use of the Premises: from 7 a.m. until 6 p.m. on weekdays during the school year and the last two weeks immediately preceding the date when school year begins (such date being the date students first report for class) (the "District's Priority Use Periods"). Notwithstanding the priority identified above, the Town shall be permitted to perform maintenance on the Premises between 7 a.m. and 3:30 p.m. on weekdays, provided that the Town (i) has notified the District in advance of such maintenance and (ii) the Town uses diligent efforts to minimize any disruption to the District's use of the Premises during these maintenance periods.
3. The Town will have priority with respect to the use of the Premises at all other permitted times other than the District's Priority Use Periods (the "Town's Priority Use Periods").
4. Notwithstanding anything set forth herein to the contrary, the District will be entitled to use the Premises free of charge.
5. The District will have priority over the Town to use the Premises during the District's Priority Use Periods, and the Town will have priority over the District during the Town's Priority Use Periods, but the District and the Town will not have priority to the exclusion of the other Party hereto during these periods. Rather, the District will be entitled to use the Premises during the Town's Priority Use Periods if the Town is not using the Premises, and the Town will be entitled to use the Premises during the District's Priority Use Periods if the District is not using the Premises. The District and the Town will coordinate scheduling for the use of the Premises as provided above.
6. Notwithstanding anything in this Agreement to the contrary, the athletic use of the Playing Fields by either Party shall always receive priority over any other proposed use of the Premises, even during the District's Priority Use Periods and the Town's Priority Use Periods.
7. In recognition of the Town's financial obligations to maintain the Premises, the District recognizes the right of the Town to generate revenues from non-school activities conducted at the Premises.

8. The District will retain all responsibility for scheduling at the Premises during the District's Priority Use Periods, and the Town will retain responsibility for all scheduling at the Premises during the Town's Priority Use Periods. Notwithstanding the preceding sentence, the Town and the District acknowledge that a designee of the Town may be permitted to conduct scheduling during the Town's Priority Use Periods on behalf of the Town.
9. Without the prior written consent of the District, the Town shall not permit the use of air horns or similar devices on the Premises. In addition, without the prior written consent of the Town, the District shall not permit the use of air horns or similar devices on the Premises. Both Parties agree that, whenever reasonably possible, the westernmost Playing Field shall be the primary field to be lit and the other Playing Field shall only be lit if the use of both Playing Fields is required at night.
10. The Town agrees to adhere to the District's policy regarding advertising and the naming of any of the Playing Fields or other improvements on the Premises, and any advertising or naming of the Playing Fields or other improvements on the Premises shall require the prior written approval of the District.



TOWN OF CONCORD  
Division of Natural Resources  
141 Keyes Road, Concord, MA 01742  
(978) 318-3285

To: Chris Whelan, Town Manager  
From: Delia Kaye, Natural Resources Administrator  
Re: **Potential Regulatory Jurisdiction at the CCHS**  
Date: March 6, 2007

---

Understanding the potential regulatory issues for the playing fields development may further assist the Playing Fields Committee as they tweak the design of the proposed fields. DNR staff look forward to continuing to work with you and the Playing Fields Committee to achieve the most environmentally sound project for the community.

As you know, there is a small isolated ponded area (basin) in the eastern portion of the site that may potentially be regulated under the MA Wetlands Protection Act, and may also provide vernal pool habitat. This memo provides information on potential regulatory jurisdiction and its implications for the proposed development.

***MA Wetlands Protection Act***

The WPA regulates several types of wetland resource areas, one of which may apply to this basin. 310 CMR 10.57(2)(b)(1) identifies Isolated Land Subject to Flooding (ILSF) as "*an isolated depression or closed basin without an inlet or outlet... which at least once a year confines standing water to a volume of at least ¼ acre-feet and to an average depth of at least six inches...*". The ILSF boundary "*is the perimeter of the largest observed or recorded volume of water confined in said area*" or, in other words, is determined in the field by flagging the perimeter of the basin and then conducting calculations to determine the volume of the basin. The wetland resource area ILSF does not have a buffer zone associated with it.

Vernal pools are protected under the WPA **only if they occur within a state wetland resource area**. In other words, if the ponded area is determined to be a vernal pool but is not an ILSF, there is no WPA review.

***Clean Water Act (Section 401)***

Vernal pools are regulated under Section 401 of the federal Clean Water Act (overseen by the MA DEP) as Outstanding Resource Waters (ORWs). If the ponded area is determined to be a vernal pool, filling it would require approval from the MA DEP. No buffer zone is provided for ORWs.

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**From:** Delia Kaye  
**Sent:** Monday, May 14, 2007 4:36 PM  
**To:** Chris Whelan  
**Subject:** CCHS pool - NOT vernal

Chris,

I just wanted to let you know Matt Burne, vernal pool ecologist with the Walden Woods Project (formerly with the Natural Heritage Program that certifies vernal pools) and I went to the pool at the High School to assess vernal pool characteristics today. None were found.

The pool had only invertebrates, none of which are obligate vernal pool species: mosquito larvae, phantom midge (family Chaoboridae) and chironomid midge.

This ponded area may have once provided vernal pool characteristics, but the drainage outfall and overall degraded nature from the practice of pushing snow and over the top of the berm have made it pretty inhospitable.

Thanks,  
Delia

PLEASE NOTE: My email address has changed to [dkaye@concordma.gov](mailto:dkaye@concordma.gov). My old address still works, but won't for much longer.

~~~~~

Delia Kaye  
Natural Resources Administrator  
Concord Division of Natural Resources  
141 Keyes Road  
Concord, MA 01742  
978.318.3285 (t)  
978.318.3291 (f)