

Lisa Tomyl

From: Barry <barry.elkin@outlook.com>
Sent: Tuesday, February 02, 2016 5:26 PM
To: Board of Selectmen
Cc: 'Carolyn Kiely'
Subject: RE: Concord Use Special Permit - #11/20/2015 180 & 182 Skyline Drive
Attachments: Public Comment EEA # 15446 Part 2.docx

Selectperson Katie Green,
Selectperson Peter J. Berry
Selectperson Janet K. Adachi

Selectperson Frances J. Osman
Selectperson Chingsung Chang

The attached Public Response was submitted to Andrew A. Beaton, Secretary of Energy and Environmental Affairs, MEPA Office, in conjunction with the MEPA review of the Concord Water Facility project on Skyline Drive in Acton. Although this document was prepared specifically to meet the needs of the MEPA evaluation, we believe it contains information that you may find useful in your consideration of the request by Concord for a Special Use Permit.

If you should have any questions, please contact either Ms. Carolyn Kiely (cmkiely@msn.com) or me (barry.elkin@outlook.com).

Thank you for your consideration on this significant matter.

Barry Elkin

57 Skyline Drive

Acton, MA 01720

978-263-8410

Carolyn M. Kiely, Esq.
(On Behalf of the Quail Ridge Residents)
11 Parkland Lane
Acton, MA 01720
978-287-4808
cmkiely@msn.com

January 30, 2016

Andrew A. Beaton
Secretary of Energy and Environmental Affairs
Executive Office of Energy and Environmental Affairs (EEA)
Attn: MEPA Office
Ms. Purvi Patel, MEPA Analyst, EEA No. 15446
100 Cambridge Street, Suite 900
Boston, MA 02114

Subject: Additional Public Comments on EEA # 15446, Nagog Pond Water Treatment Plant (180 and 182 Skyline Drive, Acton, MA)

Comment Subjects: (1) EIR Waiver Request, (2) Article 97, (3) DEP Guidance - Solar on Water Lands, (4) Water Supply Protection Areas, (5) Wildlife and Wildlife Habitat Impacts, (6) Alternatives Analysis.

Dear Secretary Beaton and Analyst Patel:

These comments are the ***second*** set of supplemental comments delivered to you under the time extension for public comment for EEA #15446, the Nagog Pond Water Treatment Plant project being proposed by the Town of Concord. The first set of supplemental comments address the need for a complete archaeological review of the project as required under the law for projects receiving state and/or federal permits and funding. This set of comments addresses specifically the information provided by Concord in two letters dated January 25, 2016. My comments are submitted on behalf of the residents living in Quail Ridge, a condominium complex abutting the project described in EEA #15446.

In summary, my comment indicate that:

1. **THE MEPA WAIVER PROVISIONS DO NOT APPLY TO THIS PROJECT.** The MEPA waiver provisions contained in 301 CMR 11.11(1) only allow waiver of the following:

“provision or requirement in 301 CMR 11.00 **NOT SPECIFICALLY REQUIRED BY MEPA.**”¹ (Emphasis added)

In this case, Concord specifically requests a waiver of the Environmental Impact Report (EIR) requirement for this project. However, an EIR is specifically required under the Massachusetts Environmental Policy Act (MEPA, Massachusetts General Laws Chapter 30, Sections 61-62I). Waivers are only allowed for provisions of the regulations THAT ARE NOT SPECIFIED IN THE STATUTE.² Since an EIR is mandated under the law, it cannot be waived through the MEPA regulations. Therefore, the mandatory EIR provisions of MEPA still apply to the Concord project.

2. Even assuming, for sake of argument, that the MEPA waiver regulations apply, Concord **has not** met the standards for waiver of MEPAs provisions for an Environmental Impact Report (EIR). Concord waited too long to submit the ENF to you, and thereby cannot now claim that an EIR would delay project implementation to their detriment.
3. Concord already has to delay project implementation to conduct a complete archaeological study of the site,³ and also needs to comply with Article 97 of the Massachusetts Constitution. Neither the archaeological study nor Article 97 is eligible for waiver under the law. Therefore, implementation of this project is already going to be delayed, and Concord can prepare the required EIR without further slowing or delaying the project.
4. Concord claims that their “hardship” that would justify a waiver is that “the time necessary for completion (of an EIR) would result in the Town losing valuable Solar Renewable Energy Credits (SRECs).”⁴ **However, Concord is proposing to LEASE the solar panels. With a lease, the SRECs go to the owners (and their investors) of the solar panels themselves – Concord does not get SRECs. Concord does not pay taxes, and SRECs are of no value to them. It is inconceivable how Concord could claim hardship if their panel provider does not get the benefit of SRECs from this project. The applicant is Concord, and it is Concord that must complete a statutorily-mandated EIR. Because the investors in Concord’s solar panels would not be eligible for SRECs IS NOT A HARDSHIP FOR CONCORD AND DOES NOT MEET THE HARDSHIP REQUIREMENTS OF THE MEPA WAIVER REGULATIONS.**

¹ Source: 301 CMR 11.11(1).

² Source: 301 CMR 11.11(1).

³ Refer to my comments dated January 27, 2016 with Comment Subject: Compliance with Historical/Archaeological Resources Requirements for Projects Obtaining State or Federal Permits and/or Funding.

⁴ January 25, 2016 two-page letter from Environmental Partners Group, #1.

5. Article 97 applies to this project, and both Concord officials themselves and Concord's own lawyers have publicly stated that Article 97 applies to the addition of solar panels on town water-related lands. Please look closely at how Concord describes the viewpoint of its special counsel (which has advised Concord on this project since 2013, and possibly before 2013). Concord's counsel NEVER STATES THAT ARTICLE 97 DOES NOT APPLY HERE.
6. The state's own guidelines for solar power lands where public water systems are located specifically mandates Article 97 be applied when solar power systems are installed on "lands owned or controlled by public water systems for drinking water purposes."⁵
7. Massachusetts Regulations on Water Supply Protection Areas, and the reduced development requirements of those provisions, still apply even with the state's policy of promoting solar arrays on water supply lands. These provisions apply individually to the two lots that comprise this project. Therefore, the reduced development requirements of Water Supply Protection Areas must still be met on each lot.
8. Concord has not studied, as alternatives to producing power on the Nagog Pond land, the alternative, off-property sites listed in Concord's own Solar Power Siting Committee Report.
9. Concord does not consider the impacts of this proposed project on wildlife and wildlife habitat, especially the impact of the eight-foot-high fence around the property on wildlife corridors and migrating animals. Concord fails to embrace MEPA's requirements to consider all environmental consequences of a project, especially as it relates to wildlife.

Finally, as explained at the end of these comments, I request that, in the event the proponent requests a further extension of time to provide additional comment to you, that the time allotted to the public to review Concord's future submittals be equally as long as the extension period granted to Concord. In this instance, Concord had two weeks to prepare their requested waiver from mandatory EIR requirements, but the public only had one week to provide comments on Concord's new submittal.

Discussion

⁵ Source: Massachusetts Guideline To Provide Guidance To Public Water Suppliers On Information to be Submitted to MassDEP for Wind & Solar Projects Proposed On Lands Owned Or Controlled By Public Water Systems for Drinking Water Purposes

1. MEPA Waiver Provisions Inapplicable:

Under the MEPA statute, an EIR “shall be prepared and submitted by the responsible agency.”⁶ This section of MEPA also provides detailed information as to what needs to be included in an EIR, such as the environmental impact of a project, mitigation measures, adverse short-term and long-term environmental consequences, and reasonable project alternatives and their environmental consequences. Under MEPA, an EIR is mandatory when certain threshold levels are met. Concord has met those threshold levels and must prepare an EIR.

Under the MEPA regulations at 301 CMR 11.11(1), the MEPA Secretary **CAN ONLY WAIVE PROVISIONS OF THE MEPA REGULATIONS THAT ARE NOT MANDATED UNDER THE MEPA LAW.** Specifically, the regulations provide as follows:

“11.11(1) Standards for all Waivers: The Secretary may waive any provision or requirement in 301 CMR 11.00 **not specifically required by MEPA** (emphasis added) and may impose appropriate and relevant conditions or restrictions...”

Concord submitted two letters to you, both dated January 25th. The short, two-page letter states on page 1 that:

“... the Town of Concord is requesting **a waiver from completing an Environmental Impact Report (EIR).**”

In the longer submittal, which was a ten page letter with attachments, Concord on page 6 states as follows:

“Based on the information presented above, **the Town of Concord is seeking a waiver from completing an EIR.**”

CONCORD IS NOT SEEKING A WAIVER FROM A PROVISION IN THE MEPA REGULATIONS. CONCORD IS SEEKING A WAIVER OF A PROVISION OF THE MEPA LAW ITSELF because an EIR is mandated under the law. And a waiver from the law’s requirements IS NOT ALLOWED. Concord, therefore, must proceed with preparation of a complete EIR because it is mandated under the law. Concord’s official request DOES NOT ask for a waiver from the MEPA regulatory thresholds – Concord is requesting a waiver of the MEPA law’s EIR requirements themselves. You therefore MUST deny this waiver request.

For sake of argument (even though the waiver should be denied outright based on the wording of Concord’s waiver request), the comments below detail the specific reasons why, if the waiver provisions of the regulations apply, it should be denied.

⁶ Source: MGL Ch. 30 Section 62B.

EIR Waiver Request Should Be Denied:

Concord is requesting a waiver from the requirement to complete an EIR on the project, despite the fact that the proposed activities exceed MEPA review threshold levels. Concord argues that it is only a temporary alteration, and therefore the waiver should be granted. However, under the MEPA statute, there is absolutely no distinction between a “temporary” alteration and a “permanent” alteration. The law is simple – exceeding a MEPA threshold means that you must prepare an EIR for the project.

The MEPA office should only rarely issue waivers of the MEPA EIR requirements, and when they are granted, ensure that they are only granted when truly unavoidable circumstances exist. However, allowing waivers in this case will set a bad precedent and encourage more project proponents to file late with you, thereby encouraging future project proponents to “game the system” and gamble that, like Concord, they will be able to obtain a waiver of the EIR requirement. In this case:

- Concord has been considering this project for many years.
- Concord acquired the adjacent Palmer land in 2003 with the express intention of utilizing that land as part of the expansion of the Nagog Pond water treatment operations.
- Concord’s Feasibility Study for this project was prepared in 2013 – two and a half years ago! The Feasibility Study clearly addressed the feasibility of Concord upgrading its Nagog Pond treatment facility and utilizing solar panels to power the facility.
- Concord testified⁷ on January 25, 2016 before the Acton Board of Selectmen⁸ that they met with Pulte Corporation representatives (the developers of Quail Ridge) in early 2015. Pulte representatives confirm this meeting from early 2015,⁹ and indicate that Concord showed them detailed project plans that included plans for solar panel location and the proposed building, along with discussion and

⁷ January 25, 2016 oral testimony of Alan Cathcart, Concord Water and Sewer Superintendent, before the Acton Board of Selectmen.

⁸ The January 25, 2016 Acton Board of Selectmen hearing was taped and televised, making it easy to obtain independent verification of my statements regarding the hearing, should my comments be questioned.

⁹ I am one of the three members of the “Board of Advisors” to the Quail Ridge Board of Directors. The present Board of Directors for Quail Ridge includes the following three Pulte Corporation employees: Reid Blute, Mark Mastroianni, and Brien Lupien.

plans for other aspects of the project.¹⁰ Concord therefore had this project well along in the design phase at the beginning of 2015, yet they waited until November of 2015 to submit their ENF and plans to you.

- Concord's "Town Manager Report" dated April 7, 2015 indicates that Concord had already contracted with Solar Design Associates (SDA) who would lease the panels to Concord. This April newsletter also indicates that "it is anticipated that a debt authorization to implement recommended design and construction improvements will be proposed at the 2016 Annual Town Meeting."¹¹ And, the report indicates that Concord Public Works has also been undergoing the preliminary design for the project. This demonstrates that much of the design work for this project was undertaken in the spring of 2015, thereby allowing Concord to file its ENF well before the November filing date.
- Concord has already set a town meeting for next week – February 4, 2016 – for town residents to vote on the 20-year lease of solar panels for the Nagog Pond project. It is well-known that efforts to obtain enough information to put a project on a town meeting warrant need to begin well in advance. The project needs to be designed and the costs need to be determined before enough information for town meetings is available. Therefore, Concord had the project specifications well in advance of their November 2015 filing of the ENF with the MEPA office.
- Everyone who has been following the solar power regulations has known long before November of 2015 that the Solar Renewable Energy Credits (SRECs) would be expiring. A simple search of your website – specifically the Secretary of Energy and Environmental Affairs web-site -- contains ample information about SRECs and the timeline for them. For Concord to file their ENF in November 2015, and claim that they need to begin construction in the spring of 2016 in

¹⁰ Pulte actually says that the solar panel plan that is presently before you was the ORIGINAL planned panel location plan that Pulte was shown in early 2015, and that the solar location plan that was initially filed with the ENF was a modification to the original plan. When Concord ran into opposition to the panel location at Acton's Conservation Commission, Pulte says that Concord simply resurrected the original plans for the solar panel location that placed the panels primarily on the Palmer land. This further demonstrates that Concord had detailed plans for this project as early as the beginning of 2015.

¹¹ Source: April 7, 2015 Concord Town Manager Report (available on www.concordma.gov)

order to be eligible for SRECs, demonstrates a complete disregard for the time-intensive nature of the MEPA process.

- The MEPA law clearly sets the expectation that EIRs should be filed early in the process for project consideration. Specifically, MGL Chapter 30, Section 62B states that “the Secretary shall encourage agencies and persons to commence preparation of reports during the initial planning and design phase of projects.” Clearly, Concord waited too long to submit the ENF to you because Concord was well out of the “initial planning and design phase” of its project when it filed the ENF in November 2015.

In their request for a waiver, Concord never attempts to explain the delay in filing the ENF with your office. Simply asking for a waiver saying time is of the essence, without justification for this delay, when they have known about this project for years, does not give rise to a situation that justifies a waiver.¹²

Based on the totality of above information, Concord’s plans for the project were sufficiently well-defined many months in advance of their November filing date/December 9th publication date. Concord has known since 2013 when their Feasibility Study was prepared that they would need to obtain all permits prior to beginning, including obtaining MEPA Certification of this project. Concord is seeking to take advantage of the “time is of the essence” argument, thereby avoiding compliance with MEPA. This is entirely self-imposed. To now claim hardship is disingenuous. And the MEPA regulations specifically do not allow waivers when the proponent is late in filing the ENF with MEPA.

As indicated above, if Concord is allowed to get a waiver in this instance, a very bad precedent is set. Other project managers will try the same approach – file late, when there isn’t enough time to obtain full environmental review of a project, then request a waiver because the project “must begin.”

The MEPA filing is not the only area where Concord is late in addressing important issues. Concord, in 2013, was informed by its Feasibility Study authors that they needed to undergo compliance with Article 97 of the Massachusetts Constitution in

¹² Concord’s approach with MEPA is exactly the same as its approach to the Acton public hearing process. Under MEPA, Concord is saying that they don’t have enough time to complete an EIR so please waive the requirement. When Concord was before the Acton Conservation Commission on December 2, 2015, Concord told the Acton Conservation Commission members that they needed a speedy vote on the Notice of Intent because they needed to then go before the Board of Selectmen, and a delay would jeopardize Concord’s plans to begin construction in the early spring of 2016. I pointed out to the Commission members that their first priority was protection of the environment in Acton, and that Concord’s timeline was irrelevant to their discussions.

order to construct an expanded water treatment plant and solar panels on their lands around Nagog Pond. Concord disregarded these recommendations, and is now seeking to also avoid implementing Article 97. And, to date, Concord has not completed the required archaeological study of the Nagog property. **The overall impact is that Concord is using the “we don’t have enough time to comply” argument to avoid compliance with very significant state laws – MEPA, Article 97, and archaeological study.** And Concord has known about the need to comply with these since at least 2013, if not earlier in 2003 when Concord acquired the Palmer land.

Concord has exceptional environmental counsel regarding this matter, and has had this same counsel since 2013 when the original Feasibility Study was performed. In fact, their counsel’s own law firm co-wrote the Feasibility Study for this entire project.¹³ Concord has been advised on a continual basis regarding this project by Attorney John Shea with the law firm of Mackey Shea PC.¹⁴ Mackey Shea is a “boutique environmental law firm” with a concentration in “environmental and land use law.”¹⁵ Mr. Shea’s attorney profile indicates that he “has practiced environmental and land use law for over 35 years.”¹⁶ Concord cannot claim that the delay in filing with MEPA was a mistake or a misunderstanding of the length of time that it takes for a project to undergo MEPA review. Concord has had superior legal advice on this project and cannot now claim that lack of knowledge or lack of attention to filing deadlines resulted in the late MEPA submission.

Finally, Concord’s time-line for ENF approval was totally unrealistic because, even if an EIR threshold was not exceeded, the Secretary in his discretion could still mandate than an EIR be required for a project. Concord’s timeline was as follows:

- Delivery of ENF to MEPA – November, 2015
- Publication in the Environmental Monitor – December 9, 2015.
- Site Visit – December 18, 2015 – at this site visit, Concord asked for an extension to change the project plans, delaying MEPA’s decision on the project.
- Further delay requested by Concord on January 12, 2016 based on public comments and the information that this project could require an EIR.
- Two sets of additional comments provided to MEPA by Concord on January 25, 2016 and January 26, 2016.

¹³ Nagog Pond Watershed and Solar Feasibility Study, Prepared by Mackie Shea O’Brien PC and Epsilon Associates, Inc., July 17, 2013.

¹⁴ Mr. Shea was introduced at the January 25, 2016 public hearing before the Acton Board of Selectmen at Concord’s Special Environmental Counsel on this matter.

¹⁵ Source: Firm Profile, Mackey Shea PC, www.lawmso.com.

¹⁶ Source: Attorney bios, MackeyShea PC, www.lawmso.com.

- Public comments on Concord's two new submittals to MEPA are due February 2, 2016.

Concord's timeline for MEPA compliance, given their indicated preferred start-of-construction date of spring 2016, was entirely unreasonable. Concord should have filed earlier.

Below I address each waiver justification provided by Concord. It should be noted that Concord's submittal contains references to the incorrect section of the Code of Massachusetts Regulations (CMR). Concord references 310 CMR 11, which are the DEP General Application and Administration Environmental Code, Title 1 regulations. I therefore quote the proper CMR provisions for waivers from MEPA projects, which is 301 CMR 11.11.

1. **301 CMR 11.11(1)(a)**¹⁷. This section allows waivers when an undue hardship will result if the waiver is not granted. **However, this waiver is expressly not allowable when the waiver request is "based on delay in compliance by the Proponent."**¹⁸ In this case, Concord delayed in applying early enough for MEPA review of their project, and that delay makes this waiver provision inapplicable to Concord.

And there is not an undue hardship to Concord for two reasons: (1) Concord is already going to be delayed in implementing this project because they need to undertake a complete archaeological study of the property, and they need to undergo Article 97 procedures before beginning construction of the project, and (2) Concord's assertion that they will have a hardship because delay could mean that Concord will not be eligible to receive Solar Renewable Energy Credits (SRECs) is insufficient to justify hardship (Note: The next two paragraphs discuss why the SREC hardship is inapplicable to Concord).

Concord's primary basis for arguing "hardship" is that the delay "would result in the Town losing valuable Solar Renewable Energy Credits (SRECs)... there is a cap on SRECs which is nearly exhausted."¹⁹ The SREC argument has no place in an argument regarding hardship for MEPA waiver purposes. The purpose of MEPA is to protect the environment, not ensure that Concord is able to claim tax incentives through their project. The tax incentives available to Concord are irrelevant for MEPA purposes, and can not be considered as a mitigating basis, or "hardship," under MEPA. Therefore, the "hardship" threshold for a waiver has not been met.

¹⁷ Concord incorrectly cites this CMR section as 310 CMR 11(1)(a), which does not exist.

¹⁸ Source: 301 CMR 11.11(1)(a).

¹⁹ Source: Environmental Partners Group 2-page letter, #1, dated January 25, 2016.

In addition, Concord is proposing to LEASE the solar panels. With a lease, the SRECs go to the owners (and their investors) of the solar panels themselves – Concord does not get SRECs. Concord does not pay taxes, and SRECs are of no value to them. **It is inconceivable how Concord could claim hardship if their panel provider does not get the benefit of SRECs from this project. The applicant is Concord, and it is Concord that must complete a statutorily-mandated EIR. Because the investors in Concord's solar panels would not be eligible for SRECs IS NOT A HARDSHIP FOR CONCORD AND DOES NOT MEET THE HARDSHIP REQUIREMENTS OF THE MEPA WAIVER REGULATIONS.**

Concord also argues that their project implementation plan includes “documented best management practices and guidelines to be implemented by the project proponent.”²⁰ The information on those best management practices needs to be included in an EIR. A letter describing these best management practices does not rise to the level of documentation needed when a MEPA threshold is exceeded. Nagog Pond is a public drinking water source, and the lands where work will be done are in a Zone A surface water source. Therefore, it is environmentally sensitive land. DEP's own Guidance For Solar Projects on Public Drinking Water Lands states that “MassDEP supports wind and solar energy projects but recognizes that lands that are under the control of public water systems have been identified as the most critical to protect public drinking water reservoirs and wells.”²¹ It is inappropriate to waive EIR requirements in such an environmentally sensitive area without a full EIR simply because the project proponent says that they will do a good job. Requiring an **EIR WILL** “serve to avoid or minimize Damage to the Environment”²² and must be required.

2. **301 CMR 11.11(1)(b).**²³ This section is inapplicable because it only applies if the provisions of 301 CMR 11.11(1)(a) are met. As stated above, Concord cannot meet the provisions of 301 CMR 11.11(1)(a) because they do not have a hardship and they submitted the project late to the MEPA office.

If, for sake of argument, 301 CMR 11.11(1)(a) does apply here, this provision (301 CMR 11.11[1][b]) would still be inapplicable because an EIR is definitely needed to ensure avoidance and minimization of damage to the environment. As stated above, the Nagog Pond is a public source of drinking water and the lands that would undergo construction are in Zone A of a

²⁰ Source: Environmental Partners Group 2-page letter, #1, dated January 25, 2016.

²¹ Source: Massachusetts Guideline To Provide Guidance To Public Water Suppliers On Information to be Submitted to MassDEP for Wind & Solar Projects Proposed On Lands Owned Or Controlled By Public Water Systems for Drinking Water Purposes

²² Source: 301 CMR 11.11(1)(b).

²³ Concord incorrectly cites this CMR section as 310 CMR 11(1)(b), which does not exist.

surface water source, which under state regulations are held to a higher degree of environmental protection. Specifically, DEP's own Guidance For Solar Projects on Public Drinking Water Lands states that "MassDEP supports wind and solar energy projects but recognizes that lands that are under the control of public water systems have been identified as the most critical to protect public drinking water reservoirs and wells."²⁴ Concord argues that they applied the Final Generic Environmental Impact Report (FGEIR) that was jointly completed by DEP and DCR. However, Concord does not include this FGEIR in the documents for consideration, therefore it is impossible for me to comment on whether or not utilizing FGEIR guidelines at this site is all that is necessary for avoiding or minimizing environmental damage. If a FGEIR has already been completed, simply incorporating the FGEIR information into an EIR specific to the Nagog Pond project would seem a rather easy way to complete the EIR. But without an EIR, you cannot ensure that this surface water protection area, which DEP terms "most critical to protect public drinking water reservoirs,"²⁵ will be protected. Concord's FGEIR comments do not sufficiently ensure that environmental standards will be met, and they have not demonstrated that an EIR "would not serve to avoid or minimize Damage to the Environment."²⁶ The DEP guidance referenced above makes it clear that this land is "the most critical to protect public drinking water reservoirs," and therefore a waiver from an EIR should not be given in the absence of complete assurance of protection.

3. **310 CMR 11.11(2).**²⁷ First, Concord does not ask a waiver from the EIR review thresholds (which is what this section applies to). Concord requests a complete waiver of the EIR requirement for this project. Therefore, this section is inapplicable. If this section were to apply, Concord does not meet the level necessary to "rebut the presumption" that the work being undertaken at the site is "presumed to have particularly significant environmental impacts."²⁸ Concord's comments indicate that the most intrusive work under this project is the intake pipe replacement. They are draining and damming the pond for four months. At the Conservation Commission hearing regarding this project, Concord did not have a specific plan as to how they would protect the fish that were within the dammed area at the time the project area was being dewatered. And this work is being

²⁴ Source: Massachusetts Guideline To Provide Guidance To Public Water Suppliers On Information to be Submitted to MassDEP for Wind & Solar Projects Proposed On Lands Owned Or Controlled By Public Water Systems for Drinking Water Purposes

²⁵ Source: Massachusetts Guideline To Provide Guidance To Public Water Suppliers On Information to be Submitted to MassDEP for Wind & Solar Projects Proposed On Lands Owned Or Controlled By Public Water Systems for Drinking Water Purposes

²⁶ Source: 301 CMR 11.11(1)(b).

²⁷ Concord incorrectly cites this CMR section as 310 CMR 11(2), which does not exist.

²⁸ Source: 301 CMR 11.11(2)

done in the middle of a public drinking water supply, which under the law requires EXTRA PROTECTIONS. To simply state that the “original and expanded ENF clearly indicate that the intake pipe replacement portion of the proposed project does not result in any significant environmental impacts”²⁹ is not enough to rebut the presumption that any project that meets or exceeds the MEPA threshold for an EIR is environmentally significant. Concord simply states that they will follow best management practices. **To state again – this is work being done in the middle of a surface water supply source. Extra precautions need to be taken in this area, not waiving a state law that requires a detailed environmental study. Concord has not “rebutted the presumption” that an EIR would significantly benefit the project and the environment.**

Concord, in its request for a waiver under this section, does not rebut the presumption for work that is being done on the lands surrounding Nagog Pond. By not addressing the new drinking water facility and the solar panels, they have certainly not “rebutted the presumption” that this project is “presumed to have significant environmental impacts.” Concord provided absolutely no evidence that their work in constructing the drinking water facility and the solar array won’t have a significant environmental impact. And, under DEP’s own Guidance For Solar Projects on Public Drinking Water Lands states that “MassDEP supports wind and solar energy projects but recognizes that lands that are under the control of public water systems have been identified as the most critical to protect public drinking water reservoirs and wells.”³⁰ Concord has not rebutted the presumption for the entirety of the project, and therefore a waiver under this Section must be denied.

4. **310 CMR 11.11(3)(a):**³¹ This section refers to requests to waive the “mandatory EIR review threshold.” Concord DID NOT ask for a waiver of the mandatory EIR review threshold. Therefore this section is inapplicable. If, however, it is determined to apply, the Secretary can only grant a waiver if the Secretary determines that **“the project is likely to cause no damage to the environment.”**³² The relevant term in this regulation is “NO DAMAGE.” How can the Secretary certify that there will be NO DAMAGE from this project without an EIR? Concord merely asserts that their letter and supplemental ENF submittal “clearly demonstrates that the proposed project

²⁹ Source: Environmental Partners Group 2-page letter, #3, dated January 25, 2016.

³⁰ Source: Massachusetts Guideline To Provide Guidance To Public Water Suppliers On Information to be Submitted to MassDEP for Wind & Solar Projects Proposed On Lands Owned Or Controlled By Public Water Systems for Drinking Water Purposes

³¹ Concord incorrectly cites this CMR section as 310 CMR 11(3)(a), which does not exist.

³² Source: 301 CMR 11.11(3)(a).

is likely to cause no damage to the environment.”³³ That’s the extent of Concord’s argument that the entirety of the project proposes no harm to the environment. In the case of dewatering the pond, this is a water supply source and clearly environmental damage would be devastating to the water supply. DEP’s guidance calls lands that are under the control of public water systems have been identified as the most critical to protect public drinking water reservoirs and wells.³⁴ A simple statement that “we won’t harm the environment” does not provide any certainty to the Secretary that work in water and on lands that are “the most critical to protect public drinking water” are protected, and therefore the Secretary cannot make a determination that, without an EIR, “the project is likely to cause no Damage to the Environment.”

5. **301 CMR 11.11(3)(b):**³⁵ For this regulatory section to apply, the MEPA Secretary must determine that “ample and unconstrained infrastructure facilities and services exist to support the Project.”³⁶ Concord provides essentially the same answer – we will do a good job like we always do. That certainly is not enough to base a Secretary-level determination upon – it’s the equivalent to saying “Concord told me that they would do a good job so I’ll sign off on it.” **Concord provides no specific sample contracts, scope of work statements, project management criteria, emergency procedures in the event of an environmental incident, or any other document that would support the work that they will be doing at the site. In addition, Concord intends to LEASE the solar panels. As such, it is the firm that Concord is leasing the panels from that contracts for the solar installation – not Concord. Because the lessor, and NOT CONCORD, will control solar panel installation, Concord can not assure that “ample and unconstrained infrastructure facilities and services” will be available.** Therefore, the Secretary cannot make a finding that the work will be properly done when the work is not contracted for by Concord, but by the solar panel lessor. That’s just how leases work.

The totality of these comments demonstrate that Concord DOES NOT QUALIFY FOR A WAIVER OF MEPA’S EIR REQUIREMENTS. Concord’s proposed project exceeds MEPA’s threshold levels, and therefore must prepare an EIR. Concord delayed in filing the ENF with MEPA, and therefore Concord’s late filing makes the waiver provisions of the MEPA regulations inapplicable to Concord. Concord’s “hardship” claim that SRECs won’t be available only benefits the lessor of the solar panels, and

³³ Source: Environmental Partners Group 2-page letter, #4.

³⁴ Source: Massachusetts Guideline To Provide Guidance To Public Water Suppliers On Information to be Submitted to MassDEP for Wind & Solar Projects Proposed On Lands Owned Or Controlled By Public Water Systems for Drinking Water Purposes

³⁵ Concord incorrectly cites this CMR section as 310 CMR 11(3)(b), which does not exist.

³⁶ Source: 301CMR 11.11(3)(b).

because Concord is ineligible for SREC credits, this IS NOT a hardship on Concord. Finally, Concord already must complete an archaeological study of the property, and comply with Article 97 of the Massachusetts Constitution, so any EIR requirement will not further delay the project than it is already going to be delayed.

2. Article 97 of the Massachusetts Constitution Applies:

In my original ENF comments dated January 11, 2016, I discuss Article 97 of the Massachusetts Constitution. Specifically, I stated as follows:

“The ENF does not identify Article 97 of the Massachusetts Constitution as applying to this project. This project includes two lots – one of which is presently open space, and one of which is undergoing a change in use. Article 97 of the Massachusetts Constitution applies to both lots, and before this project can be implemented, the following needs to occur:

- a. A two-thirds vote of town meeting is needed to change the use of both parcels,
- b. A home rule petition needs to be submitted to the legislature for both lots, and pass by a two-thirds vote of the legislature, and
- c. Concord needs to comply with applicable funding sources and disposition requirements.”³⁷

It is interesting that Concord’s Department of Public Works (DPW -- which Concord’s Water and Sewer Department falls within) has publicly defended that no lands around or above Concord’s well-fields be used as a location for solar panels without Article 97 of the Massachusetts Constitution being complied with. Specifically, Concord’s Solar Siting Committee was tasked with developing criteria for the siting of solar panels in Concord. During the September 14, 2011 “Concord Solar Siting Committee Open House,” Concord’s DPW submitted the following written testimony:

“... the Solar Committee is undoubtedly aware of ... the significant legislative and regulatory hurdles associated with many of the public works sites identified in the study. Of particular note are the well sites that are subject to the ‘public trust’ doctrine, which specifies that **all land acquired for the purpose of water supply cannot be used for other purposes or diverted to another inconsistent public use, except by laws enacted by a two-thirds vote of each branch of the general court.** (Emphasis added) This Article 97 provision would apply to many of the sites which have been identified in the study including the Benson well site and Jennie Dugan well site among others. Thus, while we are generally supportive in concept of PV projects we will all need to keep these regulatory constraints in mind as we proceed to the next stage of the process.”³⁸

³⁷ January 11, 2016 comments by me to MEPA regarding EEA #15446.

³⁸ Report: Solar Siting Committee, Town of Concord, MA, October 2011, page 95.

Based on the above comment, to date Concord HAS NOT sited solar panels on top of well-fields within the Town of Concord, despite the fact that the Concord Solar Siting Committee identified well-field lands as a place where the siting of solar panels would be justified. **However, in the case of the Nagog Pond project, Concord is perfectly willing to site solar panels on top of “land acquired for the purpose of water supply” (EMPHASIS ADDED, and using Concord’s own words from the Solar Siting Report).** The Nagog Pond lands were acquired for the purpose of water supply. **Using the DPW logic, lands acquired for the purpose of water supply need to go through the Article 97 process before solar panels could be placed on them without regard to where the lands are located – either in Acton or in Concord. Why is Concord preventing their well-fields in Concord from having solar panels because of Article 97, but is not applying Article 97 to the lands that were “land acquired for the purpose of water supply” around Nagog Pond? Because it is inconvenient. Concord can’t have it both ways. If Article 97 applies to “land acquired for the purpose of water supply” in Concord, then Article 97 logically also applies to land in Acton that was “acquired for the purpose of water supply.”**

During the January 25, 2016 Acton Board of Selectmen hearing, I pointed out that Concord’s own Nagog Pond Feasibility Study for this project, written in 2013 and co-authored by Concord’s own special counsel on this matter, Mr. John Shea, and his firm, mandates compliance with Article 97 as a condition for this project. Specifically, I stated as follows:

“Specifically, the Feasibility Study that Mr. Shea and his firm co-authored, states that Concord acquired the parcels of land around Nagog Pond:

“so as to aid in the protection of water quality. **Indeed, several of the property deeds specifically reference Article 97,**³⁹ the ‘preserving and protecting the purity of the water’ and the protection of ‘the sanitary conditions of the waters.’ According to the 2011 *Nagog Pond Watershed Management Plan*, Concord has worked and continues to work closely with landowners and developers in the watershed on appropriate protective land management controls... ”⁴⁰

I reported to the Acton Selectmen that the Nagog Pond Feasibility Study written by Mr. Shea and his firm specifically identifies, as a possible use of a portion of the properties, the installation of a solar array to power the Nagog Pond facility.

³⁹ Emphasis added.

⁴⁰ The Nagog Pond Watershed and Solar Feasibility Study (July 17, 2013), page 2-8.

I also reported to the Acton Selectmen that the Feasibility Study written by Mr. Shay and his firm concludes that Article 97 applies to installation of a solar array on these properties. The report states as follows:

“Concord’s watershed holdings are **public lands** presumably acquired for protection of the Nagog Pond water resource ... As such, the ... alteration of the lands **requires analysis and compliance**”⁴¹ with Article 97.⁴²”

Concord has known since 2013 that Article 97 applies to this project, but has chosen to disregard its application. To date, Concord has disregarded the recommendations of its Feasibility Study, and it’s own very qualified lawyer, that Article 97 applies to this project.

Concord’s ten-page letter to MEPA dated January 25, 2016 states that Concord went back and asked their special counsel to add “additional clarification”⁴³ regarding the application of Article 97 to the Nagog Pond project. Concord reports that special counsel concluded that the lands were “taken or acquired for and dedicated to the support, operation, and management of a public water supply system.”⁴⁴

CONCORD’S OWN SPECIAL COUNSEL CHOSE HIS WORDS VERY CAREFULLY – MR. SHEA DOES NOT SAY THAT ARTICLE 97 DOES NOT APPLY. AND I REPEAT – MR. SHEA DOES NOT STATE THAT ARTICLE 97 DOES NOT APPLY TO THIS PROJECT. Why did Mr. Shea choose his words carefully? Because Mr. Shea knows that Article 97 applies to this project, yet his client has not implemented Article 97. Mr. Shea and the Concord DPW are saying the same thing – lands acquired for public water supply systems must go through the Article 97 process before solar panels can be added to these lands because it is a change in use.

Concord cannot have it both ways – Article 97 must apply both to Concord-owned well-fields located in Concord, and Concord-owned water supply lands in Acton. It’s simple. Article 97 applies. And any environmental attorney in the state that you ask this question of will give you the same answer – Article 97 applies. **Therefore, before Concord can do anything to these parcels, they MUST go through the Article 97 process mandated by the Massachusetts Constitution.** This means that Concord cannot increase the size and/or function of the building at the site, or add solar panels at the site, without getting (1) a two-thirds vote of town meeting, (2) a two-thirds vote of both houses of the state legislature, and (3) comply with the requirements of all sources of funding to acquire the parcels in question.

⁴¹ Emphasis added.

⁴² Source: The Nagog Pond Watershed and Solar Feasibility Study (July 17, 2013), page 2-9.

⁴³ Source: January 25, 2016 Environmental Partners Group 10-page letter, page 7.

⁴⁴ Source: January 25, 2016 Environmental Partners Group 10-page letter, page 7.

Concord, in its ten-page January 25, 2016 letter, argues that because the lands were “taken or acquired’ for public water supply purposes, and that public purpose is not changing, then Concord can do what it is proposing without regard for the provisions of Article 97. This is untrue.

Concord attempts to further misrepresent the facts in its ten-page January 25, 2016 letter, when Environmental Partners states that the purpose of the Feasibility Study was solely to study erecting a solar array on the Nagog properties and sell the power to others, and that the Feasibility Study never intended to review solar as it related to powering a plant on the property. Mr. Olson, author of the letter, argues as follows:

“References regarding the need for consideration of Article 97 for solar PV in the draft feasibility study prepared in 2013 refer to the development of PV systems on land parcels not for the expressed purpose of providing power to the proposed Water Treatment Plant.”⁴⁵ (Emphasis added)

Unfortunately, this statement is incorrect. Concord’s Feasibility Study – in the middle of the discussion of Article 97 – provides as follows:

“Additionally, Concord is considering a smaller scale PV system to power the Nagog Pond pumping and treatment facility.”⁴⁶ ... “a small-scale, land-based PV system to serve an upgraded pumping and treatment facility will take less watershed land and require less clearing of trees.”⁴⁷

To blatantly misrepresent the wording of the report, in a letter to MEPA, calls into question the entirety of Mr. Olson’s arguments on behalf of Concord.

The Feasibility Study is clear: Article 97 applies to a change in use of the lands within the Nagog Pond watershed, even for use of PV systems to power an upgraded water treatment plant on the property. As pointed out in my January 11, 2016 comment letter to MEPA, there are two parcels of land on the Nagog property that will need to go through Article 97 process:

1. The original parcel of land (acquired in the early 1900’s) that is changing its use from an Ozone Disinfection Facility to a full-scale water treatment facility with solar panels also on the property,⁴⁸ and

⁴⁵ Source: January 25, 2016 Environmental Partners Group 10-page letter, page 7.

⁴⁶ Source: Watershed and Solar Feasibility Study, page 2-9, July 17, 2013.

⁴⁷ Source: Watershed and Solar Feasibility Study, page 2-11, July 17, 2013.

⁴⁸ Note: In my original comments dated January 11, 2016, I indicate that this parcel is undergoing a “change in use” from a simple “ozone disinfection plant” to a “full-scale water treatment facility that is 440% larger than the present facility, and will

2. The “Palmer land,” acquired in 2003,⁴⁹ which is presently forested open space with absolutely no activities conducted on the land at present. This land is being converted from open space to a solar array.

Concord provided you with the Town Meeting votes regarding the purchase of the Palmer land to attempt to avoid Article 97 on these lands. Specifically, the town meeting warrant article indicates that the land was acquired for “the purpose of constructing and maintaining a facility for the disinfection, filtration, or other treatment of the waters of Nagog Pond...”⁵⁰ **The Town Meeting vote, and the deed, make no reference to the acquisition of this parcel for the provision of power to the water treatment facility. The Town Meeting warrant article makes it clear that this parcel was ONLY obtained to be the primary parcel where the treatment plant will be located. That IS NOT the case under the proposal described in the ENF before you. Also, even if the town meeting wording included solar panels, this reference would be insufficient to avoid the provisions of Article 97. This property, which is open space, is undergoing a change in use, and needs to undergo the provisions of Article 97.**

To date, Concord has not undertaken the steps mandated under Article 97 to allow a change in use of these two properties. Article 97 is not the only instance where the Town of Concord has disregarded the laws that apply to this proposed project. Concord:

1. Has, despite laws to the contrary, not conducted a comprehensive archaeological study of the entire parcel impacted by this proposed project, and has sought to rely on a very limited archaeological review of a small portion of the land to be impacted by this project, and
2. Is seeking waivers of the EIR requirements of the state’s MEPA laws, despite the fact that MEPA’s waiver provisions do not apply to Concord because (1) MEPA cannot waive the statutory requirement for an EIR, (2) Concord does not have a hardship, and (3) Concord did not file with MEPA in a timely manner.

Article 97 clearly applies to both parcels where work will take place under this proposal.

3. Massachusetts Guideline To Provide Guidance To Public Water Suppliers On Information to be Submitted to MassDEP for Wind & Solar Projects

include ten different water treatment processes (vs. the one single process being presently conducted at the site.)”

⁴⁹ Note: The deed to the Palmer land was included in my MEPA comments dated January 11, 2016.

⁵⁰ Source: Town of Concord Annual Meeting Town Warrant, April 11, 1994.

Proposed On Lands Owned Or Controlled By Public Water Systems for Drinking Water Purposes:

The state's own guidelines for solar power lands where public water systems are located specifically mandates Article 97 be applied when solar power systems are installed on "lands owned or controlled by public water systems for drinking water purposes." Concord is arguing that they are authorized to install a solar array on this land because of DEP's Guideline for Proposed Wind and Solar Energy Projects on Lands Owned or Controlled By Public Water Systems for Drinking Water Purposes. **However, this guideline (which is INCLUDED in Concord's 2013 Feasibility Study) clearly states that Article 97 and reasonable municipal rules still apply. The exact language in the guideline is as follows: "Note: The public water supplier may need to seek additional approvals from other entities and/or MassDEP, including, but not limited to, municipal approval, legislative approval pursuant to Article 97, and MEPA approval..."⁵¹ Therefore, Concord must comply with BOTH this DEP Guideline, Article 97, AND Acton's zoning bylaws.** Article 97 and Acton's zoning bylaws cannot be ignored even with compliance with this DEP guideline for solar power on drinking water supply lands.

Concord, in its January 25, 2016 ten-page letter, argues that "... The Town of Concord received presumptive approval from DEP for the PV portion of the proposed project on January 21, 2016."⁵² The "presumptive approval" received by Concord DOES NOT EXEMPT CONCORD FROM COMPLIANCE WITH ARTICLE 97, OTHER STATE REQUIREMENTS, OR MUNICIPAL APPROVAL."⁵³ Despite what Concord is arguing to MEPA, DEPs Guidance requires compliance with both Article 97 and municipal zoning rules, as well as the state's reduced development rules for work done with the 400' "arc" around a source of public drinking water (See below).

4. Massachusetts Regulation of Water Supply Protection Areas:

As indicated above, Concord's maps show a 400' "arc" running through the middle of this project. The land inside of this 400' area is a Surface Water Supply Protection Area, which is regulated by the state. These areas establish buffers around public water supply sources to control uses that might contaminate them. Nagog Pond is a surface water source that is characterized as "Zone A." Zone A lands require extra protection under the law. As proposed, the entirety of the proposed building and as much as 50% of the proposed solar array falls within 400 feet of Nagog Pond.

⁵¹ The Nagog Pond Watershed and Solar Feasibility Study (July 17, 2013), Attachment C.

⁵² Provide for wildlife corridors and not fence off the entirety of the project site - either during construction or post-construction

⁵³ Source: Massachusetts Guideline To Provide Guidance To Public Water Suppliers On Information to be Submitted to MassDEP for Wind & Solar Projects Proposed On Lands Owned Or Controlled By Public Water Systems for Drinking Water Purposes

In my January 11, 2016 comments to MEPA, I point out that, under state law, the reduced development requirements required within Surface Water Protection Areas **apply to individual lots**. Concord's own Nagog Pond Watershed & Solar Feasibility Study states as follows: **"Further analysis would need to be performed to determine if adjoining lots can be treated as "the same lot" for these purposes."**⁵⁴ In my earlier comments, I argued that Concord has not met the requirements for reduced development in each of the individual lots that comprise this project, especially as it relates to the Palmer land because almost 100% of the Palmer land is being used for a solar panel array. Concord, in its two January 25th letters, does not address this point. This is an issue for MEPA – Concord has not met the state's reduced development requirements for lands within 400' of a drinking water source.

Concord's only justification for the present proposal is that DEP's Policy encourages the development of solar power on surface water supply lands. However, as stated above, this Guidance still requires compliance with other applicable laws and regulations.

5. Wildlife and Wildlife Habitat:

Concord, in its January 25th ten-page letter, states that, with regard to wildlife and wildlife habitat impacts, "the public comment is unsubstantiated and lacking any direct facts associated with the assertion that the proposed area to be cleared for PV is thick with wildlife which has migrated since the clearing of adjacent lands for the Quail Ridge ... development."⁵⁵ This comment is disingenuous at best, and cruel with regard to the public stewardship that Concord is charged with in terms of land under its control. The intent of an EIR is for the applicant to consider all environmental impacts from a proposed project, including impacts to wildlife. The burden of an EIR is for the APPLICANT to consider all project alternatives to ensure protection of the environment. Under MEPA, it is THE APPLICANT that must prove to the state that it has considered alternatives and is implementing a project that will minimize environmental harm. So far, Concord has never addressed the impact of this project on wildlife and wildlife habitat, and it must. In particular, Concord has not considered the impacts that the eight-foot-high fence around the property will have on migrating animals. A wildlife corridor that encourages the free movement of animals throughout properties is one of the major goals of Conservation Commissions. Concord is in actuality closing off access to these areas, which will directly impact the wildlife that lives in the area, and could possibly prevent wildlife from accessing sources of food that are located across the fence-line or on adjacent properties that the wildlife will no longer have access to. These are not "unsubstantiated" comments that are "lacking any direct facts," as Concord calls them.

⁵⁴ The Nagog Pond Watershed and Solar Feasibility Study (July 17, 2013),

⁵⁵ Source: January 25, 2016 Environmental Partners Group 10-page letter, page 8.

6. Alternatives Analysis:

Once again, Concord continues to avoid studying project alternatives to the full extent as required by MEPA. Concord's January 25, 2016 ten-page letter indicates that, with regard to the solar array, Concord ONLY studied sites within the Nagog Pond Watershed because it is close to the water treatment plant and because "the Town of Concord cannot transfer electrons generated in Concord to service locations in Acton."⁵⁶ What Concord doesn't tell you is that, in its Solar Siting Committee Report dated September 14, 2011, Concord's Solar Committee identified "about 848 acres of land in Concord in 73 parcels that are not designated as conservation land and/or not protected by deed restrictions."⁵⁷ Concord can certainly generate electricity at any of these properties, and use it as a trade-off for the power needs of the Acton water treatment facility. There is absolutely no requirement that a solar array serve a specific use. Concord does not explore these alternative options, despite MEPA's intent to ensure full, comprehensive, and complete alternative discussion and consideration. Concord needs to amend its ENF and provide a more complete alternatives analysis as to the solar panel location that include off-site properties in Concord.

Comment Extension Request

In this instance, Concord obtained a two-week extension in order to research the issue of a mandatory EIR finding, and to provide you with their comments. The public, however, was only provided one week in which to digest Concord's comments and reply to the MEPA office. As a volunteer for Quail Ridge, with a separate "real job," it has proven difficult for me to prepare adequate comments within the short time-frame provided. If Concord should request another extension, I respectfully request that the public be provided an equally-as-long time period within which to provide public comments.

Conclusion

In conclusion, none of the Concord's justifications pass the standard for either the issuance of a waiver of MEPA's requirements, or qualify Concord for reduced impacts from state and/or local environmental laws. Concord does not have a hardship in this instance because:

1. Concord is not the entity receiving SRECs – it's Concord's solar panel lessor that will receive the SRECs. Therefore, Concord does not have a hardship, and
2. Concord filed too late for MEPA approval and therefore cannot argue that they have hardship because they could have applied to MEPA earlier in the process, as MEPA requires.

⁵⁶ Source: January 25, 2016 Environmental Partners Group 10-page letter, page 8.

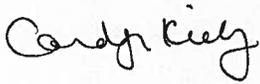
⁵⁷ Source: Concord Solar Siting Committee Report, September 14, 2011, page V.

Concord must therefore:

1. Comply with the provisions of Article 97 of the Massachusetts Constitution for BOTH parcels of land impacted by this proposal.
2. Prepare a complete EIR for this project since they are ineligible for a waiver of the EIR,
3. Comply with the reduce development provisions of areas within 400' of a surface water source, which apply BY INDIVIDUAL LOT.
4. Provide for wildlife corridors and not fence off the entirety of the project site – either during construction or post-construction.
5. Prepare a complete archaeological study of the property, and
6. Study off-site locations for solar panels, including locations in Concord.

Thank you for considering these comments.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn M. Kiely". The signature is written in black ink on a light-colored background.

Carolyn M. Kiely, Esq.

Littleton Conservation Trust
43 Foster Street
Littleton, MA 01460

February 1, 2016

Ms. Purvi P. Patel, EIT (Purvi.Patel@state.ma.us)
Massachusetts Environmental Policy Act (MEPA Office)
Executive Office of Energy and Environmental Affairs
100 Cambridge St., Suite 900
Boston, MA 02114

RE: EEA No. 15446 – (1) Comments to MEPA and EEA Secretary Matthew Beaton, regarding Concord's proposed, Acton-based, greatly expanded Nagog Pond Water Treatment Plant described in part in ENF and Expanded ENF and (2) request to deny proponent's request for waiver for Environmental Impact Report (EIR)

Why waiver to EIR should be denied:

Concord's request for a rushed environmental assessment and waiver for an otherwise mandatory EIR study is proposed so funding can be obtained through the federally enabled SERC program for its ground based associated PV Farm. This financial gain is possible because Acton's power supplier is an investor owned provider. It appears that Concord could not obtain such financial gain if the equivalent PV Farm were sited on Concord land, which is not supplied by investor owned power providers. The proposed ground-based PV Farm causes various problems including impacts to Article 97 land, unnecessary destruction of forested lands, and disturbance by sight, glare, and proximity to pre-existing residential neighborhood. An unobtrusive roof-mounted PV array, provided it does not cause disruption to residents and others may be a viable alternative. Otherwise the proposed PV Farm should be appropriately sited in an unobtrusive area of Concord for everyone's benefit. That should remove the need for any proposed waiver of EIR

Some additional areas that need to be addressed are described below:

Concord's Public Works Water and Sewer Division's proposed Nagog Pond Filtration Facility (in Acton) with upgrade and expanded development, including greatly expanded facility foot print, enhanced pond water withdrawals, creation of an inappropriately sited, associated ground-based Photovoltaic (PV) Farm, among other changes contribute to expanded impacts and concerns that need to be addressed.

The need for installing water filtration on the current water stream drawn from Nagog Pond for Concord public consumption as potable water is understood and overdue. That is not the issue. There are many other concerns proposed by this project and its expanded magnitude in many dimensions.

Changes brought about by implementing Nagog Pond Water Filtration:

Concord has acquired land surrounding Nagog Pond to protect the natural resources therein, in part to enhance water quality for the purpose of supplying drinking water to Concord. Additionally Concord has denied public access to these pond side lands in both Littleton and Acton for the purpose of protecting water quality. Once water filtration is implemented on the water stream from Nagog Pond, there is no need to prohibit public access on these protective surrounding lands (other than in the very immediate vicinity of the treatment facility itself).

With the introduction of the new Water Filtration Plant and the protection provided with its implementation, public access for all should now be granted to these surrounding lands. The need is evident by the current well-worn trail systems surrounding the pond and the desire of the Acton and Littleton communities to provide connectivity, including between Littleton's historic Sarah Doublet Forest and Nature Reserve (former Nashoba and Newtown Praying Indian Plantation) and Littleton's Morrison Farm/ Nagog Hill Orchard, with Acton trails, including the Trail Through Time, thereby connecting public areas including those with significant Native American history and artifact. The desire

to protect these lands and to provide public access to these lands is expressed in both the Littleton and Acton's Open Space and Recreation Plan Reports.

All these surrounding lands in the Nagog Pond watershed need to be permanently protected, as a result of the new treatment process reducing the need for extensive pond side land ownership and mitigation needs to be provided for an expanded water withdrawal operation and overall expanded development, with increased foot print, infrastructure, and accessory development, such as the extensive Photovoltaic (PV) Farm. There are several ways this could be done.

- Concord could gift hosting communities (Littleton and Acton) with these pond side lands, along with protective covenants allowing public access and extinguishing development rights. Lands would be gifted in fee to the corresponding community in which they reside.
- Alternatively, Concord could gift Conservation Restrictions (easements) to these same communities with the above stated public access and extinguishment of development rights. Grantees could be the corresponding community's municipal Conservation Commissions and/or private non-profit conservation land trusts.
- In no case should these lands acquired (often with the use of local and state public funding and consequently most likely protected with various statutes such as the Article 97 Amendment to the Massachusetts Constitution) to protect the natural resources of Nagog Pond, including that of providing a drinking water source for Concord, be discarded and developed directly or indirectly.

Need for more comprehensive archaeological study in vicinity of Nagog Pond and perhaps land areas now underwater due to Concord's construction of water dam and consequent flooding.

Archaeological sites and Native American presence exist throughout as noted by local historians and archaeologists :

The Nashoba Praying Indian Village selected its location between two major fresh water bodies – Fort Pond and Nagog Pond, both in Acton and Littleton. (In Algonquin, "Nashoba" translates to "between the waters"). Many Native American artifacts and indications of their presence can be found in this immediate area and surrounding environs. In particular, close to the current water treatment facility is a turtle effigy consisting of an aggregate of rocks with additional rock appendages serving as limbs and head (identified by Dan Boudillion). These and other artifacts need to be permanently protected. (See research and works of author and local historians Dan Boudillion, Peter Waksman, John Hanson Mitchell, Dr. Tim Fohl, Linda McElroy, Professor Curt Hoffman and his doctoral students, and those discussed at Acton's archaeology programs such as those hosted by its organization, Friends of Pine Hawk.) On the other side of Nagog Hill Road on LCT Sarah Doublet Forest and Nature Reserve land there are additional archaeological sites/ stone effigies and other purported Native American sites extending into nearby Fort Pond. It is likely these also extend on Nagog Pond lands on shore borderlands and beneath the water surface when more land was exposed before flooding due to the construction of the current Concord dam for its drawing of water for its town's consumption.

Ecological concerns caused by massive expansion of Concord Water Plant Construction, expanded water withdrawal, and extensive disruption of water bodies (i.e., including altering more than 10 acres of wetland/pond). The impact of successive water withdrawal upon Nagog Pond and its associated banks and ecosystem should be understood before expansion of water withdrawal and usage is allowed. Please note that Nagog Pond is a Great Pond and contains historical value in addition to its substantial ecological significance. The proposed Concord Water Filtration project is greatly expanded beyond just providing a new level of physical filtration on the current water stream which supplies limited drinking water to residents of Concord. This proposed expansion of this currently nonconforming infrastructure and operation needs to be fully understood and justified. It appears that

this greatly expanded operation is more in line with developing a greatly expanded business operation to generate more business and enhance growth rather than just protect the watershed and water resources in its host communities and just provide public health benefits to its current drinking water consumers. In particular the following should be addressed:

- Greatly expanded footprint of plant and access;
- Greater water withdrawals from Nagog Pond; and
- Newly proposed large PV Farm and accessory infrastructure, with both its impact on the ground and scenic impact from the Nagog Pond shorelines and environs.

Proponent's request for waiver for EIR needs to be denied.

The proposed project in its current form is over scaled for immediate need and has impacts on a variety of state concerns (Article 97 lands, many acquired with public funds for open space protection; need for expanded archaeological study; 10 acre plus alteration of wetland and water bodies; federal and state funding including seeking SERC funding for inappropriately sited and ecological damaging PV Farm; etc.).

A full EIR for this project will benefit the three communities involved – Acton, Littleton, and Concord and help develop a more comprehensive and integrated watershed and land use plan which involves permissible public access, connectivity to adjacent conservation lands which contain priority and estimated habitat lands for rare species, and contributing tributaries to Nagog Pond. Such a plan should make explicit and transparent what is permissible by pondside agricultural concerns (e.g. Littleton Nagog Hill Orchard's APR and Self-Help funded lands) and areas now overrun with nonnative invasive growth due to what appears to be undocumented prohibitions on Littleton's public use of Self-Help funded lands intended for general public open space use. This large expanse is one of the largest undeveloped areas in the region and significant for wildlife and public use.

If you have any questions or desire clarification, please do not hesitate to contact me. Thank you for the opportunity to comment on issues of regional and local concern.

Respectfully yours,



Donald MacIver, president and trustee
Littleton Conservation Trust
(Owners and stewards of Sarah Doublet Forest and Nature Reserve
along Nagog Hill Rd and Fort Pond Road, Littleton)

LittletonConservationTrust.org
maciver01460@gmail.com
978-952-2706

Cc: Senator James Eldridge (James.Eldridge@MASenate.gov)

Acorn Park Condominium Association
c/o Lisa Lapinski, President, Board of Trustees
525 Acorn Park Drive
Acton, MA 01720
978-263-6994
lisalapinski@verizon.net

February 1, 2016

Ms. Purvi P. Patel, EIT
MEPA Office
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Public Comments on EEA #15446, Nagog Pond Water Treatment Plant, Acton Massachusetts, Expanded ENF and Request for Waiver of Environmental Impact Report

Dear Ms. Patel,

I am writing on behalf of the Acorn Park Condominium Association (Acorn Park), a community of single family homes that abuts the project described in EEA #15546. We believe that the Environmental Notification Form (ENF) submitted by the project proponent - Concord Public Works, Water & Sewer Division (Concord) - for the Nagog Pond Water Treatment Facility is insufficient for the following reasons:

- The ENF insufficiently addresses the many environmental concerns associated with the project, especially those associated with the proposed large photovoltaic array, which will only supply 25% of the power required by the water treatment facility
- Chapter 97 of the Massachusetts Constitution prohibits, without legislative approval, the proposed construction of the solar array upon land that was originally acquired to protect a public water supply and a watershed area associated with a Great Pond, because the power generated by the proposed array will not be used directly by the treatment facility, but will be sold by Concord to the electrical grid;
- The ENF does not adequately identify and address all reasonable project alternatives, both as to the solar array and with respect to the water treatment structure itself;
- The ENF both significantly *understates* the 442% growth in the size of the current structure and the related environmental impacts of the proposed new treatment facility
- and grossly *overstates* the public benefits of this project; and

- The ENF proposes mitigation measures that do not adequately protect the vulnerable wetlands and other natural resources at the site.

THE PROPOSED SOLAR ARRAY REQUIRES LEGISLATIVE AUTHORIZATION

First, as thoroughly outlined by comments submitted on January 11, 2016 by the Quail Ridge Homeowner's Association, the proposed solar array provides a questionable public benefit given the necessary clear-cutting of longstanding forest, with related impact on wildlife, plus the proposed placement of a meadow of grasses, posing runoff issues that are not completely addressed by the ENF.

Additionally, following the recent statements by Concord's representatives before the January 25, 2016 Town of Acton Board of Selectmen's hearing on Concord's application for a needed Site Plan Special Permit¹, we believe that the Massachusetts Constitution, Chapter 97 prohibits the construction of the solar array absent the approval by a 2/3 majority vote in both of the Commonwealth's legislative bodies. In its January 26, 2016 supplemental letter to your office summarizing its arguments for requesting a waiver of the EIR requirement, Concord states that "the completion of an EIR presents an undue hardship to the project, as it would delay the project schedule and the time necessary for completion would result in the Town losing valuable Solar Renewable Energy Credits (SRECs)."

What the packed room of Acton citizens learned at the Selectmen's hearing is that the so-called "essential accessory use" of the solar array is going to be executed not by directly powering the treatment facility with the power generated by the array, but through the **sale of that power** to the local power grid, from which Concord would then purchase back power to supply the plant. And the solar array will only satisfy 25% of the power needs of the proposed 2-story building. **Thus, the purpose of the photovoltaic array is not principally to support the power needs of the proposed treatment facility; it is to sell solar power.**

So, while the land on which Concord proposes to construct the solar array was originally acquired for the purpose of protecting the Nagog Pond water supply and related watershed, the current proposed use of that land as described by Concord -- to generate and sell solar power -- constitutes a change in its purpose and requires approval by the Massachusetts legislature under Chapter 97.

THE SREC BENEFITS FOR CONCORD ARE NOT A SUFFICIENT REASON FOR THE STATE TO WAIVE THE COMPLETION OF A FULL EIR

As already noted, Concord also wishes to speed up the approval process for its water treatment facility and solar array in order to obtain federal SRECs. Concord acknowledged at the Town of Acton Selectmen's hearing that they want to hasten

¹ The Acton Board of Selectmen continued the hearing on Concord's application for the needed Site Plan Special Permit and Special Use Permit to February 22, 2016, based on several issues and questions the Board wishes to further consider.

construction of the solar array by the end of the year to take advantage of these SREC's. They also acknowledged that they did not plan to put the solar panels on the roof of the proposed treatment facility because the length of time to construct that building would also delay the installation of the solar panels past the end of 2016, and therefore deny Concord the SREC credits they desire.

We ask that the EEA reject Concord's attempts to bypass the necessary comprehensive review of the environmental impacts of their substantial construction project based on their desire to obtain a financial benefit for Concord at the cost of woodland and protected habitat in Acton. Concord could just as easily construct photovoltaic arrays on land parcels that are available and unrestricted in the Town of Concord and obtain the same SREC benefits.

CONCORD HAS NOT ADEQUATELY EXPLAINED THE NEED FOR A TREATMENT PLANT THAT IS 442% LARGER THAN THE CURRENT STRUCTURE TO TREAT 10% OF ITS TOTAL DRINKING WATER

The other major concern for the residents of Acorn Park is the startling transformation of the current small ozone disinfection facility into a much larger comprehensive water treatment facility, and Concord's attempts to underplay the nature of this change.

Since 1994, Concord has had an easement for right of access through the narrow roadways of Acorn Park to reach the current **small structure** that houses an ozone disinfection facility, a small part of the chain of water treatment, which is completed downstream of this site. Employees of the facility use these roads on only 3 days per week on average, and there are few to no chemical deliveries. During this time, there has existed between the facility and the Acorn Park neighborhood a buffer zone of forested land, home to wildlife, and also a feature that serves to protect the surrounding wetlands. Based on reasons including the light traffic load and small facility, the Town of Acton granted Concord several zoning variances, including relieving it from street frontage requirements, in part to avoid "more extensive tree cutting and grading alterations to the natural environment". (Paragraph (7) Decision No. 94-19 of the Acton Board of Appeals, Oct. 18, 1994).

Acorn Park is populated by families with small children who play on and near these roads, including the street from which Concord Water directly accesses the current facility. What Concord proposes to do now is to increase the size of the current structure by 442%. Concord also proposes to clear the forested buffer zone for the purpose of constructing its solar array; and they propose enlarging the driveway and parking area close to the enlarged structure to accommodate the expected increase in vehicle traffic, both from plant operators and chemical delivery trucks.

Significantly, the Town of Concord's 2015 Annual Water Quality Report reflects that Nagog Pond water accounts for only 10% of the Town's entire water supply. There are existing water treatment facilities downstream from the current ozone facility including a

pumping station nearby that could provide the necessary treatment for such a small amount of water.

As the ENF states, the reason the proposed structure will be so much larger than the current building is to accommodate a new use - a "state of the art" comprehensive water treatment facility, not just the ozone treatment process. Thus, Concord's statement that "[t]he principal use of the site will remain the same" is misleading: an ozone disinfection facility and a comprehensive water treatment facility consisting of multiple water treatment processes - are not the same. And a building that is 442% larger than what now exists, plus the additional impervious surfaces including more paved parking and driveway areas (as well as the solar panels), are also not the same as the small facility constructed back in 1994. Given the substantial change in the function of this site, Concord must conduct and document a much more thorough analysis of alternatives to enlarging the structure at this site, especially in light of how small a proportion of the Town's water supply derives from Nagog Pond.

For these reasons, the residents of the Acorn Park community request that you require Concord to conduct a full Environmental Impact Report. We reject Concord's desire to obtain SREC's as a legitimate reason to do less than a complete examination of the environmental risks and impacts of their project proposal. We also believe that the Massachusetts legislature must weigh in under Chapter 97 of the Constitution on Concord's use of protected land for the construction of a solar array with the purpose of selling power.

Sincerely,

Lisa Lapinski
President, Acorn Park Condominium Association

cc: Town of Acton, Conservation Commission
Town of Acton, Board of Selectmen

January 29, 2016

The town of Concord and Concord DPW started to review its proposed Nagog Pond project in detail more than two and a half years ago.

Very recently, Concord and its planners approached the Acton Conservation Commission. Meanwhile, the project was placed on the Concord Town Meeting docket apparently under the assumption that all approvals in Acton would be completed at the Acton Selectmen's meeting held Monday, January 25 at 7:00pm.

At that meeting, Concord DPW said they were trying to meet a December 2016 deadline that had nothing to do with the new intake pipe in the pond or the treatment plant itself, but with a financial deadline for the solar panel project, a deadline that, if met, provided financial gain to Concord.

Concord made available various reports and schemes, some dated from 2013 and some as recently as late December 2015. These were detailed and long.

However, after close of business day Monday, January 25 (the day of the Acton Selectmen Meeting), at 5:03pm, the firm hired by Concord to direct the project, Environmental Partners, informed the State of Massachusetts in a 10-page single-spaced letter, dated January 25, that they had overlooked a mandatory regulatory requirement for the project. Under state regulations an Environmental Impact Report (EIR) is required. In thirty months of considering the project, Concord had not realized that. Given the length of that letter sent at 5:03pm on the 25th requesting a waiver for the EIR, everyone involved with it knew considerably before that time, at least a day before and, as the letter itself implies, perhaps as much as several weeks before, that an EIR is required.

Concord DPW and every Concord and project representative at the Selectmen's meeting at 7:00pm on the 25th knew this or most certainly should have known it. Their firm wrote that letter and had already sent it to the State. However, during a forty-five minute presentation it was never mentioned. Concord did say it had recently made more filings with the State but did not specify what they were.

Separately, the issue of an EIR was raised by a citizen who stated that such a Report on a project of this kind was a "no brainer." All Concord and project representatives remained silent.

In a public hearing of the Acton Selectmen at which Concord hoped for project approval, Concord suppressed this vital information. Poor procedure, inadequate awareness of State regulations, and utter lack of transparency characterize what has happened.

James Engell
14 Breezy Point Rd.
978 263-7388

Breezy Point Homeowner's Association
Acton, MA 01720

January 21, 2016

Subject: **Request for Acton Board of Selectmen to deny the Town of Concord Water Treatment Plant project at Nagog Pond in its present form.**

Dear Selectmen Green, Berry, Adachi, Osman and Chang,

We, the undersigned residents of Breezy Point Road, all Acton residents and voters, urge you to deny approval of the Town of Concord Water Treatment Plant project in its present form.

Our neighborhood is primarily concerned by a recent addition to this project – the installation of two black vinyl coated chain link fences that will obstruct Breezy Point neighborhood access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception in 1989. Over the past decades, Breezy Point residents have been faithful stewards of this land that extends beyond our backyards.

The Breezy Point neighborhood consists of 12 single-family houses, with a median annual property tax of \$19,224 in 2015. Many residents chose this neighborhood in no small part because of its direct connection to this conservation land and associated hiking trails. We are therefore concerned that obstructing this access will reduce property values.

As stewards of this land, we are also concerned that the installation of these fences in a sensitive ecosystem is harmful to the environment, wildlife and wildlife habitat. This project will limit wildlife mobility, and will forever change the Nagog landscape.

We also have concerns regarding the scope of the Concord Water Treatment Plant project, including the 1.5 year construction period. We are concerned about the negative impacts that such prolonged construction will have on our neighborhood, and we want to ensure that proper steps are taken to mitigate its impact.

As far as we are aware, this project will entirely benefit the town of Concord, at great expense to the residents of Acton. *As concerned residents, we urge the Acton Board of Selectmen to deny approval of the Water Treatment Plant project in its present form.*

We welcome the opportunity to collaboratively work with the Concord Water District to ensure that the concerns of Acton residents, including those in our neighborhood, are properly addressed in the next draft of these plans. *Most importantly, we urge that any future drafts of these plans continue to provide the residents of Breezy Point with direct access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception.*

Sincerely,

The Undersigned Residents (and Voters) on Breezy Point Road

Kelly Fry - 11 Breezy Point Road Acton, ma 1/24/16
M. [Signature] - 11 Breezy Point Road Acton, MA 01720
2016

Breezy Point Homeowner's Association
Acton, MA 01720

January 21, 2016

Subject: **Request for Acton Board of Selectmen to deny the Town of Concord Water Treatment Plant project at Nagog Pond in its present form.**

Dear Selectmen Green, Berry, Adachi, Osman and Chang,

We, the undersigned residents of Breezy Point Road, all Acton residents and voters, urge you to deny approval of the Town of Concord Water Treatment Plant project in its present form.

Our neighborhood is primarily concerned by a recent addition to this project – the installation of two black vinyl coated chain link fences that will obstruct Breezy Point neighborhood access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception in 1989. Over the past decades, Breezy Point residents have been faithful stewards of this land that extends beyond our backyards.

The Breezy Point neighborhood consists of 12 single-family houses, with a median annual property tax of \$19,224 in 2015. Many residents chose this neighborhood in no small part because of its direct connection to this conservation land and associated hiking trails. We are therefore concerned that obstructing this access will reduce property values.

As stewards of this land, we are also concerned that the installation of these fences in a sensitive ecosystem is harmful to the environment, wildlife and wildlife habitat. This project will limit wildlife mobility, and will forever change the Nagog landscape.

We also have concerns regarding the scope of the Concord Water Treatment Plant project, including the 1.5 year construction period. We are concerned about the negative impacts that such prolonged construction will have on our neighborhood, and we want to ensure that proper steps are taken to mitigate its impact.

As far as we are aware, this project will entirely benefit the town of Concord, at great expense to the residents of Acton. *As concerned residents, we urge the Acton Board of Selectmen to deny approval of the Water Treatment Plant project in its present form.*

We welcome the opportunity to collaboratively work with the Concord Water District to ensure that the concerns of Acton residents, including those in our neighborhood, are properly addressed in the next draft of these plans. *Most importantly, we urge that any future drafts of these plans continue to provide the residents of Breezy Point with direct access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception.*

Sincerely,

The Undersigned Residents (and Voters) on Breezy Point Road

Handwritten signatures in blue ink:
1. A large signature, possibly "Alexandros..."
2. A signature that reads "Breezy Point Rd"
3. A signature that reads "Emi Williams"

Breezy Point Homeowner's Association
Acton, MA 01720

January 21, 2016

Subject: **Request for Acton Board of Selectmen to deny the Town of Concord Water Treatment Plant project at Nagog Pond in its present form.**

Dear Selectmen Green, Berry, Adachi, Osman and Chang,

We, the undersigned residents of Breezy Point Road, all Acton residents and voters, urge you to deny approval of the Town of Concord Water Treatment Plant project in its present form.

Our neighborhood is primarily concerned by a recent addition to this project - the installation of two black vinyl coated chain link fences that will obstruct Breezy Point neighborhood access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception in 1989. Over the past decades, Breezy Point residents have been faithful stewards of this land that extends beyond our backyards.

The Breezy Point neighborhood consists of 12 single-family houses, with a median annual property tax of \$19,224 in 2015. Many residents chose this neighborhood in no small part because of its direct connection to this conservation land and associated hiking trails. We are therefore concerned that obstructing this access will reduce property values.

As stewards of this land, we are also concerned that the installation of these fences in a sensitive ecosystem is harmful to the environment, wildlife and wildlife habitat. This project will limit wildlife mobility, and will forever change the Nagog landscape.

We also have concerns regarding the scope of the Concord Water Treatment Plant project, including the 1.5 year construction period. We are concerned about the negative impacts that such prolonged construction will have on our neighborhood, and we want to ensure that proper steps are taken to mitigate its impact.

As far as we are aware, this project will entirely benefit the town of Concord, at great expense to the residents of Acton. *As concerned residents, we urge the Acton Board of Selectmen to deny approval of the Water Treatment Plant project in its present form.*

We welcome the opportunity to collaboratively work with the Concord Water District to ensure that the concerns of Acton residents, including those in our neighborhood, are properly addressed in the next draft of these plans. *Most importantly, we urge that any future drafts of these plans continue to provide the residents of Breezy Point with direct access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception.*

Sincerely,

The Undersigned Residents (and Voters) on Breezy Point Road

Annie Brown
James Angell
Kora Manning

14 Breezy Pt Rd
14 Breezy Point Rd
Jay Manning

Breezy Point Homeowner's Association
Acton, MA 01720

January 21, 2016

Subject: **Request for Acton Board of Selectmen to deny the Town of Concord Water Treatment Plant project at Nagog Pond in its present form.**

Dear Selectmen Green, Berry, Adachi, Osman and Chang,

We, the undersigned residents of Breezy Point Road, all Acton residents and voters, urge you to deny approval of the Town of Concord Water Treatment Plant project in its present form.

Our neighborhood is primarily concerned by a recent addition to this project – the installation of two black vinyl coated chain link fences that will obstruct Breezy Point neighborhood access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception in 1989. Over the past decades, Breezy Point residents have been faithful stewards of this land that extends beyond our backyards.

The Breezy Point neighborhood consists of 12 single-family houses, with a median annual property tax of \$19,224 in 2015. Many residents chose this neighborhood in no small part because of its direct connection to this conservation land and associated hiking trails. We are therefore concerned that obstructing this access will reduce property values.

As stewards of this land, we are also concerned that the installation of these fences in a sensitive ecosystem is harmful to the environment, wildlife and wildlife habitat. This project will limit wildlife mobility, and will forever change the Nagog landscape.

We also have concerns regarding the scope of the Concord Water Treatment Plant project, including the 1.5 year construction period. We are concerned about the negative impacts that such prolonged construction will have on our neighborhood, and we want to ensure that proper steps are taken to mitigate its impact.

As far as we are aware, this project will entirely benefit the town of Concord, at great expense to the residents of Acton. *As concerned residents, we urge the Acton Board of Selectmen to deny approval of the Water Treatment Plant project in its present form.*

We welcome the opportunity to collaboratively work with the Concord Water District to ensure that the concerns of Acton residents, including those in our neighborhood, are properly addressed in the next draft of these plans. *Most importantly, we urge that any future drafts of these plans continue to provide the residents of Breezy Point with direct access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception.*

Sincerely,

The Undersigned Residents (and Voters) on Breezy Point Road

David A. Feschman 8 Breezy Pt Rd
[Signature]

January 21, 2016

Subject: **Request for Acton Board of Selectmen to deny the Town of Concord Water Treatment Plant project at Nagog Pond in its present form.**

Dear Selectmen Green, Berry, Adachi, Osman and Chang,

We, the undersigned residents of Acton, urge you to deny approval of the Town of Concord Water Treatment Plant project in its present form.

Our neighborhood is primarily concerned by a recent addition to this project – the installation of two black vinyl coated chain link fences that will obstruct Breezy Point neighborhood access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception in 1989. Over the past decades, Breezy Point residents have been faithful stewards of this land that extends beyond our backyards.

The Breezy Point neighborhood consists of 12 single-family houses, with a median annual property tax of \$19,224 in 2015. Many residents chose this neighborhood in no small part because of its direct connection to this conservation land and associated hiking trails. We are therefore concerned that obstructing this access will reduce property values.

As stewards of this land, we are also concerned that the installation of these fences in a sensitive ecosystem is harmful to the environment, wildlife and wildlife habitat. This project will limit wildlife mobility, and will forever change the Nagog landscape.

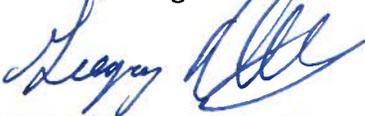
We also have concerns regarding the scope of the Concord Water Treatment Plant project, including the 1.5 year construction period. We are concerned about the negative impacts that such prolonged construction will have on our neighborhood, and we want to ensure that proper steps are taken to mitigate its impact.

As far as we are aware, this project will entirely benefit the town of Concord, at great expense to the residents of Acton. *As concerned residents, we urge the Acton Board of Selectmen to deny approval of the Water Treatment Plant project in its present form.*

We welcome the opportunity to collaboratively work with the Concord Water District to ensure that the concerns of Acton residents, including those in our neighborhood, are properly addressed in the next draft of these plans. *Most importantly, we urge that any future drafts of these plans continue to provide the residents of Breezy Point with direct access to the Nagog Hill Conservation Land, a right that has been afforded the neighborhood since its inception.*

Sincerely,

The Undersigned Residents of Acton


37 Minuteman Rd
Acton MA 01720


10 RYDER PATH
ACTON, MA 01720


4231 AVALON DRIVE
ACTON MA 01720



CONCORD PUBLIC WORKS

Water/Sewer Division
135 Keyes Road
Concord, Massachusetts, 01742

TEL: 978-318-3250 FAX: 978-318-3204

RE: Nagog Pond Watershed

June 1, 2004

Dear Nagog Pond Watershed Resident:

In this time of heightened security concerns Concord Public Works (CPW) needs the help of property owners and residents within the Nagog Pond watershed. Nagog Pond serves as an important drinking water supply source for the people of Concord. As a resident of the land area that drains into Nagog Pond your awareness and pro-active help can protect Nagog Pond and Concord's drinking supply.

Land owned by the Town of Concord is posted "Public Water Supply - No Trespassing". (A map depicting this property is enclosed with this letter). Town employees inspect the watershed on a daily basis and the Acton and Littleton police departments also patrol the area. However, during the past year there has been an increase in overt trespassing on the protected lands surrounding the Pond—all of which are prohibited under 310 CMR 22.20B of the Massachusetts Drinking Water Regulations. These prohibited activities include swimming, fishing, kayaking, canoeing, cutting of vegetation, bonfires, littering, horse-back riding, mountain biking, and the congregation of people on the Pond's shore. While we are respectful of passive recreation activities such as hiking, these other higher impact uses are not allowed and can not be tolerated.

This spring the Acton Police issued three trespassing notices for such activities. A canoe was also found on the eastern shore in Acton presumably used on an on-going basis. We ask that if you see people or activities occurring in the Pond or on its shores that you immediately contact the appropriate police department depending on where the activity is taking place:

- Acton Police: 264-9638
- Littleton Police: 952-2300

We also ask you to be mindful of your own activities as co-stewards of this vital natural resource. Attached is a fact sheet with suggestions and resources on how to properly maintain your septic system; use, store, and dispose of household hazardous materials; and care for your lawn. More information is available at www.epa.gov/owow/nps and www.mass.gov/dep/brp/wm/nonpoint.htm.

If you have any questions, suggestions or information to share please contact Matthew Mostoller, Environmental Analyst at 978-319-3250 or via e-mail at mmostoller@concordnet.org. With your support, we can continue to ensure that Nagog Pond is forever protected and safe.

Sincerely,


Alan H. Cathcart
Water & Sewer Superintendent
Concord Public Works

Enc.

Lisa Tomyl

From: Rosemary White <rwdtw@comcast.net>
Sent: Monday, January 25, 2016 12:13 PM
To: Board of Selectmen
Subject: Concord Proposal

TO: Board of Selectmen

We are vehemently opposed to Concord's expanding its water treatment plant at Nagog Pond and ask you to BLOCK THIS PROJECT. Concord continues to take advantage of

the Acton residents using our town as a dumping ground for whatever projects (housing of buses and added traffic to Acton) they generate. Their real estate values continue

to soar compared to Acton because they protect their town from any industry or any undesirable projects.

Rosemary and Dewey White, 3 Revolutionary Road, Acton MA 01720

Lisa Tomyl

From: Goldman, Susan <Susan.Goldman@bcbsma.com>
Sent: Monday, January 25, 2016 12:43 PM
To: Board of Selectmen

I am writing to implore the Acton Selectmen to NOT approve Concord's water project at Nagog Pond. You must block Concord's attempt to tell Acton what to do. You are elected officials. You must support Acton's citizens. Please do not allow Concord to destroy this beautiful forested area. This area has much value. Allowing Concord to build a solar array is tantamount to saying it is OK for them to build an industrial power plant in our beautiful town. Please say NO!!!

Susan N. Goldman
Contract Leader
Pharmacy and Consumer Solutions
Email: susan.goldman@bcbsma.com
Phone: 617-246-4924

Blue Cross Blue Shield of MA
101 Huntington Avenue
Suite 1300
Boston, MA 02119



Pulte Homes of New England, LLC
115 Flanders Road, Suite 200
Westborough, MA 01581
Telephone: 508-870-9999
Fax: 508-870-0408

January 22, 2016

Acton Board of Selectmen
472 Main Street
Acton, MA 01720
978-929-6611

Re: Comment Letter
Town of Concord Application for a Site Plan Special Permit/Use Special Permit
#11/2/2015 - 459

Dear Board of Selectmen,

Thank you for the opportunity to submit this letter. Pulte Homes has reviewed the most recent site plans submitted by Environmental Partners Group for the water treatment plant upgrade and the solar field.

While we appreciate Concord's desire to upgrade their facility and utilize solar, their revised proposal to clear right up to the property line and to locate solar panels 30-40 feet away facing directly at our abutting homes disregards the well being of our existing and future residents of Acton. Although we appreciate the intent of the proposed screening along the property line, we can not imagine a scenario where enough screening can be planted to mitigate the solar glare that will be directed right at our nearby homes.

The Acton residents of these adjacent homes should be considered and protected by the Town. The Concord Water revised proposal is a gross over reaction from their original plan and should be revised with more thought to balance environmental and abutter impacts.

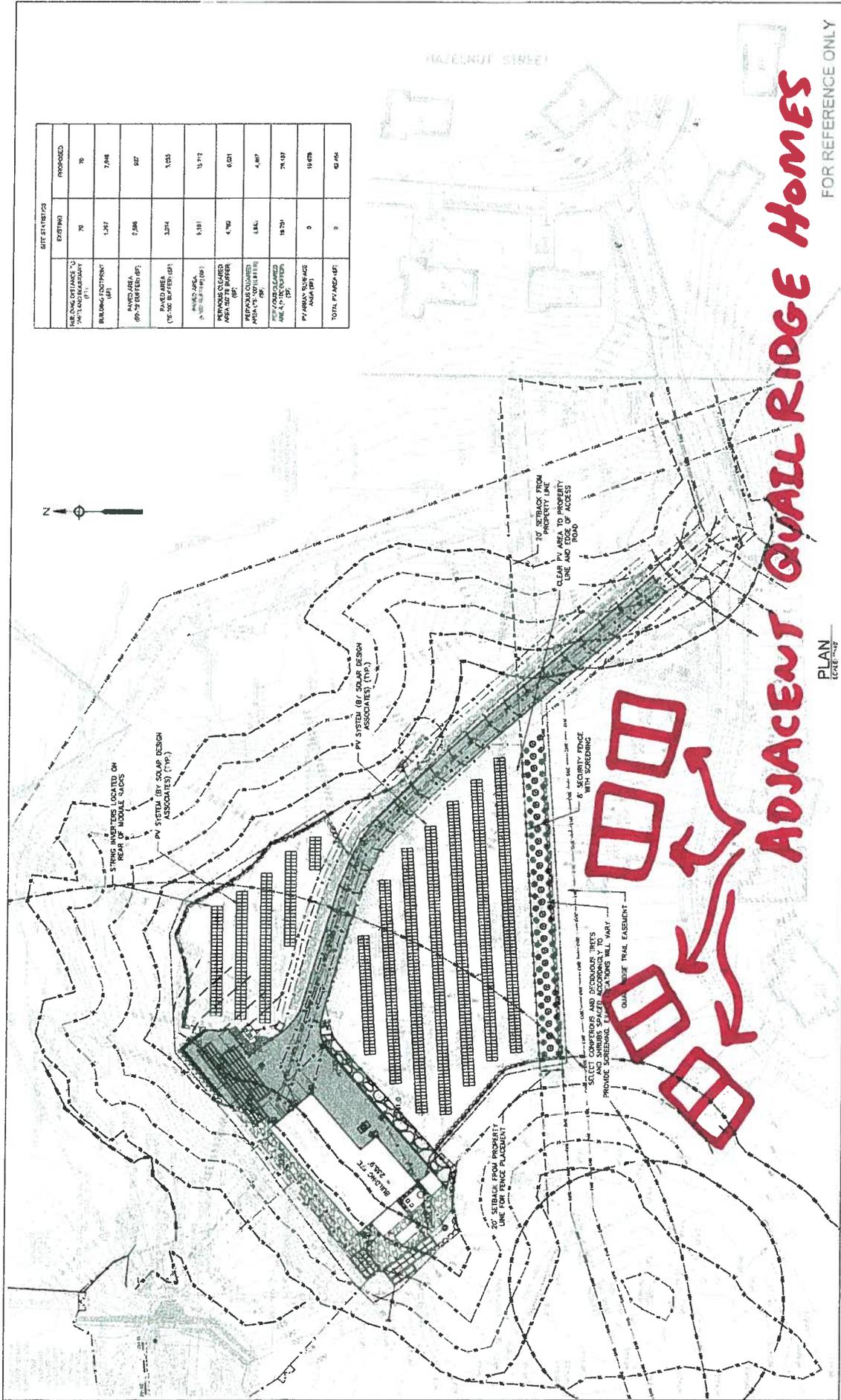
We ask the Board to request the plans be revised to leave at least a 100 ft. undisturbed buffer between the proposed solar field and the abutting homes at Quail Ridge, or as a fall back position, we ask that Concord Water be required to submit a much more detailed and substantial landscape screening plan that will completely screen the panels and the solar glare from the abutting homes at Quail Ridge.

We appreciate the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Reid A. Blute". The signature is fluid and cursive, with a long horizontal stroke at the end.

Reid A. Blute
Vice President – Land Acquisitions



	SITE CHARACTERISTICS	
	EXISTING	PROPOSED
MINIMUM DISTANCE TO NEAREST ADJACENT PARCEL BOUNDARY	70'	70'
REGULATORY SETBACK (SF)	1,327	7,048
PAVED AREA (SF) - EXISTING (SF)	5,386	507
PAVED AREA (SF) - PROPOSED (SF)	3,754	1,035
PERMITS AREA (SF)	5,191	13,172
ADJACENT CLEARANCE AREA (SF) - EXISTING (SF)	4,792	6,021
ADJACENT CLEARANCE AREA (SF) - PROPOSED (SF)	1,641	4,487
PERMITS CLEARANCE AREA (SF) - EXISTING (SF)	19,701	74,137
PERMITS CLEARANCE AREA (SF) - PROPOSED (SF)	0	19,679
TOTAL PV AREA (SF)	0	42,104

FOR REFERENCE ONLY

Environmental Partners GROUP
A PARTNERSHIP FOR ENVIRONMENTAL PROTECTION

Dimarini & Wolfe
ARCHITECTS • URBAN DESIGNERS
BOSTON, MASSACHUSETTS

LN
LIN ASSOCIATES, INC.
CONSULTING ENGINEERS

PLAN
E001-ENG

DATE: DECEMBER 2015
SCALE: 1"=50'-0"

DESIGNED BY: LEL
DRAWN BY: LEL
CHECKED BY: DWP
APPROVED BY: GOC

THIS LINE IS ONE INCH LONG WHEN PLOTTED AT A SCALE OF 1"=50'-0" DRAWING

MARK DATE DESCRIPTION

NAGOG POND WATER TREATMENT PLANT
TOWN OF CONCORD, MASSACHUSETTS
WATER TREATMENT PLANT
SUPPLEMENTAL SOLAR LAYOUT PLAN - 40 SCALE

FOR PERMITTING
Sheet No. **C-95**

168 Skyline Drive
Acton, MA 01720
January 17, 2016

Addressed to: Selectmen Green, Berry, Adachi, Osman and Chang

Re: Request the Acton Board of Selectmen deny the Town of Concord permission to install a solar panel array in conjunction with a water treatment plant on Skyline Drive in the Quail Ridge development.

Dear Selectmen,

I am writing because I learned from other residents that the Town of Concord plans to install a solar panel array on Skyline Drive property in Acton, in connection with the Nagog Pond Water Treatment Plant upgrade.

I want to be clear that I have received no prior written notice from anyone, including the Town of Acton, the Town of Concord, or Pulte Homes regarding the plans to clear cut the trees and transform a wooded area directly behind my new home, into an industrial setting of solar panels.

Pulte Homes has developed the land that is next to the proposed solar panel array. There are over 100 homes in this fairly new development. I purchased my new home on November 24, 2015 – less than two months ago. It is in a lovely setting; I was told through the purchase and sales that the land behind Skyline Drive would remain undeveloped. There is currently a walking trail. The area is filled with trees, and wildlife.

Clear cutting trees will destroy the wildlife habitat and have an impact on the environment. It makes no sense to me as a new resident of Acton, that Acton would allow, and in fact enable the Town of Concord to transform a beautiful area so drastically and so soon after approving a new development. This would cause damage to the environment in Acton. Residents of Quail Ridge, especially those on Skyline Drive, would see a drastic change in their environment, and likely a drastic drop in the value of our property. It is beyond my understanding that a governmental body would unilaterally change the use of land next to a new development, when that change would be devastating to the environment and to the residents. Please do not approve this project.

Representatives of our community plan to provide detailed comments at your public meeting regarding the problems with the proposal and the devastating impact it would have. Please deny this project outright. Protect the environment and citizens of Acton.

Sincerely,



Linda O. Rhen, Resident of the Residences at Quail Ridge

January 25, 2016

Subject: Request for Acton Board of Selectmen to Deny the Town of Concord permission to install solar panel array in conjunction with Water Treatment Plant on Skyline Drive.

Dear Selectmen Green, Berry, Adachi, Osman and Chang,

We, the undersigned residents of Quail Ridge, all Acton residents and voters, urge you to deny permission to the town of Concord to install a solar panel array on Skyline Drive property in connection with the Nagog Pond Water Treatment Plant upgrade.

The installation of the array in a sensitive ecosystem is harmful to the environment, wildlife and wildlife habitat. This project will result in the destruction of many mature trees, and forever change the vista associated with this land.

The primary justification for requesting this denial is that the proposal made by the Town of Concord violates Acton Zoning By-Laws, and potentially State laws and regulations.

Concord proposes to install an array of solar panels over an area of 62,454 square feet, and clear-cutting trees within 25 feet of existing homes. This clear-cutting has significant environmental and visual impacts for Acton. The solar panels are the most egregious aspect of the plan because of the sheer size of the solar array. The clear-cutting of trees destroys wildlife habitat as well as destroys the environment's natural ability to filter harmful materials before these materials flow into the wetland and damage down-stream properties. Concord can operate the proposed facility without installing any solar panels at this location, making the solar array an "option" for this site and not something that is a hardship for the Applicant if the solar panel portion of the project is denied.

The entire benefit of this project is to the town of Concord. Concord gains a new solar panel facility and a new water treatment plant, while Acton gets clear-cut land and significant environmental degradation. None of the new electricity generated by this project will go directly to any Acton resident, and no new additional water customers in Acton are contemplated from this project

Because several of the individual Acton town Boards and Departments have not yet provided their detailed inputs into the project, representatives of our community will provide more detailed comments regarding our concerns at your upcoming public hearing. We remain opposed to the project for the reasons cited above. We urge you to deny this project outright and protect the citizens and environment of Acton.

Sincerely,

The Undersigned Residents (and Voters) of the Residences at Quail Ridge

Printed Name	Address	Signature
Meredith Cutler	171 Skyline Drive	Meredith Cutler
James Cutler	171 Skyline Dr.	James Cutler
Regina M. Erickson	41 Greenside Ln	Regina M Erickson
ROBERT HYNES	38 GREENSIDE LN	Robert Hynes
Edward Root	40 Greenside Lane	Edward Root
Carole Root	40 Greenside Lane	Carole E Root
Barry Foster	33 Greenside Lane	Barry Foster
ANDREW WALSH	37 GREENSIDE LN	Andrew Walsh
Ruth Richards	72 Skyline Drive	Ruth Richards
Tom Hynes	38 Greenside	Tom Hynes
JANE WALSH	37 GREENSIDE LANE	Jane Walsh
Thomas Farnon	51 Skyline DR	Thomas Farnon
BARBARA J. LABADINI	56 Skyline Dr	Barbara J Labadini
Robert J. Labadini	56 Skyline Dr.	Robert J Labadini
JOHN WITTS	12 Quail Ridge Dr	John Witts
THANNE WITTS	12 Quail Ridge Dr.	Thanne Witts
Paula Alden	70 Skyline Dr.	Paula Alden
JANET KLASSE	18 PARKLAND LN	Janet Klasse
NORMA JONES	5 Quail Ridge Dr.	Norma Jones
Pete Foley	73 SKYLINE DR	Pete Foley

Printed Name	Address	Signature
NINDA FOLEY	73 SKYLINE DR.	Ninda Foley
MARGARET LEVER	27 QUAIL RIDGE DR.	M. Lever
Wallace Forrest	18 Ryder Path	Wallace Forrest
JUNE FORREST Wally	18 Ryder Path	June M. Forrest
Nancy Scopa	19 Ryder Path	Nancy P. Scopa
Renate Winter	29 Parkland Lane	Renate W. Winter
ONE J WINTER	29 PARKLAND LANE	One J. Winter
	23 Parkland Ln.	
DANA SYDNER	8 PARKLAND LN.	Dana Snyder
ANNE KINGSAN	30 Paul Davis Lane	Anne Kingsan
Robert Kingan	30 Paul Davis Lane	Robert Kingan
Berrie Dennis	42 GREENSIDE LN.	Berrie Dennis
Joyce Dennis	42 Greenside Ln.	Joyce Dennis
Paul Scopa	19 Ryder Path	Paul Scopa
	28 Parkland Ln.	
Michele Brady	68 Skyline Dr.	Michele Brady
RALPH LAURY	68 SKYLINE DR.	Ralph Laury
LANA KERTNER	23 PARKLAND LN.	Lana Kertner
PETER KERTNER	23 PARKLAND LN.	Peter Kertner
BYRON HARTUNIAN	21 PARKLAND LN.	Byron Hartunian

Printed Name	Address	Signature
MARGARET NICHOLS	21 PARKLAND LANE	Margaret Nichols
DOROTHY KIMBALL	20 PARKLAND LANE	Dorothy Kimball
DONALD H. KIMBALL	20 PARKLAND LANE	Donald H. Kimball
Sandra Markwitz	22 Parkland Lane	Sandra Markwitz
Harold Markwitz	22 Parkland Lane	Harold Markwitz
Steve Bohem	1 Parkland Lane	Steve Bohem
John KOVACH	13 PARKLAND LN	John Kovach
PAT KOVACH	13 Parkland Ln	Pat Kovach
Jeanne Rainville	19 Parkland Ln	Jeanne Rainville
DENNIS RAINVILLE	19 PARKLAND LN	Dennis Rainville
Melinda Salvaggio	16 Quail Ridge Drive	Melinda Salvaggio
Fred Salvaggio	16 Quail Ridge Drive	Fred Salvaggio
JOAN McVICKAR	62 Skyline Dr.	Joan McVikar
Ingrid Vetsch	55 Skyline Dr.	Ingrid Vetsch
Angela Bohem	1 Parkland Lane	Angela Bohem
Ruth Fishbein	160 Skyline Dr.	Ruth Fishbein
Tom SCHADLER	19 Greenside Ln	Tom Schadler
Nancy Hart	25 Greenside Ln	Nancy Hart
Amala Kurtzer	16 Greenside Ln	Amala Kurtzer
David Kurtzer	16 Greenside Lane	David Kurtzer

Printed Name	Address	Signature
Elizabeth Bilups-Fovky	9 Quail Ridge Dr	<i>Elizabeth Fovky</i>
David M. Fovky	9 Quail Ridge Dr	<i>David M Fovky</i>
STEPHEN GALLAGAN	58 Skyline Dr.	<i>Stephen Gallagan</i>
Marilynn Gallagan	58 Skyline Dr	<i>Marilynn A Gallagan</i>
Maureen Fletcher	65 Skyline Dr	<i>Maureen Fletcher</i>
Michael Fletcher	65 Skyline Dr	<i>Michael Fletcher</i>
WILLIAM FLETCHER	65 SKYLINE DR.	<i>William Fletcher</i>
Sheelendra Kulkarni	27 Greenside Lane	<i>Sheelendra Kulkarni</i>
Vidya Kulkarni	27 Greenside Lane	<i>Vidya Kulkarni</i>
Sharon E. Pugatch	35 Greenside Lane	<i>Sharon E Pugatch</i>
DAVID HERBERT	69 SKYLINE DR	<i>David Herbert</i>
James Hess	10 Parkland Ln.	<i>James Hess</i>
Nancy Hess	10 Parkland Ln	<i>Nancy Hess</i>
Karen Hergert	69 Skyline Dr	<i>Karen Hergert</i>
Marybeth Petroff	67 Skyline Dr.	<i>Marybeth Petroff</i>
Rick Petroff	67 Skyline Dr.	<i>Rick Petroff</i>
NANCY SCHIDLER	19 GREENSIDE LN	<i>Nancy Schidler</i>
NANCY BROWN	17 RYDER PATH	<i>Nancy Brown</i>
Patricia Falwell	21 Greenside Ln	<i>Patricia Falwell</i>
JAMUEL JONES	96 SKYLINE DR	<i>J. Jones</i>

Printed Name	Address	Signature
Regueline Gianfranco	29 Quail Ridge Dr	Regueline Gianfranco
PATRICIA Lindsay	18 Greenside Lane	Patricia Lindsay
BARBARA BISSON	7 Greenside Lane	Barbara Bisson
LEONARD BISSON	7 Greenside Lane	Leonard Bisson
Bright Smiths	18 Quail Ridge DR.	Bright Smiths
Olga Jones	96 Skyline Dr.	Olga Jones
THOMAS W FALWELL	71 GREENSIDE LANE	Thomas Falwell
Carolyn Keely	11 Parkland Lane	Carolyn Keely
DAVID SPOTTS	11 Parkland Lane	David Spotts
Connor Spotts	11 Parkland Lane	Connor Spotts
Sarah Spotts	11 Parkland Lane	Sarah Spotts
WALTER SMITHS	18 QUAIL RIDGE DR	Walter Smiths
MICHAEL BRANDT	71 SKYLINE DR	Michael Brandt
Karen Foster	33 Greenside Lane	Karen Foster
Erin Fitzmaurice	32 Parkland Lane	Erin Fitzmaurice
Joyce Mazzola	32 Parkland Ln	Joyce Mazzola
Knut Hansen	16 Parkland Ln	Knut Hansen
ALMIT TOROZ	16 PARKLAND LN	Almit Toro
Joanne Camparola	21 Ryder Park	Joanne Camparola
David Camparola	21 RYDER PARK	David Camparola

From: Linda Rhen
Sent: Saturday, January 16, 2016 3:49 PM
To: Barry Elkin
Subject: Re: Solar Panels Letter

Hi Barry,
Thank you for contacting me.
Please add my name to the letter with the list of residents who oppose this project.
I just learned of this yesterday.

I plan to send an email to the board of selectmen. I am considering coming to the January 25 meeting and will get back in touch with Carolyn.

Thanks again for contacting me.

Best Regards,
Linda Rhen

On Jan 16, 2016, at 12:51 PM, Barry Elkin <barry.elkin@outlook.com> wrote:

Linda / Noor

My name is Barry Elkin, and I am working with Carolyn Kiely to try and stop the Town of Concord from installing the large solar array panels directly behind your homes in Quail Ridge. Most of the residents here have signed a letter that we are going to present to the town Selectmen protesting the panels. If you would like to join the list of people who signed the letter please let me know.

Since you are not physically in Acton, and we are facing a short deadline to get this to the Selectmen, simply send me an e-mail that states you want your name and address added to the letter, and instead of a signature we'll simply insert "signed electronically". We won't include you without your approval.

I am attaching the letter to this e-mail. We've also added you to our e-mail list so you will be kept up to date on any developments

Barry Elkin
barry.elkin@outlook.com

<Letter To Selectmen Version 2.docx>

From: Noor Roomi
Sent: Saturday, January 16, 2016 9:38 PM
To: Barry Elkin
Subject: Re: Solar Panels Letter

Dear Barry
Please add my name and address to the list, Thanks
Dr Noor Roomi
170 skyline drive

On Sat, Jan 16, 2016 at 12:51 PM, Barry Elkin <barry.elkin@outlook.com> wrote:
Linda / Noor

My name is Barry Elkin, and I am working with Carolyn Kiely to try and stop the Town of Concord from installing the large solar array panels directly behind your homes in Quail Ridge. Most of the residents here have signed a letter that we are going to present to the town Selectmen protesting the panels. If you would like to join the list of people who signed the letter please let me know.

Since you are not physically in Acton, and we are facing a short deadline to get this to the Selectmen, simply send me an e-mail that states you want your name and address added to the letter, and instead of a signature we'll simply insert "signed electronically". We won't include you without your approval.

I am attaching the letter to this e-mail. We've also added you to our e-mail list so you will be kept up to date on any developments

Barry Elkin
barry.elkin@outlook.com

**** Release at Board of Selectmen Meeting January 25, 2016 ****

Testimony in Opposition
Nagog Pond Water Treatment Project – Town of Concord
January 25, 2016

My name is Carolyn Kiely. I live at 11 Parkland Lane in Acton – part of the Quail Ridge community. I am an environmental lawyer with significant local, state, and federal experience.

My comments are going to focus on:

1. Why the maps of this project are misleading and have resulted in town staff saying that this project can be approved, when it is contrary to your zoning regulations.
2. Why this Special Permit application is the incorrect method of permitting this project,
3. Why further archaeological study is needed, and protection of an archaeological resource located within the solar panel array needs protection, and
4. Why this project is wrong for Acton.

The Use Special Permit application before you defines the project as follows:

“... the Town of Concord is proposing to replace their existing ozone disinfection facility with a new state of the art water treatment plant. The new treatment plant will include state of the art treatment technologies ... The Town is also proposing a solar photovoltaic array accessory use.”

Presently, Concord does most of its water treatment down-stream. Only ozone disinfection takes place at the present building on the site. Concord's water supply customers receive perfectly fine water under the current system of water treatment. I should know – I was a customer of Concord's water when I was renting in Concord for six months before moving to Acton.

The present building contains 1,760 square feet. The new building will be 9,338 square feet – a 530% increase in size! Total lot coverage is increasing from 17,374 square feet to 47,526 square feet – a 275% increase. The proposed building will be two stories – vs. the one story, small structure presently at the site. And with the clear-cutting necessary for the solar array, the tree clearing will make the huge structure not only visible both on the Quail Ridge and Acorn Park side of Nagog Pond, but the building will also be visible across the pond. Additional details on the solar array portion of the project will be provided by Barry Elkin, also of Quail Ridge. And Robert Sekuler will also provide comments.

**** Release at Board of Selectmen Meeting January 25, 2016 ****

I can NOT see the proposed project from my backyard. I am NOT her to make a NIMBY statement. However, I do feel strongly that this project is wrong for Acton, primarily because:

1. Concord has a policy of “no new water customers in Acton.” As such, no new water customers in Acton will get the benefit of this project.
2. No new electricity will be supplied directly to Acton through this project.
3. The work is proposed for a Zone A Water Supply Area, and there are significant restrictions on what can and can not be built in a Zone A Water Resource Area.
4. A significant archaeological finding was uncovered in 1994 that now falls within the solar array area. This site needs to be uncovered, protected, and a new archaeological study conducted on the separate parcel of land that was not studied in 1994, yet which is being developed under the proposal before you.

In terms of supporting any portion of this project, we support replacing the intake pipe only.

1.0 Why the Maps Are Misleading

Concord’s maps of this project are misleading. The address for this project is as follows: 180 and 182 Skyline Drive. Why is it two street numbers? Because it is two lots located right next to each other. This IS NOT one parcel of land.

The following are the two parcels of land involved here.

- The original parcel, which contains the dam, intake pipe and the present building, was acquired sometime between 1909 and 1914.
- The second parcel, which is totally open space at present, was acquired from the Palmer family in 2003.¹ This second parcel is where most of the solar array panels are proposed to be located.

The maps before you do not show you lot lines.

¹ Concord’s Feasibility Study for this project, which is posted on Acton’s Docu-Share web-site, incorrectly identifies the source of acquisition of this parcel in Table 1-1 on page 1-2. The table incorrectly identifies the land as being obtained by Concord in a “land swap with Acton for the purpose of constructing a water treatment facility.” This is incorrect. The deed clearly shows that the grantor is “Gloria W. Palmer,” and nowhere in the deed does it say that the land will be used to construct a water treatment facility.

**** Release at Board of Selectmen Meeting January 25, 2016 ****

The map contained in is Concord's Feasibility Study for this project (Attachment A) shows the two lots that comprise this project. These lots are:

1. "Fourth Parcel" which contains the Nagog Pond Dam and the Town of Concord Ozone Facility, AND
2. Lot C4-32.

Why is it important that this is two lots, and not one lot? BECAUSE YOUR ZONING BYLAWS APPLICABLE HERE APPLY PER LOT. And your staff recommendations are therefore incorrect because the staff was applying the Acton zoning bylaws as if this project was being conducted on one parcel of land, which it is not.

It should also be noted that Concord's own Feasibility Study for this project, which is contained on your docu-share web-site, explicitly tells Concord that the issue of separate lots is important and must be addressed by Concord.

1.1 Zoning Bylaws Require Accessory Uses to Support the Principal Uses on the Same Lot

Concord claims that the solar panels are an "accessory use" of the project. Under your zoning guidelines regarding Accessory Uses for solar, section 3.8.4.10 specifies that the solar systems :

"primarily benefit and support the PRINCIPAL USE(S) on the same LOT."

HERE, WE HAVE A SOLAR ARRAY ON ONE LOT, AND A WATER TREATMENT FACILITY ON A DIFFERENT LOT. According to your bylaw, the solar array MUST serve a principal use ON THE SAME LOT for it to be an accessory use. It doesn't do that, and must be disallowed BECAUSE IT IS NOT AN ACCESSORY USE ON THIS LOT.

Concord's own feasibility study cautions Concord to be careful regarding uses of individual lots that comprise the entirety of this project. The Feasibility Study provides as follows:

"... a solar system that is accessory to the water treatment facility should be allowed **ON THE SAME LOT**,"²

"... it appears that Section 3.8 of the Acton Zoning By-Laws may allow a solar system as an 'accessory use' **ON THE SAME LOT** with the water supply principal use...,"³ and

"Further analysis would need to be performed to determine if adjoining

² Nagog Pond Watershed and Solar Feasibility Study, July 17, 2013 Draft, page 2-14.

³ Nagog Pond Watershed and Solar Feasibility Study, July 17, 2013 Draft, page 2-14.

**** Release at Board of Selectmen Meeting January 25, 2016 ****

lots can be treated as 'the same lot' for these purposes."⁴

Concord has not shown you the individual lots that comprise this project because, if they did so, it would violate your zoning bylaws. And Concord has known since 2013 when the Feasibility Study was prepared for them that the solar panels needed to be included ON THE SAME LOT in order for them to be considered an "accessory use" in accordance with your zoning bylaws.

What you have here is the principal use of Lot C4-32 is a solar array. Do your Zoning rules allow Lot C4-32 to have as its principal use a solar array? NO. Barry Elkin will address this issue in his testimony.

Unfortunately, because this project was presented with one map that did not identify lot lines, your Planning Department staff believed that this was one lot. That is why your staff indicates in its memorandum that, under ZBL section 3.8.4.10, the solar panels are "a by-right accessory use to any principal land use." However, since the solar array is located on a separate lot, it is not accessory under your bylaws and must be denied.

1.2 State Application of Article 97 of the Massachusetts Constitution By Lot

This project requires Certification under MEPA – the Massachusetts Environmental Policy Act. The MEPA Certification is to be issued after preparation of these comments. Therefore, my public comments will address the state determination under MEPA for this project.

As to the issue of this project being conducted on individual lots, the issue for MEPA is whether Article 97 of the Massachusetts Constitution applies. Article 97 does not allow "public lands" to be used for any other purpose without:

1. A two-thirds vote of town meeting,
2. A two-thirds vote of the legislature, and
3. Compliance with any restrictions on future uses of a parcel that are contained in the sources of funding of the individual properties.

Concord's own consultants in their Feasibility Study explicitly indicated that Article 97 applies to this entire project, and to both lots. To date, Concord has chosen to disregard the recommendation of its own consultant as to the application of Article 97, and has not undertaken the state-mandated process. We argued to the state that both parcels must go through the Article 97 process, just as Concord's own consultants recommended. Parcel C4-32 because this process converts forested open space to a solar panel array. This site is presently undeveloped, and adding anything to it is a change in use. And the "Fourth Parcel" because it is a change in

⁴ Nagog Pond Watershed and Solar Feasibility Study, July 17, 2013 Draft, page 2-14.

**** Release at Board of Selectmen Meeting January 25, 2016 ****

use from an ozone disinfection facility to a full-scale water treatment plant involving eight different chemical processes.

You must note that Concord, in its special permit application, states that “there is no change in the principal use of the site (the treatment of public drinking water). There is a new accessory use: solar photovoltaic array.” This is incorrect. As to Lot C4-32, the change in use is going from vacant forested open space to a solar array as a principal use. As to the “Fourth lot,” the use is changing from an ozone disinfection facility into a full scale water treatment plant. This section of the application before you must be changed by Concord to accurately reflect the project, and the individual parcels that comprise the project.

We are still waiting for the state’s determination regarding the application of Article 97 to this project.

1.3 DEP Guideline for Solar Project to Power Water Systems

Concord will be arguing that they are authorized to install a solar array on this land because of DEP’s Guideline for Proposed Wind and Solar Energy Projects on Lands Owned or Controlled By Public Water Systems for Drinking Water Purposes. However, this guideline (which is INCLUDED in the Feasibility Study) clearly states that reasonable municipal rules still apply. The exact language in the guideline is as follows: “Note: The public water supplier may need to seek additional approvals from other entities and/or MassDEP, including, but not limited to, **municipal approval**, legislative approval pursuant to Article 97, and MEPA approval...”⁵ Therefore, Concord must comply with BOTH this DEP Guideline AND Acton’s zoning bylaws. The zoning bylaws can not be ignored even with compliance with this DEP guideline for solar power on drinking water supply lands.

2.0 Concord Needs to Amend the Original Variance From the Board of Appeals

The building is presently at the site because of the following:

- A variance granted by the Board of Appeals for a “drinking water disinfection facility.”
- A Site Plan Special Permit granted by the Board of Selectmen
- A Special Use Permit granted by the Board of Selectmen, and
- A Flood Plain Special Permit issued by the Selectmen.

In this instance, Concord is seeking to totally bypass the Variance process. However, without the Variance, this building could not be here. The Variance was needed because the ozone building exceeded the authority under Acton’s Zoning rules. To

⁵ The Nagog Pond Watershed and Solar Feasibility Study (July 17, 2013), Attachment C.

expand the facility, the proper method for permitting this process is to amend the original Variance issued by the Board of Appeals. That has not been done here, and needs to be done.

There is caselaw regarding this.⁶ Under the caselaw, the court concludes as follows: “we do not think the Legislature intended in G.L. c. 40A, Section 6, to authorize the expansion of uses having their genesis in a variance pursuant to the more generous standard applicable to a special permit.” The cases indicate that “It would be anomalous if a variance, by its nature sparingly granted, functioned as a launching pad for expansion as a nonconforming use.” **So, under the law, a facility that is originally permitted via a variance must continue through the variance process, and it is not allowed for that same facility to receive its next permit through the site plan and use plan special permit processes only.** Town Counsel review of the caselaw and this proposal is therefore needed before you can legally act on this proposal.

It is my interpretation of the caselaw that, before you can act on the Special Permit requests, this proposal needs to go before the Board of Appeals to amend the variance issued for this facility. The requested variance needs to apply to both the proposed building and the proposed solar array because both are expanded uses of the originally-permitted ozone disinfection facility.

It should also be noted that, under G.L. C 40A, Section 11, variances and special permits, to be valid, need to be recorded in the registry of deeds. Copies of the 1994 variance and the 1994 Site Plan Special Permit contained in the application before you do not bear Registry recording information. If Concord did not record the variance and special permits, then they may not be legally effective. Town Counsel should also look at this.

3.0 Archeological Implications From This Project

Concord’s supplemental materials posted on January 11th contain an Archeological Study performed in 1994 at the time the original ozone building was being permitted. This study finds that “a single historic quarry pit was documented outside the project area.” The pit “was identified, located east of the proposed disinfection facility and south of the proposed access road.” (Attachment B)

“EAST” AND “SOUTH” OF THE DISINFECTION FACILITY PLACES THAT HISTORIC PIT SQUARELY IN THE MIDDLE OF THE PROPOSED SOLAR ARRAY (Attachment B). The 1994 archeological study needs to be reexamined, the location of the historic structure located, and efforts need to be taken to ensure that this historic structure is not harmed by this proposed project.

⁶ Case: Cesar A. Mendes vs. Board of Appeals of Barnstable & Others, 28 Mass. App. Ct. 527 (January 11-1990 – April 17, 1990), references other applicable cases.

**** Release at Board of Selectmen Meeting January 25, 2016 ****

In addition, the parcel where the majority of the solar panels are proposed to be located has not undergone an archaeology study because Concord did not own that land until 2003. Under Massachusetts law (MGL Ch 9, Sections 26-27), projects that receive state or federal permits (which this project does) **MUST** be reviewed by the Massachusetts Historical Commission for impacts to historical and archaeological resources. It should be noted that Concord, in its Environmental Notification Form (ENF) to the state, indicated that there are no archaeological issues associated with this project. However, based on Concord's own 1994 report, we know that there is one significant archaeological site on the property, and the newly acquired property was never assessed for archaeological significance. It is likely that, since several archaeological sites exist within the general area of the activity, that additional sites could possibly be found within the newly acquired parcel.⁷ Before any construction or clear-cutting of trees is performed, at a minimum the following needs to occur:

- a. The site of the historic quarry pit that was identified in 1994 needs to be identified,
- b. A plan needs to be provided to protect that site,
- c. No solar panels can be placed around the site,
- d. A complete archaeological study needs to be conducted on the land acquired from the Palmer family in 2003,
- e. The new archaeological study needs to be reviewed and approved by the state, and
- f. The ENF filed with the state needs to be modified to indicate that compliance with the Massachusetts Historical Commission needs to be achieved.

4.0 Why This Project is Wrong for Acton

4.1. No Benefits of Water or Electricity to Acton From This Project

Concord states that the beneficiaries of this project are the 70 businesses and homes along Great Road in Acton who are served by Concord's water. However, these 70 customers are **EXISTING** customers. And these 70 customers comprise less than 1%

⁷ Concord will argue that the 1994 archaeological report concludes that "no further investigations are recommended." That "no further investigation" recommendation was made based on the Scope of Work (SOW) of the 1994 investigation. The only areas studied in 1994 included (1) the defined proposed disinfection facility site, and (2) the defined proposed access road. No further areas were archaeologically studied. Therefore, the "no further investigations are recommended" recommendation in 1994 is inapplicable in 2016 because (a) a significantly larger, and more intrusive, area is proposed to be impacted from this proposal, (b) there is an additional lot impacted that wasn't owned by Concord in 1994, and (c) the area where the 1994 study uncovered a historical structure is immediately impacted because it is in the middle of the solar panel array proposed by this project, which Concord does not identify in its maps as a structure to be protected.

**** Release at Board of Selectmen Meeting January 25, 2016 ****

of the water supply customers in Acton. These 70 customers will continue to get their water from Concord with or without this project.

What Concord has neglected to tell you is that they have a policy with regard to providing water to additional Acton customers. That policy is as follows – and I quote: **“No new customers in Acton.”** Acton’s Water District staff provided this information to me. Let me quote you the staffer’s exact words:

“...Concord water service in Acton, this has been happening for a long time. The latest connection in Acton was a fire service provided to a condominium/apartment building in the past year or so. Prior to that, the early 2000’s was **the last new connection** when the Trader Joe’s/Staples plaza was built. **Since then, it has been Concord’s policy not to take on new customers in Acton.**”

Acton is being rushed into approving this project, when absolutely no additional water customers in Acton are contemplated. You must look out for the best interests of the environment and the citizens of Acton.

Barry Elkin will address the lack of electricity from this project to Acton in his testimony.

4.2 Massachusetts Regulations for Water Supply Protection Areas:

Concord’s maps show a 400’ “arc” running through the middle of this project (Attachment C). The land inside of this 400’ area is a Surface Water Supply Protection Area, which is regulated by the state. These areas establish buffers around public water supply sources to control uses that might contaminate them.

Nagog Pond is a surface water source that is characterized as “Zone A.” Zone A lands require extra protection under the law. As proposed, the entirety of the proposed building and as much as 50% of the proposed solar array falls within 400 feet of Nagog Pond.

Concord expressly recognizes this 400’ zone of protection in its Environmental Notification Form to the state when it provides as follows: With regard to their Watershed Resource Protection Plan proposed for the project, it states that “The Protection Plan ... does include the **reduced development requirements** for lands within 400’ of a surface water source.”⁸ The 400’ “arc of protection” is clearly marked on the maps before you. I disagree with Concord’s assertion that they have met these reduced development requirements for the following reason: The state requirements for Watershed Protection in areas within 400’ of a surface water source **apply to individual lots**. Concord’s own Nagog Pond Watershed & Solar

⁸ Source: Environmental Notification Form, Page 7.

**** Release at Board of Selectmen Meeting January 25, 2016 ****

Feasibility Study states as follows: **“Further analysis would need to be performed to determine if adjoining lots can be treated as “the same lot” for these purposes.”** Concord has not met the requirements for reduced development in each of the individual lots that comprise this project. Additional information and analysis is necessary in order to determine that reduced development sufficient to protect the watershed **on each lot** is included.

Taking the solar panels outside of the 400’ arc may result in reduced economic benefit to Concord from the smaller array, and would appear to require the panels to be located entirely outside of the 400’ arc and solely within the backyards of Quail Ridge residents. However, Barry Elkin will present the arguments regarding why the panels are not allowed to be located close to the back of homes, and must be moved away. **If the panels are not allowed to be located within the 400’ arc of a water supply protection area, and they are not allowed under Acton’s zoning bylaws to be located close to the backyards of homes, then the panels can not be sited on this property.**

5.0 Conclusion

In conclusion, I urge you to:

1. Require this project to go through the Variance process before the Board of Appeals to amend the Variance that presently exists for the site,
2. Disallow the use of the solar panel array as an “accessory use” because it is on a separate lot from the water treatment plant, and therefore does not fit the definition of “accessory use” under your zoning bylaws,
3. Further study the archaeological history of this site, and protect the existing archaeological find that sits in the middle of the solar array, and
4. Ensure that the citizens and environment of Acton are protected from this project.

Thank you.

Sincerely,

Carolyn M .Kiely, Esq.

Attachment A: Nagog Pond Watershed & Solar Feasibility Study, July 17, 2013,
Figure 1: Concord Owned Watershed Parcels Map

Attachment B: An Archaeological Site Locational Survey for the Water Disinfection System, Acton, Massachusetts, Figure 5, Survey Unit 2 (STPS 11-17)

**** Release at Board of Selectmen Meeting January 25, 2016 ****

Attachment C: Site Plan Special Permit map

**** Release at Board of Selectmen Meeting January 25, 2016 ****

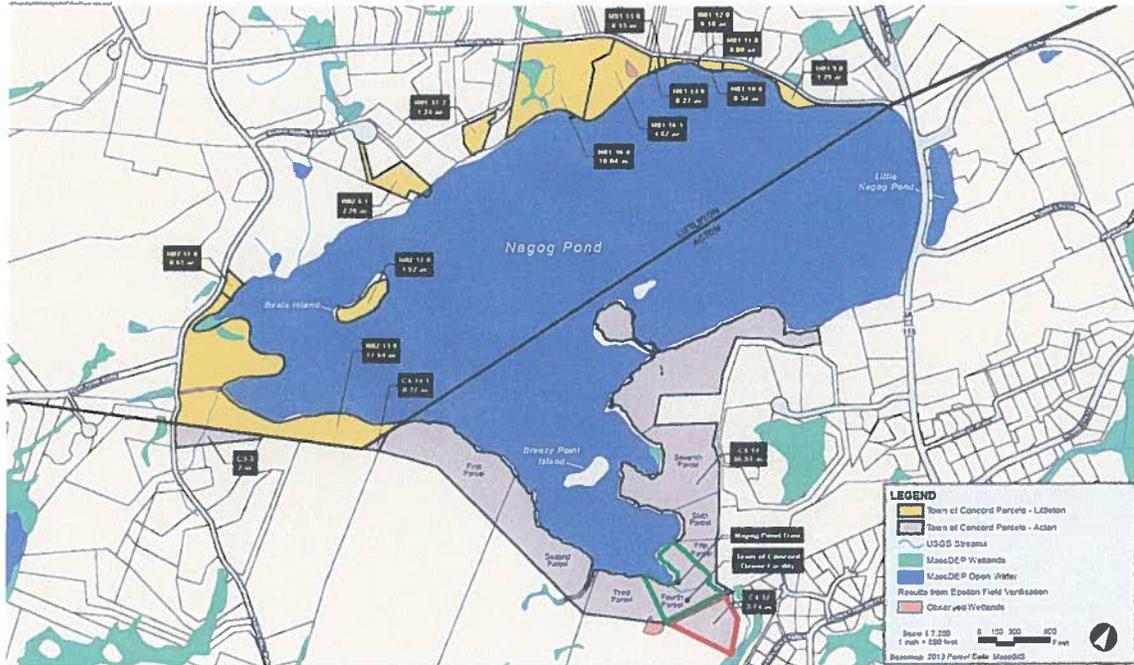


Figure 1 Concord Owned Watershed Parcels Map

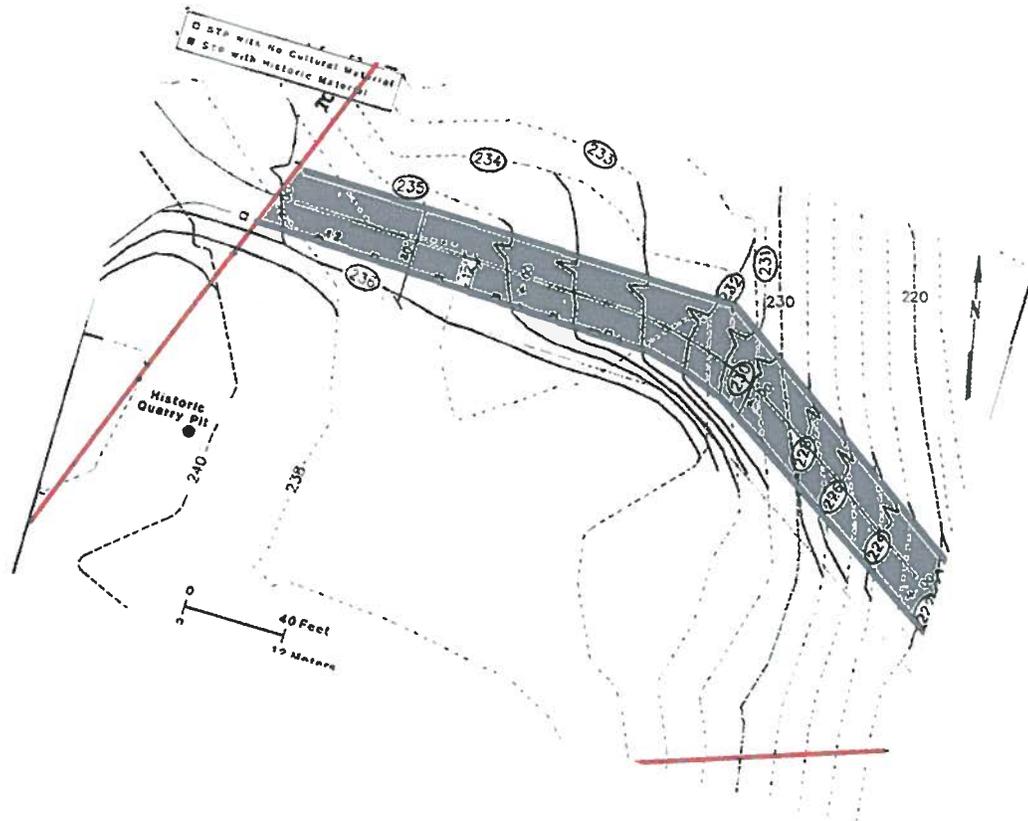


Figure 2 Archaeological Site Locational Survey for the Water Disinfection System, Acton

**** Release at Board of Selectmen Meeting January 25, 2016 ****

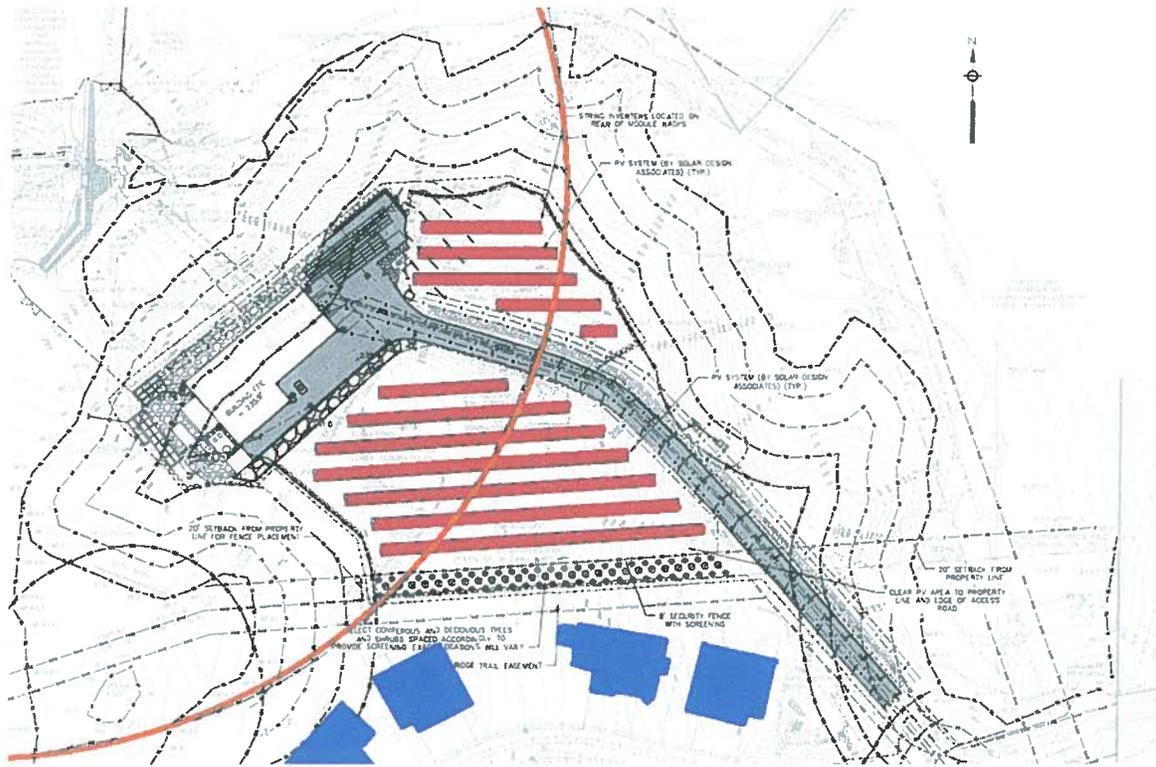


Figure 3 Site Plan Special Permit map

Carolyn Kiely
Testimony Addendum

This statement augments the formal statement already prepared regarding the Town of Concord's Proposed Nagog Pond Water Treatment Project. In order to understand my testimony, background needs to be provided.

First, Concord initial Special Permit Application included a map showing all of the solar panels sited to the right of the access road. (original map attached). All of the solar panels in Concord's original Special Permit Application were sited on the same lot as the proposed water treatment plant. As such, the solar panels were described by Concord as "accessory" under the Acton Zoning Bylaw 3.8.4.10.

However, while this proposal was going through review by Acton's Conservation Commission, the Town of Concord revised its drawings and changed the location of the solar panel array (new map attached). The new plan places the solar panels **primarily on a separate lot** from the proposed water treatment plant.

Under the new proposal, the solar panels are no longer accessory to the treatment plant. The solar panels that are located on a separate lot are **primary** to that lot -- not accessory. **But Concord did not amend the wording of the Special Permit Application before you to address the primary nature of the solar panels on the second lot.**

Therefore, the Special Permit Application discusses the original plan. The new plan is not addressed in the Special Permit Application before the Selectmen. The bylaws quoted, and assertion that the solar panels are "accessory" to the project, refer to the original plan. Because there are now two lots involved, and the solar panels are not accessory to the project, there is a disconnect between the justification contained in the Special Permit Application and the new plan before you.

The text of the Special Permit Application before the Board of Selectmen needs to be revised to specifically address the new plan that the Board of Selectmen is being asked to approve through the Special Permit process.

Attachments:

1. Original Plan Provided with the Special Permit Application
2. Revised Plan Provided for the Special Permit Application

**** Release at Board of Selectmen Meeting January 25, 2016 ****

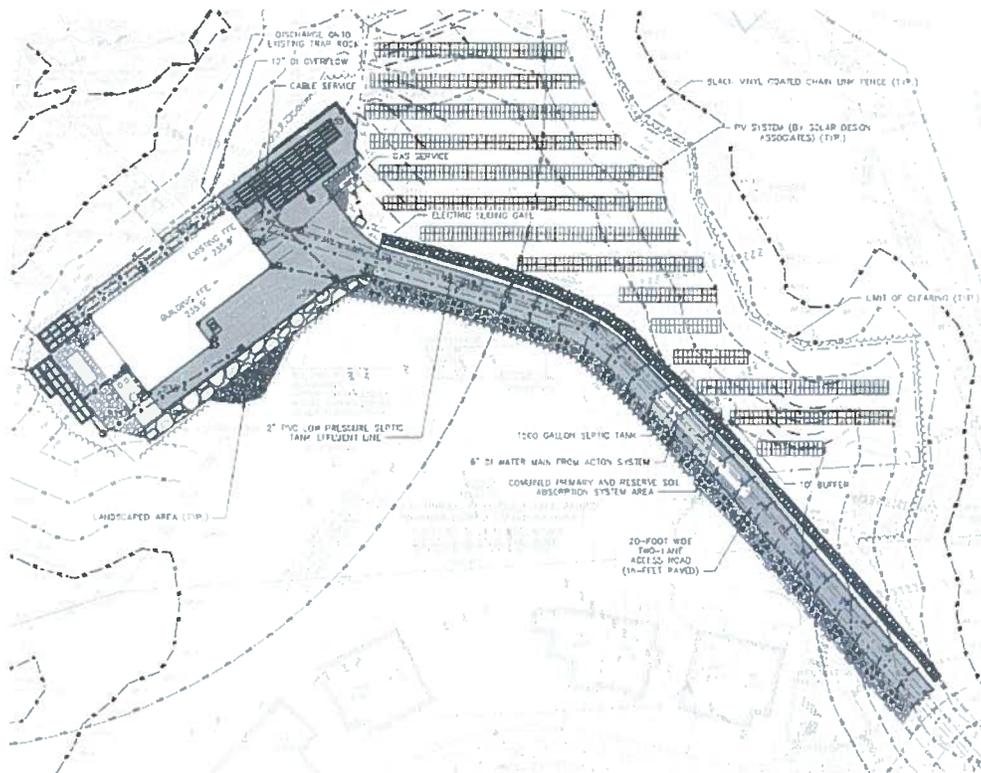


Figure 1 Original Plan - One Lot

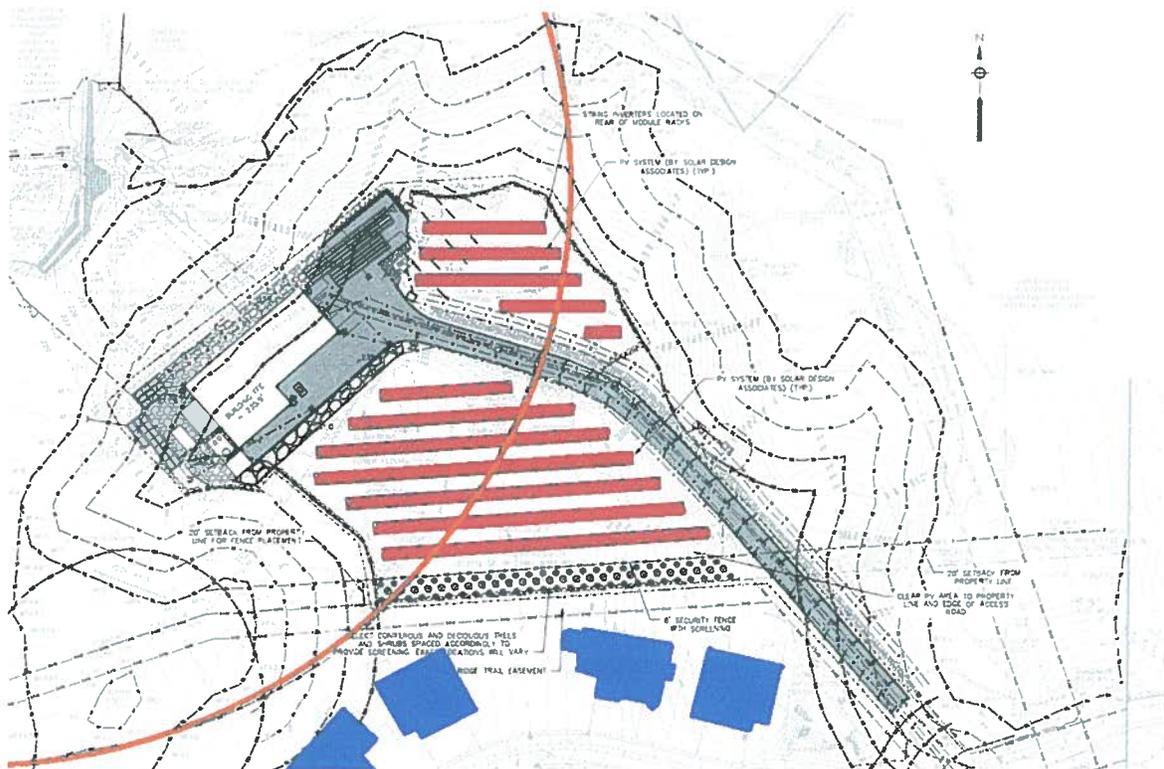


Figure 2 - Revised Plan - Two Lots

Testimony in Opposition
Nagog Pond Water Treatment Project – Town of Concord
January 25, 2016

My name is Barry Elkin, and I live at 57 Skyline Drive in Acton. I am going to do something I never thought I would be doing – speaking out against the installation of solar panels. Specifically the solar panel array proposed to be installed on Skyline Drive at Nagog Pond by the Town of Concord. After all, solar panels are good for the environment, and help lessen our dependence on fossil fuels. So why am I doing this. To set the record straight, this is not a NIMBY, or Not in My Backyard argument. I live over ½ mile from the proposed installation. It doesn't impact me in the least. My argument is based upon the application of subjective values, as well as the application of objective regulatory requirements.

Let's start with the subjective arguments. To do this we need a set of criteria to determine if the proposed Skyline Drive location is a reasonable one to place solar panels. Reasonable people can disagree over the definition of satisfactory location, so I am going to make this easy. I will defer totally to the Town of Concord, and use their principles for determining when a location is not satisfactory for location of solar panels. That eliminates a lot of unnecessary debate.

In 2011, The Town of Concord Board of Selectmen established and charged a Solar Siting Committee to identify and evaluate land for the purpose of hosting ground-based solar arrays within the Town of Concord. In a well written, and thoroughly thought out 118 page report dated October, 2011, the Town of Concord's own committee defined the criteria used for solar panel site selection within the Town of Concord. According to that report¹, some of the reasons to define a site as "Unacceptable" include:

- **Present or potential use for agriculture, forestry, recreation, or conservation land clearly outweighs value of solar site.**
- **Site is forested and it is unlikely to be acceptable to cut trees; or major impact on other vegetation.**
- **Site is critical for wildlife.**
- **Solar array on site would have potentially adverse impact on neighboring town(s).**
- **Site judged to have adverse impact on neighbors if used as solar site**

The property at Nagog Pond meets every one of the above reasons the Town of Concord Siting Committee defines as being "Unacceptable" for use for a solar panel array. What logic justifies a Town of Concord Selectmen appointed committee defining unacceptable one way in Concord, and the Concord DPW another way in Acton?

¹ Concord Solar Siting Committee Report, October 2011, pages 5 - 11

During an Acton Conservation Commission hearing held on December 2, 2015, when asked if the solar panel array was designed to meet the needs of the water treatment facility only, or if it was sized to meet any other needs, the Town of Concord responded to the former – meeting the needs of the facility only. However; later in that same hearing, when asked by the Commission why the array could not be located elsewhere (such as within the boundaries of the Town of Concord), they responded that the array needed to be located in “Eversource territory” so that excess power could be sold to Eversource. Two obviously inconsistent statements. During a subsequent discussion I asked a member of the Concord proposal team about this, and he responded that sometimes things are said at meetings that are not completely thought out, and may not be correct. I see it differently. The statement made in the hearing is a “spontaneous utterance”, essentially an unintended statement that sheds light on the truth.

The basis for the inconsistency is most likely in the definition of how much power is needed by the facility. This is where engineering sleight of hand comes into play. At any point in time, the plant may be running at full capacity – every motor operating, every pump churning, every light turned on. During that period the solar panels may in fact not be up to the task of providing enough power for everything that’s operating. Having said that, there are other times when there may be less taking place – not everything operating, and significantly less power being consumed. It’s during those less strenuous times that excess power is available for sale to Eversource.

Solar panels can be placed anyplace, and have a positive environmental impact, offsetting the energy to be used at the Concord Water Treatment Plant. The Town of Concord will make it sound complicated, talking about things like “access points”, at least they tried to do that with me. But it is really very simple. If the Water Treatment Plant consumes X amount of electricity, and solar panels built anyplace else provide X amount of electricity, then the net environmental impact is zero. What Concord loses by placing the plant someplace else, perhaps in Concord, is the ability to sell power to Eversource. So this is absolutely and totally an economic issue, not an engineering or environmental matter.

Now for the more objective legal reason to forbid construction of the proposed solar panel array. It violates the Town of Acton Zoning Bylaws.

The Acton Zoning By-Law defines two categories of solar panel arrays, “Neighborhood” and “Industrial”.² A neighborhood array is prohibited from being more than one acre in size, and is primarily designed to benefit the energy needs of uses in the immediately surrounding area or neighborhood. An industrial array must be primarily designed to benefit all energy users regardless of location or vicinity to the installation.

Although primarily designed to benefit the energy needs of uses in the immediately surrounding area, the proposed solar array is significantly larger than one acre in size. The Zoning By-Law specifically states that size is determined by the total area of the vertical projection on the ground of all panels in the installation’s most horizontal tilt position and shall include all spaces between the panels³. Essentially, the entire area that the panels occupy – in this case at least 62,454 square feet⁴.

² Acton Zoning By-Law Section 3.6.5 and 3.6.6

³ Ibid.

⁴ Drawing C-9S attached to letter to Mr. Terry Maitland Acton Conservation Commission from Mr. Stephen Olson, Environmental Partners Group dated December 22, 2015

The proposed solar array does not fit the industrial category because it is not primarily designed to benefit all energy users regardless of location or vicinity to the installation. The operative word here is primarily. Concord defines the solar array as “an accessory solar photovoltaic (PV) array field to power the new facility”.⁵ The Nagog Pond Watershed and Solar Feasibility Study, calls the solar panels an “accessory to the water treatment facility.”⁶ So what we have is Concord defining their own new category – a neighborhood ground mounted solar array that is larger than one acre. Complete disregard for the Acton Zoning By-Laws.

But there’s more. Town of Acton Zoning Bylaws, clearly state “Not more than 1 acre of land shall be deforested for any one Ground-Mounted Industrial Solar Photovoltaic Installation”⁷. Engineering drawings submitted by Environmental Partners on behalf of Concord, specify that the total photovoltaic surface array will be 62,454 square feet⁸, all on current woodland. An acre is 43,560 square feet. That means that the amount of deforestation required exceeds Acton Zoning By-Law by almost 19,000 square feet, and that’s without any collateral deforestation needed to be done to provide a clear view of the sun.

The Town of Concord will argue that prohibiting the solar panels violates Massachusetts state law, specifically Part 1 Title VII Chapter 40A Section 3, which states “No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare”. Unfortunately the words “unreasonably regulate” is not defined. However, the Commonwealth of Massachusetts Department of Energy Resources of the Massachusetts Executive Office of Energy and Environmental Affairs published a document titled “Model Zoning for the Regulation of Solar Energy Systems”. This document opens by stating, “This model zoning and accompanying Guidance were prepared to assist Massachusetts cities and towns in establishing reasonable standards to facilitate development of solar energy systems.”⁹

With regards to land clearing, the Model Zoning Guide states, “Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of solar energy system or otherwise prescribed by applicable laws, regulations, and bylaws/ordinances.”¹⁰ Thereby providing a clear model for the existing Acton zoning Bylaw that provides for restriction on woodland clearing. Commentary included in the Model Zoning Guide states “DOER strongly discourages locations that result in significant loss of land and natural resources, including farm and forest land, and encourages rooftop siting, as well as locations in industrial and commercial districts, or on vacant, disturbed land. Significant tree cutting is problematic because of the important water management, cooling, and climate benefits trees provide.”¹¹

⁵ Letter from Mr. Stephen Olsen, Environmental Partners Group to Mr. Roland Bartl dated November 20, 2015.

⁶ Nagog Pond Watershed and Solar Feasibility Study Prepared by Environmental Partners Group, July 17, 2013 Page 25.

⁷ Acton Zoning By-Laws Section 3.11.3.7

⁸ Drawing C-9S attached to letter to Mr. Terry Maitland Acton Conservation Commission from Mr. Stephen Olson, Environmental Partners Group dated December 22, 2015

⁹ Model Zoning for Regulating Solar Energy Systems Department of Energy Resources Massachusetts Executive Office of Energy and Environmental Affairs December 2014 Page 1

¹⁰ Model Zoning for Regulating Solar Energy Systems Department of Energy Resources Massachusetts Executive Office of Energy and Environmental Affairs December 2014 Section 1.3.1.5

¹¹ Model Zoning for Regulating Solar Energy Systems Department of Energy Resources Massachusetts Executive Office of Energy and Environmental Affairs December 2014 Page 5

The Town of Concord has accepted the recommended words in their entirety into their Zoning Bylaws, signifying their recognition of “applicable laws, regulations, and bylaws”.¹² In fact, the feasibility study prepared on behalf of Concord in support of this project states that towns may impose reasonable regulations.¹³

The “Nagog Pond Watershed and Solar Feasibility Study” prepared by Environmental Partners states “... “the typical arrangement for such projects in New England is an array of flat PV panels set at a fixed 20 to 30 degree angle above the horizontal, facing south to south-southwest.”¹⁴

The proposed solar array does not conform to the Acton Zoning Bylaw in other ways. The Bylaw requires “Landscaping or architectural screening shall be provided to reduce the visual impact of installations and specifically to protect nearby receptors from danger, harm, or nuisance that may result from reflective solar glare of photovoltaic panels. Where necessary, panels shall be oriented or tilted in a manner to prevent such glare upon receptors.”¹⁵ As noted above, the panels will be oriented to face towards the south and southwest. This means they will be facing directly towards a number of two and three story homes. The Town of Concord has stated that the panels will be placed approximately 45 feet from the line separating their property from the land the homes sit on. The homes are only approximately 40 feet from that same property line. That means the southern border of the panels will be located less than 100 feet from the homes. The Town of Concord has not demonstrated how those homes, including upper floors, will be protected from solar glare.

The By-Laws also states “In the case of a Residential District location, the visual impact of the installation on its immediate abutters and on the nearby neighborhood has been effectively neutralized through appropriate designs, landscaping, or structural screening”¹⁶. The Town of Concord has presented few if any details regarding their plans to address these requirements. The only landscaping that is proposed is a sliver of trees located at the boundary between the homes in quail Ridge and the solar panels. Concord’s plan states: “select coniferous and deciduous trees and shrubs spaced accordingly to provide screening. Exact locations will vary.” A detailed landscaping plan is needed, including identifying tree heights. Any screening needs to totally block the view of the panels from the homes, even if this interferes with the efficacy of the solar panels.

Based upon the information I am providing today this Board has no choice but to deny the proposal made by the Town of Concord for the following reasons:

- 1) The Town of Concord has proposed construction of a neighborhood photovoltaic array greater than one (1) acre in size in violation of Acton Zoning By-Laws.
- 2) The Town of Concord is proposing violating the requirements of Acton’s Zoning Bylaw by deforesting more than one acre.

¹² Zoning Bylaw Town of Concord dated May 2014 Section 7.9.6.2

¹³ Nagog Pond Watershed and Solar Feasibility Study Prepared by Environmental Partners Group July 17, 2013 Page 25.

¹⁴ Ibid Page 3-1.

¹⁵ Acton Zoning By-Laws Section 3.11.3.2

¹⁶ Ibid Section 3.11.4.2

- 3) There are no plans for the protection of the two and three story homes on Skyline Drive to meet the requirements of Acton Zoning Bylaw with regards to solar glare.
- 4) There are no well-defined plans to meet the requirements for Acton Zoning Bylaw with regards to mitigation of visual impact?

The previously mentioned Town of Concord Solar Siting Committee report states: "The Town of Concord and the Concord–Carlisle Regional School District together own about 848 acres of land in Concord in 73 parcels that are not designated as conservation land and/or are not protected by deed restrictions or other legal instruments. The Committee limited its focus to sites that could support at least one megawatt of power—i.e., at least five acres—to minimize the overhead cost of developing and operating the solar arrays. Of the remaining available sites, the Solar Siting Committee has identified six as being suitable for hosting ground based or utility-scale solar power systems and as worthy of further discussion and evaluation by Town government and residents. Together, these sites could accommodate approximately 12–19 megawatts of photovoltaic solar arrays. The Committee has also identified an additional three sites as suitable but for which legislative or regulatory hurdles exist."¹⁷

Perhaps it would be in all interests for Concord to consider one of the sites identified by their own committee, or to add capacity to one of their existing sites.

¹⁷ Concord Solar Siting Committee Report October 2011 Page V.

Testimony of Robert Sekuler
January 25, 2016

My name is Robert Sekuler. I live at 17 Parkland Lane in the Quail Ridge community.

I am submitting these comments on behalf of Quail Ridge and the concerned citizens of Acton.

Wildlife and Wildlife Habitat Impacts:

The solar array proposed by Concord was not under the jurisdiction of the Conservation Commission, and therefore the Conservation Commission did not address the impact of this project on wildlife and wildlife habitat. Therefore, addressing these important issues now falls under the jurisdiction of the Board of Selectmen.

There will be a direct impact on over an acre of forestland that will need to be clear-cut to facilitate placement of the solar panel array. Significant wildlife habitat presently exists within this area. Unfortunately the wildlife habitat in this area is thick due to the migration of wildlife from the adjacent area that was cleared to make way for a golf course, and now homes. This development caused the wildlife to retreat into this section of woods and it is their home.

It is important to note that wildlife that lives in forested areas is different from wildlife that lives in meadows. Forest animals are generally larger and prefer the cover of the trees and shrubs, while meadows primarily include smaller animals that can hide in the meadow grasses. Here, Concord is proposing to replace forestland with "meadow grasses" underneath solar panels. The forest habitat will be gone, forcing the wildlife that now lives there to seek new homes. Measures need to be taken to minimize this clear-cutting to protect the wildlife that is presently living there, and its habitat. The Conservation Commission unfortunately provided you with no guidance on how to do this. I believe that deforestation needs to be minimized and even eliminated to protect the wildlife and wildlife habitat at the project site.

Alternatives Analysis:

Concord presently treats its water downstream of the Nagog Ozone Disinfection Facility. Concord should consider expanding the facilities that presently treat the water downstream from Nagog Pond, and not expand the ozone facility in the

sensitive Nagog Pond watershed. Concord will tell you that they are under a mandate to improve their water treatment systems. But that mandate does not require them to install a new, full-service treatment plant at Nagog Pond. The treatment plant could be installed at any point downstream from the pond, and by doing so Concord would still be meeting the requirements for improving their water quality systems.

With regard to the solar panels, Concord told the state **that it only considered locations for the solar panels in “the entire Nagog Pond watershed.”**¹ Concord has solar panel locations in Concord, and the present closed Concord landfill has solar panel expansion capability. And, as you heard from Barry Elkin, Concord’s Solar Panel Siting Commission has identified other sites suitable for siting solar panels. So before you permit this project, please ensure that **Concord has fully evaluated alternative sites for project that are off-property. Neither the new large building, nor the solar array, need to be on these two parcels of land. The solar panels appropriately belong in Concord and not in Acton.**

Neither does Concord propose alternative sources of energy other than solar to power this plant. The plant can be run without solar power – the existing operations on the site are run without solar power. Concord needs to evaluate the alternatives to solar power for this project. The project can operate on power generated elsewhere, just as the current plant is operated from power generated elsewhere. Therefore the solar array at this location is not mandatory for the project. I urge you to delay issuing the special permit and require Concord to site the solar array and the building off-site and in Concord.

Stormwater Analysis:

A stormwater analysis is contained in the application before you. However, the stormwater management documents do not evaluate the stormwater impacts from the solar panels. In fact, the application alludes to the fact that the meadow seed mix that is proposed to be planted under the solar panels should take care of runoff. However, no calculations on runoff from solar panels are included in the stormwater analysis. That is serious omission.

We agree with the Acton Town Engineer who, in his report, indicated that “the applicant should address how stormwater runoff is being handled in this area” (i.e., the solar array). The stormwater portion of the site permit application needs to be modified and expanded to include the impacts of runoff from the solar panels. In addition, mitigation measures for solar panel runoff, and alternatives to the solar array to prevent runoff, need to be evaluated.

¹ Source: Environmental Notification Form (ENF) filed with the state, alternatives analysis section

Skyline Drive is a Private Road:

The street address for the project is Skyline Drive. Skyline Drive is a private road. Therefore, no trucks and/or staff accessing the facility can drive through Skyline Drive. So the entire burden of transportation to and from this project is through the Acorn Park development, which is problematic.

Quail Ridge is unable to post "private road" signs at the entry to Skyline Drive at the intersection with Great Road because the public must be able to access both the Palmer Kennel and the Quail Ridge Golf Club. If the Selectmen approve this project, we urge you to:

- Include language expressly prohibiting any access to the facility over the private Skyline Drive as it winds through the entirety of the Quail Ridge development, including at the entrance where the kennel and golf course are located.
- Create rules for traffic – including such things as hours during which trucks are allowed access to the facility, etc.
- Identify an Acton employee whom the public could contact with notice of violations of the transportation rules.

Septic Issue:

It should be noted that an approval for the proposed septic system and leach field will be needed from the Acton Board of Health. That requirement is not noted in the List of Municipal, State and Federal Permit Requirements contained in Attachment E to the Special Permit Application. The residents at Quail Ridge oppose further clear-cutting of trees for this project, including tree cutting that would be needed for the septic system location. Any special permit must require that tree cutting anywhere on the two properties be minimized, and also expressly require that Concord obtain Acton Board of Health approval for its septic system that minimizes the cutting of trees.

Building Aesthetics:

The exterior of the water treatment building is not described anywhere in the special permit application before you. The present building has an ugly cinder-block exterior that is in no way compatible with the history of Acton or Concord, and is a blight on the neighborhood. It is presently shielded from view and is not visible to abutters. However, the newly proposed water treatment plant is so large that it will be quite visible along the Nagog Pond shoreline and to abutters. At a minimum,

**** Release at Board of Selectmen Meeting January 25, 2016 ****

the exterior of the building should be brick, with no cinder block or metal wall panels, consistent with the history of the area.

I urge you to specify, in the special permit (if one is issued), that an Architectural Advisory Panel be convened to review the architectural drawings and to be able to determine the exterior aesthetics of the newly proposed building. It is imperative that a majority of the members of the Architectural Advisory Panel be local abutters to the project. Acton does have a Design Review Board who has initially reviewed the preliminary plans for the project. A member of the Design Review Board could be a member of the Architectural Advisory Panel.

Sounds Emanating From the Facility

Despite Concord's assertions that there will be no sounds coming from the proposed water treatment facility, residents are still concerned that the large number of processes being undertaken at the facility will in fact emit noise that will be bothersome to the neighborhood. We urge you to require, in any special permit that is issued, a sound emissions analysis (including modeling) to ensure that nearby residents can not hear the facility. We urge you to specify in the permit that "no sound" can be allowed to be issued from the facility. Meeting "code levels" for sound is unacceptable – we want no sound to be audible from the facility. Testing should be at night, when background noise is minimized, to ensure that the facility will not emit sounds that could disturb the sleep of nearby residents. In addition, we ask that Acton designate a town employee who could be notified in case of noise violations.

Conclusion:

In conclusion, this is a large project that will have significant impact on the local community, as well as the environment. We urge you to proceed slowly and fully evaluate all of the issues associated with this project. Issuing a speedy decision on this project will only benefit Concord and harm the citizens and the environment of Acton.

Sincerely,

Robert Sekuler

Lisa Tomyl

From: David <daspotts@msn.com>
Sent: Monday, January 18, 2016 7:40 AM
To: Board of Selectmen
Subject: Oppose Concord Nagog Pond Project

To the Acton Board of Selectmen:

I urge you to oppose the Nagog Pond Project that is being proposed for the Town of Acton. Concord has a policy of "no new customers in Acton," yet they want to expand their facility in Acton and destroy the environment and vista of the Nagog Pond watershed. The clear-cutting of trees that will be required to install the solar array is outside the bounds of Acton's zoning bylaws and should not be allowed, especially since it is in the backyards of Acton residents. This project belongs in Concord and not in Acton.

Sincerely,

David Spotts
978-287-4808

David Spotts, 11 Parkland Lane, Acton, MA 01720

Lisa Tomyl

From: rsekuler <sekuler@brandeis.edu>
Sent: Sunday, January 17, 2016 10:22 PM
To: Board of Selectmen
Subject: Concord's Proposed Water Treatment Plant

To members of Acton's Board of Selectmen:

My understanding is that in the 1880's or 1890's, the Massachusetts Legislature granted Concord the use of water from Nagog Pond. I ask that we imagine how the Legislature would respond TODAY if Concord approached it with that same request de novo.

I don't know what the legislative record shows, but it seems to me that in making its decision, the Legislature might have taken account of the two towns' population sizes. According to the 1900 US Census, Concord's population was more than twice Acton's (5,672 vs. 2,120). So the idea of diverting Nagog Pond water to Concord in 1900 probably seemed like not a big deal (for just 5,672 people), and not an unfair arrangement (taking water from the far smaller town to allow the larger town to have it). OK. But today's conditions are far different. According to the 2010 Census, Concord's population was 17,688, while Acton's was 21,924. I think that what might have seemed like not a big deal in 1880 or 1890, would today be a non-starter. Moreover, the new water treatment plant that Concord proposes would allow the smaller town to draw far more water from Nagog Pond than it does under the current arrangement. I say that because Concord Public Works officials' testified to our Conservation Commission that the new plant would allow Concord to draw Nagog Pond water 12 months a year after the change vs. 2 months a year now. This is galling, particularly as our own town's citizens are forced to depend on the very limited resource of groundwater wells for our water supply.

All of these considerations heighten my sense that what Concord proposes is terribly unfair to Acton's citizens. If the Board of Selectmen acquiesces to Concord's proposal, Concord receives all the benefits, while Acton bears all the burden, including the destruction of hundreds of Acton's trees whose root systems are so important in filtering our precious groundwater.

I urge the Board of Selectmen to do every thing in its power to deny Concord's proposal.

Sincerely,

Robert Sekuler
17 Parkland Lane
Acton MA

Lisa Tomyl

From: Linda Rhen <linda.rhen1@gmail.com>
Sent: Sunday, January 17, 2016 9:14 PM
To: Board of Selectmen
Subject: Objection to Proposal of Town of Concord to install solar panels near Skyline Drive
Attachments: Letter Acton January 17 2016.docx

Dear Selectmen,

Please find a letter outlining my objections to the Proposal to the Acton Board of Selectmen from the Town of Concord to clear cut trees and install solar panels on land behind Skyline Drive in Acton.

Their proposal has serious deficiencies, would harm the environment and cause serious problems for residents of Skyline Drive.

Thank you for your attention to this important matter. If you have questions, you can reach me at my address: 168 Skyline Drive, Acton, MA 01720, or 717-439-7247.

Linda Rhen

168 Skyline Drive
Acton, MA 01720
January 17, 2016

Selectmen Green, Berry, Adachi, Osman and Chang

Re: Request the Acton Board of Selectmen to deny the Town of Concord permission to install a solar panel array in conjunction with water treatment plant on Skyline Drive in the Quail Ridge development.

Dear Selectmen,

I am writing because I learned through other residence that the town of Concord plans to install a solar panel array on Skyline Drive property in connection with the Nagog Pond Water Treatment Plant upgrade.

I want to be clear that I have received no prior written notice from anyone, including the Town of Acton, the Town of Concord, or Pulte Homes regarding the plans to clear cut the trees and transform a wooded area into an industrial setting of solar panels.

You are likely aware that Pulte Homes has developed the land that is next to the proposed solar panel array. There are over 100 homes in this fairly new development. I purchased my new home on November 24, 2015 - less than two months ago. It is in a lovely setting, and I was told through the purchase and sales that the land behind Skyline Drive would remain undeveloped. There is currently a walking trail. The area is filled with trees, and of course there is wildlife.

The clear cutting of trees will destroy the wildlife habitat and have an impact on the environment. It makes no sense to me as a new resident of Acton, that Acton would allow, and in fact enable the Town of Concord to transform a beautiful area so drastically. The damage to the environment would be to Acton. The residents of Quail Ridge, and specifically those on Skyline Drive, like me, would see a drastic change in their environment, and likely a drastic drop in the value of our property.

Representatives of our community plan to provide detailed comments at your public meeting. I urge you to deny this project outright and protect the environment and citizens of Acton.

Sincerely,

Linda O. Rhen, Resident of the Residences at Quail Ridge

Lisa Tomyl

From: Lisa Munson <mgmunsonfamily@verizon.net>
Sent: Sunday, January 17, 2016 3:10 PM
To: Board of Selectmen
Subject: Concord Water Project?

To the Acton Board of Selectman:

I read with disgust Paula Goodwin's verbiage about wetlands bylaws in this week's Acton Beacon.

What a load of crap!

She has the audacity to publish that editorial about the conservation commission while that very conservation commission does not follow its own bylaws?

How dare she — and the Town of Acton — have the nerve to issue that diatribe of an editorial and flagrantly dismiss its own bylaws with respect to Concord's heist of our water reservoir. Acton completely ignored what is in the best interest of its citizens and the recommendations of respected environmental scientists.

I am personally so disgusted with Acton's perpetual half-hazard decisions and disgusted with how our town's "leadership" always cowers to Concord.

You want to destroy wetlands and cut down a forest in the name of solar energy while expecting your citizens to abide by conservation and wetland bylaws? Ha, I'm laughing.

Lead by example and follow your own rules.

-Lisa Munson

Lisa Tomyl

From: Nigel Godley <woodlane_consulting@verizon.net>
Sent: Friday, January 15, 2016 11:11 PM
To: Board of Selectmen
Subject: Concord's proposed Water treatment facility

The Selectmen should reject the building of this facility. There is no reason why Acton land should be used (and therefor spoiled) for the convenience of Concord residents. Concord has consistently denied the building of commercial facilities in its own town center, whereas Acton has permitted such facilities, no doubt readily used by Concord residents.

The water treatment facility will be placed on precious land, valued as buffer between two housing developments and already used for hiking and other recreational reasons. Why should this precious resource be spoiled for the convenience of selfish Concord residents?

Why does Acton always play "second fiddle" to Concord - there is just as much history here as there is in Concord. People who live in Acton, and pay taxes here have the first right to the use of the land and other facilities provided by the town.

If Concord needs such a facility let them build it on their own land.

Significantly, Concord chooses to build its waste treatment facilities right on Route 2, where they least inconvenience Concord residents, but where they are an eyesore to everyone else in the State who has to use this road. This selfish behavior must be stopped. It is time for Acton Selectmen to act in the best interest of the Acton town taxpayers, rather than agreeing to everything that Concord demands. It is bad enough that our own most beautiful pond no longer belongs to the Town, but let's not allow them to build industrial facilities here as well, just to avoid them having to build them in Concord.

Enough - its time to say a resounding "NO" to this proposal.

Nigel Godley, Acton resident and taxpayer for 42 years.

Lisa Tomyl

From: Lynn Kibblehouse <ejkibble@verizon.net>
Sent: Wednesday, January 13, 2016 9:50 PM
To: Board of Selectmen
Subject: Quail Ridge Resident/166 Skyline Drvie

Acton Selectman,

I moved in to my house in Quail Ridge on Nov 6th 2016. I have NOT received a letter summarizing the plan of the Concord Water department. I had to find out this information from my neighbors. We purchased 166 Skyline for \$593,000 and had no idea that these solar panels where going to be placed in my backyard(and I mean literal in my backyard). As a new homeowner to Acton(I previously lived in Westford, Ma), I do not want to be looking at solar panels in my backyard. As a taxpayer to Acton, I hope that as selectman you can take a hard look at this proposal and take into account that the residence of Acton do not need to be looking at Concord's water treatment services in there backyards. There has got to be another solution!

I put faith in knowing that we have selectman to represent the residence of Quail Ridge. High taxpayers with no previous information to this plan prior to purchase. I will be attending the meeting on Jan 25th and addressing my concerns at that time. Please take this in to consideration when voting on this issue. We are counting on our Acton Selectman to protect the residence of Acton.

Sincerely,

Lynn Kibblehouse
166 Skyline Drive
Acton, Ma 01720

978-973-7126

Lisa Tomyl

From: Jayharley@aol.com
Sent: Thursday, January 14, 2016 6:03 PM
To: Board of Selectmen
Subject: article in the Jan 14 Beacon titled "Who is Governing Acton?"

Hello,

My wife and I are long time residents in Acton. I just read the article in the Jan 14 Beacon titled "Who is Governing Acton?". I was deeply alarmed by the article.

As a resident it is very easy to get lost and out of touch with the politics taking place around you. We were shocked that Concord MA has suddenly put itself in the position of environmental leader of Acton.

I suggest that Concord let Acton be in charge of their natural environment in Acton. Let Acton citizens vote to protect their resources just as Concord has stepped in to protect Walden Pond etc. If Concord wants to cut down acres of trees, for whatever reason, let it be in Concord.

Jay and Suzanne Jacobson
25 year residents of Acton

Lisa Tomyl

From: mpcjt@comcast.net
Sent: Thursday, January 21, 2016 5:39 PM
To: Board of Selectmen
Subject: Concord's request to expand it's water treatment facility

I have been reading about this matter and assumed that it would not be a concern as I didn't think it would get by the Conservation Commission. I was surprised to hear that the Conservation Commission approved it given the destruction of beautiful land surrounding Nagog Pond it would bring. The proposed facility and solar array can in no way match the pristine beauty that is there now. I get that Concord gets all the benefits of this, but how can it possibly benefit Acton? Our town should not be treated like a doormat for Concord to increase it's water supply. It's not our problem if Concord has more developments and more landscaping to irrigate. Acton lives with water restrictions to protect our groundwater resource. If Concord is allowed to go through with this project, will we noticeably see the water level of Nagog Pond go down during periods of decreased rainfall? Please deny Concord's request and support our town.

Sincerely,
Janice DiBona, Washington Drive

Sent from my iPad

Lisa Tomyl

From: P. Quilty <pattiq1@gmail.com>
Sent: Thursday, January 21, 2016 6:37 PM
To: Board of Selectmen
Subject: Concord plans for OUR town

Board:

Please do not approve Concord's plan for their water project in our town. Read the letters to the editor in this weeks Beacon. Why should that town benefit when we have water shortages ourselves all summer with restrictions.

Agreements don't apply that were made so long ago as demographics have changed.

Besides that is the prettiest ride in Acton along the reservoir. Please don't let let them ruin it and the land, & the wildlife.

Thank you,

Pat Quilty

Acton resident.

Lisa Tomyl

From: Jim Kirkman <jim_kirkman@yahoo.com>
Sent: Thursday, January 21, 2016 9:46 PM
To: Board of Selectmen
Subject: Concord Water Treatment Plant

To the Honorable Board of Selectmen,

I am writing to request that you deny Concord's request to expand their water treatment plant and construct a solar array. The expansion of the treatment plant and solar array construction has many negative implications for Acton, including:

- loss of property values for the abutters
- loss of trees
- loss of Acton groundwater resulting from the increased usage of the resevoir
- visual blight

It does not make sense for Acton to agree to Concord's plans given the many negative implications for Acton and the disregard shown for Acton citizens by the Town of Concord. It's surprising and frustrating that Concord assumes they can make these changes without providing anything in return to Acton.

Over the past few years, Concord's actions have shown little concern for it's neighbors in Acton. Those actions include:

- the location of the apartment complex designed to move Concord above the 10% 40B limit in far corner of Concord. This location was 'out of sight' for Concord but resulted in increased traffic impacts to Acton
- their plans to locate their school bus parking and maintenance and parking facility in a location very close to Acton's drinking supply.

It's time that Acton stood up to Concord and let them know they can't continue to take advantage of Acton's citizen's.

Regards,

Jim Kirkman
5 Jesse Drive
Acton

Lisa Tomyl

From: Bruce Green <bmgreen99@verizon.net>
Sent: Friday, January 22, 2016 9:35 AM
To: Board of Selectmen
Subject: Please Do Not Approve Concord Water Treatment Plant

Board of Selectmen:

Please do not approve the Concord Water Treatment Plant extensive expansion on Nagog Pond based on the information in the Letters to the Editor in the Beacon from Carole and Ed Root. Their argument is compelling.

Please stop this expansion including the intrusive solar array. This project will deface the pond area which is a beautiful part of Acton.

Thank you for representing us and many of our friends, neighbors, and relatives who do not support this expansion.

Respectfully,

Bruce and Fern Green

4 Trask Rd.

Acton

Board of Selectmen (and others concerned)
Acton Town Hall
472 Main Street,
Acton, MA 01720

January 22, 2016

RE: Site Approval Public Hearing for Concord's proposed Acton-based Nagog Pond Water Filtration Facility and associated PV Farm, scheduled for Monday evening, 1/25/2016

Concord's Public Works Water and Sewer Division's proposed Nagog Pond Water Filtration Facility

Concord's Public Works Water and Sewer Division's proposed Nagog Pond Filtration Facility (in Acton) with upgrade and expanded development, including expanded facility foot print, enhanced pond water withdrawals, creation of an associated PV Farm, among other changes contribute to expanded impacts and concerns that need to be addressed.

The need for installing water filtration on the current water stream drawn from Nagog Pond for Concord public consumption as potable water is understood and overdue. That is not the issue. There are many other concerns proposed by this project and its expanded magnitude.

Changes brought about by implementing Nagog Pond Water Filtration:

Concord has acquired land surrounding Nagog Pond to protect the natural resources therein, in part to enhance water quality for the purpose of supplying drinking water to Concord. Additionally Concord has denied public access to these pond side lands in both Littleton and Acton for the purpose of protecting water quality. Once water filtration is implemented on the water stream from Nagog Pond, there is no need to prohibit public access on these protective surrounding lands (other than in the very immediate vicinity of the treatment facility itself).

1. With the introduction of the new Water Filtration Plant and the protection provided with its implementation, public access for all should now be granted to these surrounding lands. The need is evident by the current well-worn trail systems surrounding the pond and the desire of the Acton and Littleton communities to provide connectivity, including between Littleton's historic Sarah Doublet Forest and Nature Reserve (former Nashoba and Newtown Praying Indian Plantation) and Littleton's Morrison Farm/ Nagog Hill Orchard, with Acton trails, including the Trail Through Time, thereby connecting public areas including those with significant Native American history and artifact. The desire to protect these lands and to provide public access to these lands is expressed in both the Littleton and Acton's Open Space and Recreation Plan Reports.
2. All these surrounding lands in the Nagog Pond watershed need to be permanently protected, as a result of the new treatment process reducing the need for extensive pond side land ownership and mitigation needs to be provided for an expanded water withdrawal operation and overall expanded development, with increased foot print, infrastructure, and accessory development, such as the extensive Photovoltaic (PV) Farm. There are several ways this could be done.
 - a. Concord could gift hosting communities (Littleton and Acton) with these pond side lands, along with protective covenants allowing public access and extinguishing development rights. Lands would be gifted in fee to the corresponding community in which they reside.
 - b. Alternatively, Concord could gift Conservation Restrictions (easements) to these same communities with the above stated public access and extinguishment of development

rights. Grantees could be the corresponding community's municipal Conservation Commissions and/or private non-profit conservation land trusts.

- c. In no case should these lands acquired (often with the use of local and state public funding and consequently most likely protected with various statutes such as the Article 97 Amendment to the Massachusetts Constitution) to protect the natural resources of Nagog Pond , including that of providing a drinking water source for Concord, be discarded and developed directly or indirectly.
3. The Nashoba Praying Indian Village selected its location between two major fresh water bodies – Fort Pond and Nagog Pond, both in Acton and Littleton. (In Algonquin, "Nashoba" translates to "between the waters"). Many Native American artifacts and indications of their presence can be found in this immediate area and surrounding environs. In particular, close to the current water treatment facility is a turtle effigy consisting of an aggregate of rocks with additional rock appendages serving as limbs and head. These and other artifacts need to permanently protected. (See research and works of Dan Boudillion, Peter Waksman, John Hanson Mitchell, Tim Fohl, Linda McElroy, Curt Hoffman and his students, and those discussed at Acton's archaeology programs such as those hosted by its organization, Friends of Pine Hawk.)
 4. The impact of successive water withdrawal upon Nagog Pond and its associated banks and ecosystem should be understood before expansion of water withdrawal and usage is allowed. Nagog Pond is a Great Pond and contains historical value in addition to its substantial ecological significance.
 5. The proposed Concord Water Filtration project is greatly expanded beyond just providing a new level of physical filtration on the current water stream which supplies limited drinking water to residents of Concord. This expansion of this currently nonconforming infrastructure and operation needs to be fully understood and justified. In particular due to:
 - a. Greatly expanded footprint of plant and access;
 - b. Greater water withdrawals from Nagog Pond; and
 - c. Newly proposed large PV Farm and accessory infrastructure, with both its impact on the ground and scenic impact from the Nagog Pond shorelines and environs.

If you have any questions or desire clarification, please do not hesitate to contact me. Thank you for the opportunity to comment on issues of mutual concern.

Respectfully yours,



Donald MacIver, president and trustee
Littleton Conservation Trust
(Owners and stewards of Sarah Doublet Forest and Nature Reserve
along Nagog Hill Rd and Fort Pond Road, Littleton)

LittletonConservationTrust.org
maciver01460@gmail.com
978-952-2706

Lisa Tomyl

From: Betsy Purcell <betsypurcell@gmail.com>
Sent: Friday, January 22, 2016 1:34 PM
To: Board of Selectmen
Subject: Say NO to Concord water treatment expansion!

To the Acton Board of Selectmen:

I am not often moved to write to the Board of Selectmen, as I feel Acton is well run. I love this town and support those who donate their time to keep it running.

I grew up in Concord, and since 1997, I've lived in Acton, raised my kids here, and have been a cheerleader for Acton, especially in my role as a Realtor.

I urge you to push back in any way that you can, to stop this proposed project, of clearcutting an acre and a half, putting in a solar field, and quadrupling the size of the water treatment plant at beautiful Nagog Pond. The process should at the very least include notifying all abutters to this area. This assault on our Town will directly affect the home values in Acorn Park, Breezy Point, and newly built Quail Ridge. For a town that so depends on these higher end neighborhoods for tax revenue, this will be a kick in the teeth, and will eventually cause all Acton residents to pick up the slack, because the homes in this area will no longer command the price point that they do now.

If the shoe were on the other foot, Concord would never allow us to build anything that would take down trees in their town. Interestingly, on a personal note, my family tried to donate a bandstand to the Town of Concord, in my Mother's memory, (who was a Selectman in Concord years ago.) Residents came out in droves to prevent any change to their community. We should stand up and do the same, and this time, for a good reason. Please stop this project now.

Respectfully,

Betsy Purcell
69 Charter Rd
Acton, MA 01720

Lisa Tomyl

From: Larry Kerpelman <l.kerpelman@gmail.com>
Sent: Friday, January 22, 2016 1:45 PM
To: Board of Selectmen
Subject: Please stop the Concord water treatment plant expansion

Board of Selectmen

Town Hall

Acton, Massachusetts

Ladies and Gentlemen:

It's time to put your collective foot down and tell Concord to stop using Acton as its doormat. In the 40 years I've lived in Acton, I've watched Concord fulfill many of its municipal responsibilities at Acton's expense. For too long, Concord has blithely gotten away with putting their "undesirable" projects in Acton, allowing Concord to reap all the benefits while forcing Acton to bear all the burden.

- It has attempted to perform its 40B responsibilities by allowing construction of a huge apartment complex in the very corner of Concord that abuts Acton, with the resulting traffic pouring onto Acton's streets.
- It has attempted to put a school bus depot adjacent to the Acton Water District wells, threatening our water with gas and oil spills from their buses.
- Now they are proposing to build an industrial-scale water treatment plant and solar array adjacent to Nagog Pond, destroying numerous trees around that picturesque pond, disturbing historical Indian artifacts lying within that land, and taking out more water from the pond than ever before.

It galls me to drive around Concord and see all that open land and yet have Concord come to Acton for municipal land uses it could just as easily fulfill in Concord if only it decided to buy up one of the many 40-acre estates I see and use that land instead. As the elected representatives of Acton, it is up to you to tell Concord enough is enough.

Sincerely,

Larry C. Kerpelman

=====

Larry C. Kerpelman, Ph.D.

9 Puritan Road

Acton, MA 01720-4248, USA

Lisa Tomyl

From: DavidForte&EllendeLemosForte <dforte@verizon.net>
Sent: Friday, January 22, 2016 1:20 PM
To: Board of Selectmen
Subject: Town of Concord use of Town of Acton clean water - TIME CRITICAL - please vote AGAINST current proposal

Importance: High

I would like to know more about the arrangement between the Town of Concord and the Town of Acton relative to the clean water in Nagog Pond on Acton land?

With the increasingly difficult job our town has of securing clean, vital drinking water for our own residents, is there any possibility we can re-visit this issue given the current circumstances and negotiate a "shared" use of this critical natural resource?

It seems counter productive (and potentially quite harmful long term) to allow another entity to negatively impact our town and destroy natural habitat surrounding this valuable resource for their own use, while our own residents and committed individuals in the Public Resources and Acton Water District struggle to find ways to provide clean water to our own residents?

Please VOTE AGAINST allowing the Town of Concord to use Acton resources for their own self-interest unless there is some cooperative agreement which addresses our own Town's reasonable and justifiable need for this resource. Our own Town of Acton residents should be able to utilize this valuable resource as well.

Please address these issues before moving forward.

Many thanks for your service.

Ellen de Lemos (Forte)
3 Perkins Lane
Acton, MA 01720

Lisa Tomyl

From: David Didriksen <david@willowbooks.com>
Sent: Friday, January 22, 2016 12:29 PM
To: Board of Selectmen
Subject: Concord power play

Dear Board of Selectman Members:

Of all of the dumb things the town of Acton has done over the years (and there have been many) one of the dumbest would be to let the town Concord comander part of our water and land around Nagog Pond to build their own permanent infrastructure.

It's bad enough that our forefathers foolishly gave away rights to the best natural resource in the entire town, Nagog Pond. The only thing that can said in its favor is that it has kept a lot of housing development from trashing the pond. We could only hope that - someday- Acton might get its own land and water rights back. That will never happen if you give up all of our rights to let Concord come in and build a permanent facility.

I have lived here 26 years and have always regretted that Nagog Pond has been off-limits to the citizens of Acton. It would be much better to tell Concord to use their own land for their public works projects. In fact, instead of selling land to Concord, we should be negotiating a way out of a horrible deal, signed so long ago, by people with very little foresight.

Please do not betray future generations by giving up Acton's future rights to this resource.

Sincerely,

David Didriksen
25 Lincoln Drive
Acton, MA 01720

978-501-0918

Town Of Concord

Water Treatment Plant
Special Permit / Use Special Permit

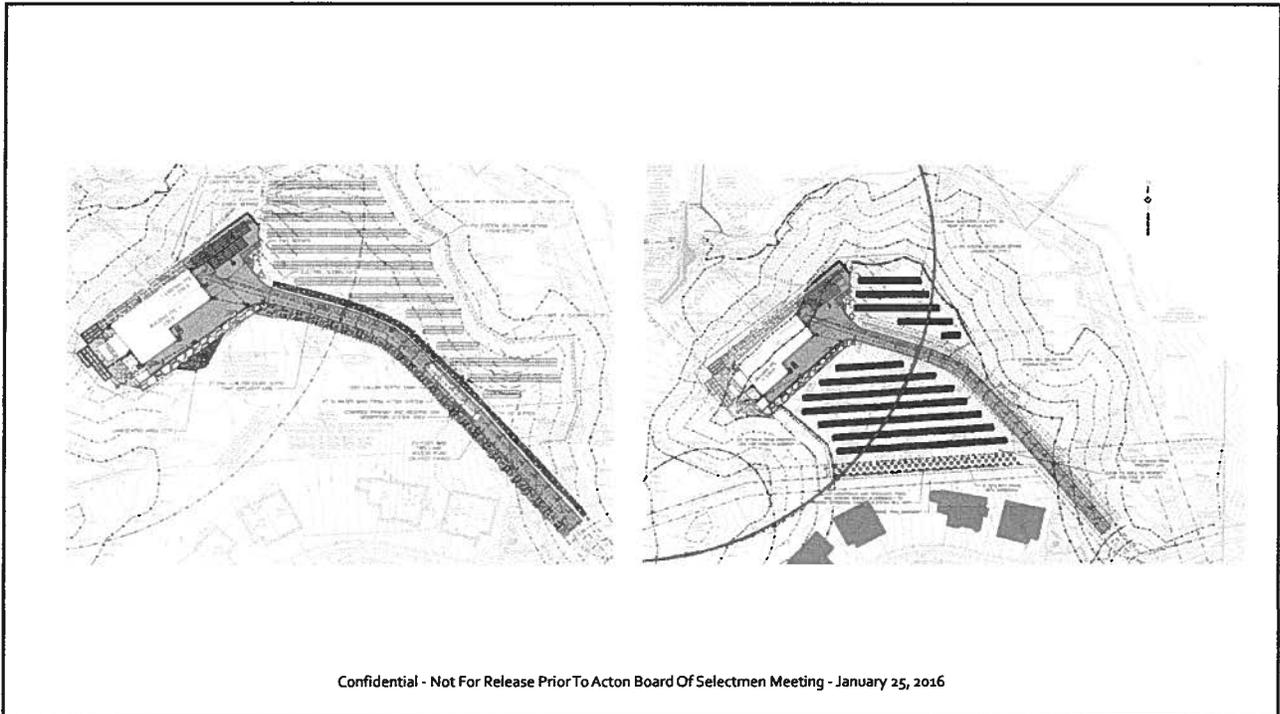
Not Right For Acton

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Introduction

- Carolyn Kiely – 11 Parkland Lane
- Maps Are Misleading
- Variance Is Also Needed
- Why This Project Is Wrong For Acton

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016



Use Special Permit

- Replacing Ozone Disinfection Facility
- With State-of-the-art Water Treatment Plant
- Including A "Solar Photovoltaic Array Accessory Use"

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

What's Done Now?

- Ozone Disinfection Only
- Remaining Water – Treated Downstream
- Powered By Electricity
 - Public Utility – Eversource

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Presently / Proposed

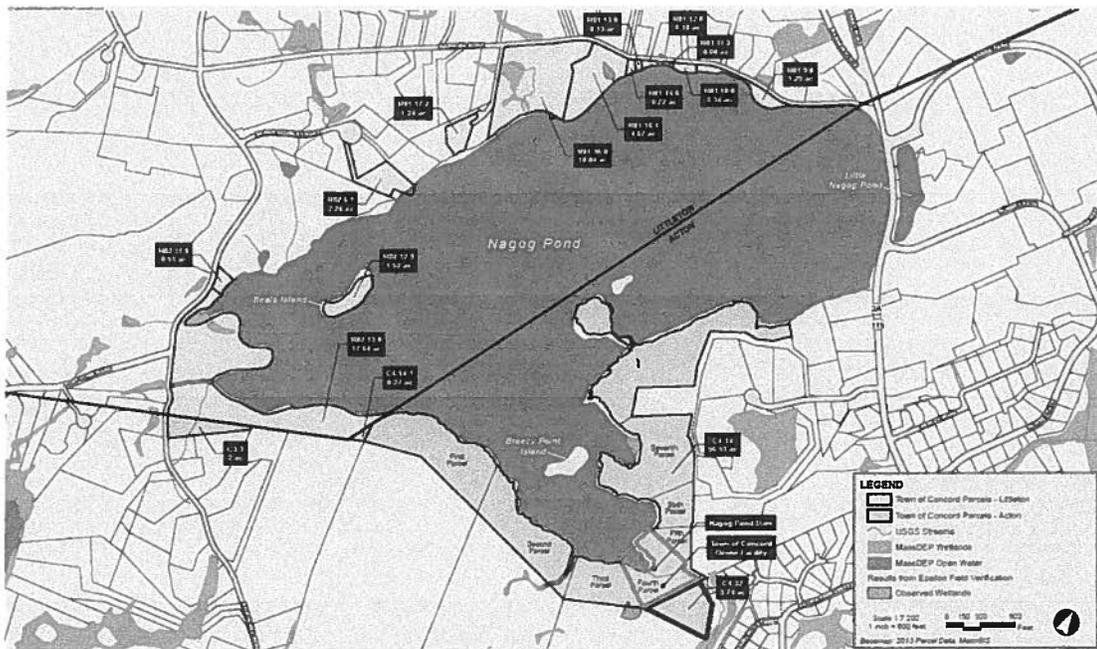
- Present Building – 1,760 Sq. Ft.
- Proposed Treatment Plant – 9,338 Sq. Ft.
 - 530% Increase
- Present Lot Coverage – 17,374 Sq. Ft.
- Proposed Lot Coverage – 47,526 Sq. Ft.
 - 275% Increase
- New Building – Two Stories, Visible Around Watershed And To Neighbors

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Maps Are Misleading

- Address: 180 & 182 Skyline Drive
- Two Parcels (Not Told To You)
 - First Parcel – Acquired Early 1900’s, Contains Dam, Intake Pipe, And Present Building.
 - Second Parcel – Acquired In 2003, Forested Open Space
 - Solar Panels Proposed For Second Parcel
- Concord’s Map – Parcels Are “Fourth Parcel” And Parcel “C4-32”

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016



Zoning Rules & Lots

- Concord Claims That The Solar Panels Are "Accessory Use"
- Zoning 3.8.4.10: Accessory Uses Must
 - Provide Benefit And Support The Principal Use(s)
 - On The Same Lot.
- The Principal Use – Water Treatment – Is On A Different Lot. The Solar Lot Is Open Space.
 - "Accessory Use" Of Solar Not Allowed Here.

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Concord's Feasibility Study

- Concord's 2013 Feasibility Study:
 - Cautions Concord Re: Uses Of Individual Lots For The Project.
 - Accessory Solar Arrays Must Be On The Same Lot.
 - Further Analysis: Use Of Adjoining Lots.
- Why Aren't Lots Shown?
 - Violates Bylaws
- Staff
 - Unaware Of The Two Lots.
 - Indicates Solar Panels Accessory To Principal Land Use
 - But No Principal Use On That Lot – Open Space

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

State Requirements

- MEPA Certification – awaiting results
- DEP Guideline – solar power for water facilities
 - Favors solar
 - Must comply with municipal rules

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Article 97

- Massachusetts Constitution
 - Public Lands Can Not Be Converted To Another Use Without:
 - 2/3rds Vote At Town Meeting
 - 2/3rds Vote Of Legislature
 - Funding Compliance
- Article 97 Applies By Lot
 - Open Space Lot – Being Converted To Solar Panels
 - Disinfection Lot – Change In Use
 - Full-scale Treatment, Chemical Storage

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Variance Issues

- Original Facility – Variance (Board Of Appeals)
- Also –
 - Site Plan Special Permit (Selectmen)
 - Special Use Permit (Selectmen)
 - Flood Plain Special Permit (Selectmen)
- Concord Is Bypassing The Variance Process
- Without The Original Variance, This Building Couldn't Be There

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Variances (Cont'd)

- Case Law
- When A Building Is Originally Permitted Under A Variance, It Can't Then Only Use The Special Permit Process For Future Expansion
 - A Facility Originally Permitted Through The Variance Process Needs To Continue Through The Variance Process
 - The Variance Needs To Be Amended By The Board Of Appeals

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Variations (Cont'd)

- Wait Until The Board Of Appeals Acts Before Acting On The Special Permits Before You
- Permits/Variations Need To Be Filed With The Registry To Be Valid
 - Unclear If The Original Permits/Variation Were Ever Recorded
 - May Not Be Legally Effective
 - Town Counsel Review Needed

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Archaeological Impacts

- 1994 Archeological Study
 - "Historic Quarry Pit"
 - Located "East" And "South" Of The Ozone Facility
 - The Historic Quarry Pit Is In The Solar Array!!
 - Not Identified On Maps
- Need:
 - Locate Historic Pit
 - Preservation Plan
 - New Archaeological Study Of Palmer Land (Not Owned In 1994, Not Studied)

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

No Water to Acton

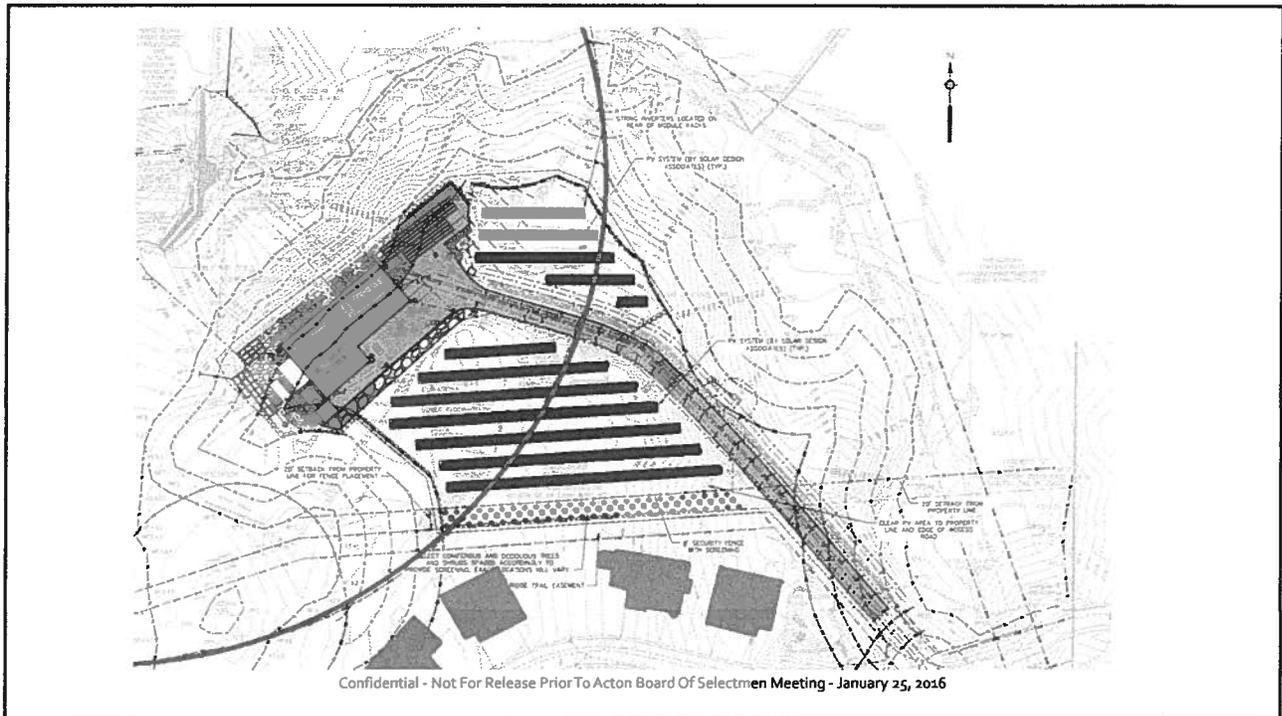
- Existing water customers
 - 70 in Acton
 - Less than 1%
 - Will continue to get water from Concord
- Concord's Policy: NO NEW CUSTOMERS IN ACTON
- Recent history:
 - Past year – fire hookup to an multi-unit complex
 - Before that – Staples/Trader Joe plaza – last hook-up

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Water Supply Protection Areas

- Nagog Watershed – Zone A
- 400' Arc – Water Supply Protection Area
 - Buffers Around Water Supply Sources
- Entirety Of Building And 50% Of Solar Array Within 400' Of Nagog Pond
- Concord Must Meet State Mandated Reduced Development Requirements
- State Requirements Apply 'Per Lot'
 - Panels – 100% Coverage On One Lot (Not Reduced)

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016



Conclusion

- Only Concord Benefits
- Acton Bears The Brunt
- Misleading Maps
 - Two Lots
 - Zoning Rules Apply Per Lot
- State Rules – Acton’s Bylaws Still Applicable
- New Variance Needed First
- No New Water Customers
- No Electricity
- Zone A Water Supply Area Jeopardized
- Archeological Study Needed, Protect Historic Site

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Town Of Concord

Water Treatment Plant
Special Permit / Use Special Permit

Not Right For Acton

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Introduction

- Barry Elkin – 57 Skyline Drive
- Speaking Out Against Solar Panels
- Good For The Environment And Green Source Of Energy
- So Why?
 - Concord's Own Statements
 - Acton Bylaw
 - Concord Bylaw
- Not NIMBY – ½ Mile Away

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Unacceptable Location ?

- Reasonable People Can Disagree
- Let's Not Debate
- Use Concord's Definition
 - 2011 Solar Siting Committee Report
 - Charged By Concord Board Of Selectmen
 - Comprehensive 118 Page Report

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Concord's Own Words

- "Present Or Potential Use For Agriculture, Forestry, Recreation, Or Conservation Land Clearly Outweighs Value Of Solar Site"
- "Site Is Forested And It Is Unlikely To Be Acceptable To Cut Trees; Or Major Impact On Other Vegetation"
- "Solar Array On Site Would Have Potentially Adverse Impact On Neighboring Town(s)"
- "Site Judged To Have Adverse Impact On Neighbors If Used As Solar Site"
- "Site Is Critical For Wildlife"

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

December 2 Conservation Hearing

- Why This Location
 - Can't Locate In Concord – Sell Excess Power To Eversource
 - Makes This A Financial Issue
- Panels Can Be Located Any Place
- Power Balance
 - X Power Consumed
 - X Power Created
 - Net Zero Impact

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

So Why Acton?

- Concord Gets To Sell Power To Eversource
- Creates Issues For Acton – Not For Concord
- Less Restrictive Zoning Bylaw Than In Concord
 - Minimum 5 Acre Lot Size
 - Acton Lot 3.75 Acres

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Permitted Uses – Acton Zoning Bylaw

- Ground Mounted Neighborhood
 - Primarily Designed To Benefit The Energy Needs Of Uses In The Immediately Surrounding Area Or Neighborhood.
 - Not More Than One Acre In Size
- Ground Mounted Industrial
 - Primarily Designed To Benefit All Energy Users
 - Any Size

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Is It Fish Or Fowl

- Not Industrial
 - Not Primarily Designed To Benefit All Energy Users
 - Accessory To Water Treat Plant
 - The Nagog Pond Watershed And Solar Feasibility Study
 - Letter From Mr. Stephen Olson, Environmental Partners Group
- Neighborhood
 - Primarily Designed To Benefit The Energy Needs Of Uses In The Immediately Surrounding Area
 - This Is What Concord Applied For
 - BoS Notice To Abutters (Section 3.8.4.10)

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Violates Acton Zoning Bylaw

- More Than One Acre In Size
 - An Acre Is 43,560 Square Feet
 - Total Photovoltaic Surface Array Will Be 62,454 Square Feet
- Over 40% Too Large
 - Doesn't include related buildings, structures and equipment
- If Reclassified As Industrial
 - Primary Use Must Change
 - "Not More Than One Acre Of Land Shall Be Deforested For Any One Ground-mounted Industrial Solar Photovoltaic Installation"
 - Collateral Deforestation

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Concord Will Argue

- State Law
 - Massachusetts General Law Chapter 40A
 - "No Zoning Ordinance Or Bylaw Shall Prohibit Or Unreasonably Regulate The Installation Of Solar Energy Systems Or The Building Of Structures That Facilitate The Collection Of Solar Energy, Except Where Necessary To Protect The Public Health, Safety Or Welfare".
 - "Unreasonably Regulate" Not Defined

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

However....

- Commonwealth Of Massachusetts
 - Department Of Energy Resources
 - Massachusetts Executive Office Of Energy And Environmental Affairs
- Model Zoning For The Regulation Of Solar Energy Systems
- "This Model Zoning And Accompanying Guidance Were Prepared To Assist Massachusetts Cities And Towns In Establishing Reasonable Standards To Facilitate Development Of Solar Energy Systems."

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

DOER Says:

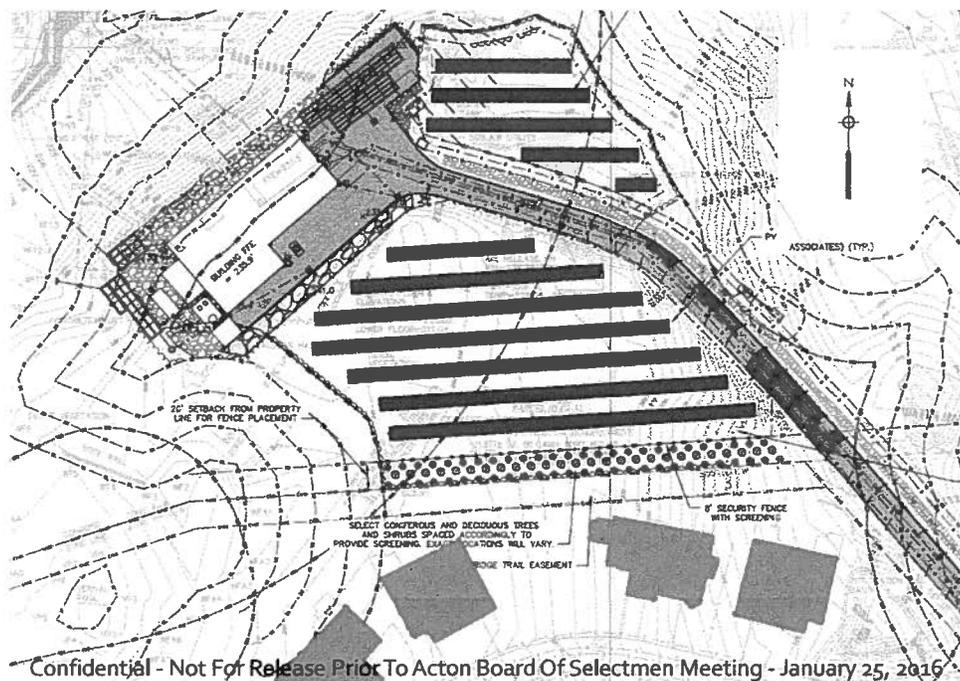
- "Clearing Of Natural Vegetation Shall Be Limited To What Is Necessary For The Construction, Operation And Maintenance Of Solar Energy System Or Otherwise Prescribed By Applicable Laws, Regulations, And Bylaws/Ordinances"
- "DOER Strongly Discourages Locations That Result In Significant Loss Of Land And Natural Resources, Including Farm And Forest Land, And Encourages Rooftop Siting, As Well As Locations In Industrial And Commercial Districts, Or On Vacant, Disturbed Land"
- "Significant Tree Cutting Is Problematic Because Of The Important Water Management, Cooling, And Climate Benefits Trees Provide"

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Concord Agrees

- Concord Zoning Bylaw
 - “Clearing Of Natural Vegetation Shall Be Limited To What Is Necessary For The Construction, Operation And Maintenance Of The Large-scale Ground-mounted Solar Photovoltaic Installation Or Otherwise Prescribed By Applicable Laws, Regulations, And Bylaws.”
- Feasibility Study
 - “The Towns May Impose Reasonable Regulations On A Solar Installation Based Upon Public Health, Safety, And Welfare Considerations”

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016



Additional Concord Violations

- "Landscaping Or Architectural Screening Shall Be Provided To Reduce The Visual Impact Of Installations And Specifically To Protect Nearby Receptors From Danger, Harm, Or Nuisance That May Result From Reflective Solar Glare Of Photovoltaic Panels. Where Necessary, Panels Shall Be Oriented Or Tilted In A Manner To Prevent Such Glare Upon Receptors."
- Panels Directly Aimed At Multi-Story Homes
 - As Close As 70 Feet Away
 - Directly To The South
- Planning Board Can Require Additional Setbacks

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Landscaping

- "In The Case Of A Residential District Location, The Visual Impact Of The Installation On Its Immediate Abutters And On The Nearby Neighborhood Has Been Effectively Neutralized Through Appropriate Designs, Landscaping, Or Structural Screening"
- DRB
 - "If Granted, The Permits Should Condition That Prior To A Building Permit, The Applicant Must Submit A Landscaping Plan That Meets The Intent Of ZBL Section 10.4."
- Prior To Approval
 - Heights And Density.
 - Not Extended Out For A Number Of Years When The Landscaping Grows
 - The Landscape Plan Must Provide Complete Screening Right Away.

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Concord's Solar Siting Report

- The Town Of Concord And The Concord – Carlisle Regional School District:
 - Own About 848 Acres Of Land In Concord
 - 73 Parcels
 - Not Designated As:
 - Conservation Land
 - Not Protected By Deed Restrictions
 - Other Legal Instruments
 - Identified Six As Being Suitable For Hosting Ground Based Or Utility-scale Solar Power Systems

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Questions And Issues

- Solar Panels....
 - Violates Concord's Own Guidelines
 - Solar Glare
 - Visual Impact
 - State Guidelines
 - Over 40% Non Compliant
 - A More Suitable Location For The Array ... Concord
- Other Questions:
 - Article 97
 - Zone A Water Supply Area
 - Multiple Lots
 - Wildlife Impact
 - Septic Plan
 - Archeological Impact

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Granting Authority

- ...The Special Permit Granting Authority Shall Not Issue A Special Permit Unless Without Exception It Shall Find That The Proposed USE:
 - Is In Harmony With The Purpose And Intent Of This Bylaw.
 - Will Not Be Detrimental Or Injurious To The Neighborhood In Which It Is To Take Place.
 - Complies With All Applicable Requirements Of This Bylaw.
- As One Resident Who Gets To Speak For Many
 - How Does Concord Propose To Address These Issues And Questions ?
 - Until Resolved This Request Cannot And Should Not Be Granted
 - Nothing In This Proposal Positively Impacts Acton

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Town Of Concord

Water Treatment Plant
Special Permit / Use Special Permit

Not Right For Acton

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Introduction

- Robert Sekuler - 17 Parkland Lane
- Additional Issues To Consider
- Although "Additional" – Not Insignificant

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Wildlife

- Not Under Conservation Commission Jurisdiction
- Over An Acre To Be Cleared
 - Adjacent Areas Developed
- Wildlife And Habitat Impacts
- Must Minimize Deforestation

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Alternative Analysis

- Water Can Be Treated "Downstream"
 - Treated Today
- Solar Panels Are Not A Requirement
- Only Nagog Pond Area Considered
- Concord Solar Siting Committee
 - Alternative Sites Need To Be Considered

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Storm Water Analysis

- Analysis
 - Does Not Include Impact Of Solar Panels
 - Acton Town Engineer
 - "Applicant Should Address How Storm Water Runoff Is Being Handled"
- Solar Panel Mitigation Evaluation

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Access

- Skyline Drive Is Private
- All Access Via Acorn Park
- Cannot Post Private Road Signage
 - Golf Course
 - Palmer Kennel
- Clear Language To Concord

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016

Additional Issues

- Septic System and Leach Field
 - Board Of Health Approval
 - Additional Clear Cutting Required?
- Building Aesthetics
- Noise

Confidential - Not For Release Prior To Acton Board Of Selectmen Meeting - January 25, 2016