Site Plan and Use Special Permit #11/20/15-459
180 & 182 Skyline Drive
Town of Concord – Nagog Pond Water Treatment Plant
March 27, 2017

TOWN OF ACTON
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Board of Selectmen

MODIFIED DECISION
#11/20/15-459

180 & 182 Skyline Drive (Nagog Pond Water Treatment Plant)
Conditional Approval of
1. Special Permit for Other Public Use (Zoning Bylaw, s. 3.1 & s. 10.3)
2. Site Plan Special Permit and related Waiver (Zoning Bylaw, s. 10.4)
3. Finding as related to Floodway (Zoning Bylaw Note #4 to s. 3.1 Table of Principal Uses)

March 27, 2017 – MODIFIED ______________, 2017

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

This Modified Decision is in response to an application for a site plan and use special permit, submitted to the Board on November 20, 2015, pursuant to Sections 3.4.7, 10.3, and 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the applicable Site Plan Special Permit Rules and Regulations (hereinafter the Rules).

Initial Hearing and March 2017 Decision:
The Board held a duly noticed public hearing on January 25, 2016, which was continued to February 22, April 11, July 18, September 12, November 1, December 14, 2016 and January

Board members Peter Berry, Janet Adachi, Frances Osman, Katie Green and Chingsung Chang were present throughout the hearing. The minutes of the hearing and submissions upon which this initial public hearing. On March 23, 2017, after deliberations, the Board voted to grant the requested (1) Special Permit for Other Public Use, (2) Site Plan Special Permit with Waiver (sidewalk), and (3) Floodway Finding pursuant to Note #4 of the Section 3.1 Table of Principal Uses – subject to the Plan Modifications, Conditions and Limitations set forth in its written decision. The vote was 5 for and 0 against to approve the Decision. The written Decision was filed with the Town Clerk on March 29, 2017. The Decision and the minutes of that hearing and submissions upon which the Decision was based are available at the Town Clerk’s office and the office of the Board at the Acton Town Hall.

**Appeal, Additional Public Hearing and Modified Decision:**

On April 13, 2017, Concord filed a Complaint in the Land Court pursuant to M.G.L. c. 40A, § 17 appealing the March 29, 2017 Special Permit Decision. The case is Concord v. Acton Board of Selectmen, Civil Action No. 17 MISC 000205 (the 40A Appeal).

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

Concord and the Board ultimately agreed to conduct a further public hearing pursuant to M.G.L. c. 40A to consider modifications to the March 2017 Decision.

The Board conducted a public hearing on potential modifications to the Special Permit Decision, with public hearing sessions held on [HEARING DATES].

Board members Janet Adachi, Peter Berry, Katie Green, Chingsung Chang and Joan Gardner were present throughout the hearing. The minutes of the hearing and submissions upon which this Modified Decision is based are available at the Town Clerk’s office and the office of the Board at the Acton Town Hall.

1 **EXHIBITS**

Submitted for the Board’s consideration were the following materials:

1.1 A plan entitled “Nagog Pond Water Treatment Plant, Concord, Massachusetts” dated November 18, 2015, revised in August 2016 (with portions subsequently revised/supplemented), drawn by Environmental Partners Group of 18 Commerce Way, Suite 2000, Woburn, MA 01801 consisting of 37 sheets (Attachment L in 1.2 below).

1.2 Application package entitled “Nagog Pond Water Treatment Plant, Acton, Massachusetts – Applications for Special Use Permit and Site Plan Special Permit”, including supplemental items and documentation required by the Rules, dated November 20, 2015, revised August 25, 2016 (with portions subsequently revised/supplemented), with a cover letter, a project overview with existing and proposed use description, and Attachments A through L as follows:

A – Application for Special Use Permit.
B – Application for Site Plan Special Permit.
C – Zoning Compliance Analysis.
D – Variance and Special Permit.
E – Article 97 Analysis with Deeds and Plans.
F – Typical Distributed Energy Unit.
G – Noise Emissions Analysis Memorandum.
H – Order of Conditions.
I – Stormwater Drainage Calculations.
K – Earth Removal Calculations.
L – Permit Design Plans.

1.3 Other items submitted as required by the Rules, including:
- Filing fee.
- Certified abutters list.
- Record plans and deeds.

1.4 Additional information provided by the Applicant:
- Fencing Plan (plan sheet C16, expanded view), dated 8/29/16, last revised 1/6/17.
- Public Archaeology Laboratory, 1900 Crown Colony Dr., Quincy MA: Scope of Services, Nagog Pond Water Treatment Plant Improvement Project, Acton, Massachusetts, Archaeological Sensitivity Assessment, January 28, 2016.
- Nagog Pond Dam, Acton, Massachusetts, “Underwater Inspection of The Raw Water Intake Supply Line”, April 11, 2012; by Inner Tech Marine Services LLC, PO Box 91234, Warwick, RI 02889 (report).
- Letter from Peter F. Durning, Mackie Shea, P.C. dated November 1, 2016 with two enclosures:
  B. Proposal/Scope of Services from Public Archaeology Laboratory (PAL) for “Intensive Archaeological Survey” services, dated October 31, 2016.
- Letter from Peter F. Durning, Mackie Shea, P.C. dated November 16, 2016 with the following enclosures:
  B. October 31, 2016 cover letter to Proposal/Scope of Services from Public Archaeology Laboratory (PAL) for “Intensive Archaeological Survey” services.
  C. Memorandum from Environmental Partners Group “Town of Concord – Nagog Pond WTP Chemical Addition Summary”, dated November 14, 2016, with attached materials safety data sheets.
• Letter from Peter F. Durning, Mackie Shea, P.C. dated November 18, 2016 with resumes attached for two LEC staff members.
• Letter from Peter F. Durning, Mackie Shea, P.C. dated December 7, 2016, with the following enclosures:
  A. Fencing Plan, revised 12/7/16; and
  B. Proposal/Scope of Services from Public Archaeology Laboratory (PAL) for “Intensive Archaeological Survey” services, revised 12/5/16.
• Letter from Peter F. Durning, Mackie Shea, P.C. dated January 6, 2017, with the following enclosures:
  A. Fencing Plan, revised 1/6/17; and
  C. Letter from the Massachusetts Historical Commission, dated December 21, 2016 with permit #3709 to conduct archeological field investigation.

1.5 Interdepartmental communication was received from:
• Acton Water Supply District, written comments posted 1/1/16 and presented 1/8/16, letter from the Board of Water Commissioners, undated, and email from Chris Allen of Acton Water District (response to questions) dated 12/9/16.
• Acton Public Health Department, App 24 Munis output, undated.
• Acton Engineering Department, dated 9/29/15 (re: street address change), 1/8/16, 9/2/16, 9/12/16 and 10/28/16.
• Acton Fire Department, dated 10/27/16.
• Acton Land Stewardship Committee, dated 3/15/16.
• Acton Planning Department, dated 1/11/16, 9/8/16, 10/26/16, 10/27/16, 11/29/16, and 1/13/17.
• Acton Open Space Committee, dated 10/19/16.
• Chris Allen, Acton Water District, 1/18/17.
• Jeffrey L. Roelofs, Counsel to the Board, dated 1/18/17 (zoning overview).

1.6 Correspondence from & presentations by Applicant, Parties in Interest, and others:
• Lynn Kibblehouse, 166 Skyline Drive, 1/13/16.
• Jay and Suzanne Jacobson, 1/14/16.
• Nigel Godley, 1/15/16.
• Lisa Munson, 1/17/16.
• David Spotts, 11 Parkland Lane, 1/18/16.
• Rebecca Seel Oddsund, 1/21/16.
• Breezy Point Homeowner’s Association, 1/21/16, with multiple signatures & 12/9/16.
• Harold Hyman, 19 Black Horse Drive, 1/22/16.
• Peter Henry, 15 Ticonderoga Road, 1/22/16.
• Robert Schneider, Braebrook Road, 1/22/16.
• Reid Blute, Pulte Homes of New England, LLC, 1/22/16.
• Betsy Purcell, 69 Charter Road, 1/22/16.
• Larry Kerpelman, 9 Puritan Road, 1/22/16.
• Ellen de Lemos Forte, 3 Perkins Lane, 1/22/16.
• David Didricksen, 25 Lincoln Drive, 1/22/16.
• Maurice and G. Helen Berrigan, 21 Oakwood Road, 1/23/16.
• Julie Greenspan, 8 Overlook Drive, 1/23/16.
• Kathy Jackson, 142 Willow Street, 1/23/16.
• Frances Harris, Oneida Road, 1/23/16.
• Gary Mazzola, 32 Parkland Lane, 1/24/16.
• Corinne Hogseth, 61 Seminole Road, 1/25/16.
• Letter dated 1/25/16 from Residents of the Residences at Quail Ridge with +/-128 signatures.
• 2 Abel Jones Place Barry Elkin, 57 Skyline Drive, 5/10/16 and undated.
• Kevin Clayton, 9/20/16.
• Robert Sekuler, 17 Parkland Lane, 1/17/16, 1/25/16, 9/14/16, 10/25/16, 10/28/16 and two undated items.
• Robert Kingan, 30 Parkland Lane, undated.
• Carolyn Kiely, 11 Parkland Lane, 1/25/16 (hearing presentation and “Testimony in Opposition”), 1/30/16, 2/4/16, 3/21/16, 5/4/16, 7/8/16, 9/12/16, 10/6/16, 10/11/16, 11/1/16 (hearing presentation); 1/18/17 (hearing presentation).
• Neal Fishman, 7/17/16.
• Concord 1/25/16, 9/12/16, 11/1/16 and 1/18/17 hearing presentations.
• Richard Reine, Concord Director of Public Works to Carolyn Kiely, 5/16/16.
• Littleton Conservation Trust, 1/22/16 and 2/1/16.
• Littleton Conservation Trust to EOEEA Secretary Beaton, 9/22/16.
• Donald Maclver, president & trustee, Littleton Conservation Trust, 1/22/16.
• Emily McDowell, 2/3/16.
• Linda Rhen, 168 Skyline Drive, 1/17/16, 2/4/16, 9/5/16 (with photos attached), and 10/31/16.
• Barry Elkin, Carolyn Kiely & Robert Sekuler, 6/4/16 and 1/18/17.
• Friends of Pine Hawk, c/o Acton Memorial Library, 486 Main Street, 9/9/16, with attachments, and 11/1/16 (hearing presentation).
• Alissa Weiss as President, The Breezy Point Homeowners Association, 9/9/16, with attachment.
• Nigel and Vera Godley, 10 Wood Lane, 9/8/16.
• Jim Kirkman, 5 Jesse Drive, 9/8/16.
• Alissa Weiss, 6 Breezy Point Road, 9/9/16.
• Ro Pinto, 9/12/16.
• Acton Historical Commission letter to Secretary Matthew Beaton, EOEEA, 9/16/16.
• Acton Board of Selectmen to Acton Water District Manager, dated 9/21/16.
• Letter from Paul F. Ormond, PE., Energy Efficiency Engineer, Massachusetts Department of Energy Resources to EOEEA Secretary Beaton, 9/23/16.
• Paul C. Millett, P.E, Environmental Partners Group, Inc. to EOEEA Secretary Beaton, 9/30/16.
• Nigel Godley to Senator James B. Eldridge, 10/13/16.
• George Downs, 29 Duggan Road, 10/21/16.
• Kim Kastens, 10/22/16, and 1/18/17 (with hearing presentation).
• Gregory S. Davis, 27 Parkland Lane, 10/20/16.
• James Engell, 14 Breezy Point Road, 10/26/16.
• James Engell to Purvi Patel, EOEEA MEPA Office, 9/22/16 and 10/24/16.
• Ainslie Brennan to Editor of The Concord Journal and the Beacon, undated.
• Wei Yang, 9 Breezy Point Road, 10/30/16.
• Lingchuan Wu, 11 Breezy Point Road, 10/31/16.
• Brona Simon, Mass. Historical Commission to Alan Cathcart, Town of Concord, 10/27/16.
• Peng Luo and June Wang, 7 Breezy Point Road, 10/30/16.
• Acton Water Supply District, hearing presentation, 11/1/16.
• Ron Beck, 80 Esterbrook Road, 11/2/16.
• Bernie Dennis, 42 Greenside Lane, 11/2/16.
• Terra Friedrichs, 11/2/16.
• Correspondence between Melissa Simoncini, Concord Water Department and Evan Carloni, Acton Health Department, dated 11/4/16 and 11/9/16.
• Lisa Lapinski, 525 Acorn Park Drive, 11/1/16.
• Donald and Lilian Stokes, 90 Skyline Drive, undated (“Nagog Pond Wildlife Report 2016”).
• Geoff Mamlet, 2 Gregory Lane, 11/19/16 and 1/18/17.
• Bob Ferrara et. al., undated, addressed “To the Editor:”
• Daniel Wells, M.S., Goddard Consulting LLC, “Peer Review of Wildlife Habitat Impacts, Town of Concord Nagog Pond Water Treatment Plant Project”, prepared for Acton Board of Selectmen, dated 12/7/16.
• Ann M. Sullivan, 11 Quail Ridge Drive, 1/11/17.
• Dean Shu and Shin Lee, 102 Skyline Drive, 1/11/17.
• Jim and Pat Butler, 63 Skyline Drive, 1/12/17.
• Renate Winter, 29 Parkland Lane, 1/12/17.
• John Kovach, 1/12/17.
• Basil Chigas, 315 Nagog Hill Road, 1/16/17.
• Margaret Nichols, 21 Parkland Lane, 1/16/17.
• Richard Burpee, 158 Skyline Drive, 1/16/17.
• Tracy and John Lawrence, 138 Skyline Drive, 1/16/17.
• Jeff D. Clymer and Acorn Park Condominium Association Board of Trustees, 5 Walnut Street and Corresponding Condominiums, 1/17/17.
• Pralay Som, 91 Skyline Drive, 1/17/17.
• Ann Glesnes, 39 Greenside Lane, 1/18/17.
• Response from Selectmen Peter Berry to Carolyn Kiely, 1/17/17.
• Robert Sekuler, 17 Parkland Lane, 1/18/17.
• E-mail from Richard Friend, MassDEP to Jeff Roelofs, Counsel to the Board, dated 10/31/16, Subject: Concord Water Management Act clarification.
• All other correspondence in this matter received by the Town via e-mail or otherwise, whether or not listed herein, as included in the Board’s record.

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

1.8 Post 40A Appeal Documents and Testimony

[IDENTIFY ADDITIONAL MATERIALS HERE OR INCORPORATE ABOVE]

Exhibits 1.1 through 1.4 and 1.8.1 – [UPDATE REFERENCES] (including the most recent version of any materials that were revised during the hearing) are hereinafter referred to collectively as the Plan or Plans.

2 FINDINGS AND CONCLUSIONS

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

2.1 The Site is located within the Residence 8 (R-8) and Residence 10/8 (R10/8) zoning districts, Groundwater Protection Overlay District Zone 4, partially in the Affordable Housing Overlay Sub-district A, and partially in the Flood Plain Overlay District.

2.2 The Site measures approximately 60 acres on land in Acton, plus Nagog Pond, which is partially in Acton and partially in Littleton. Access to the Site is provided via Acorn Park Drive and Hazelnut Street. The Site is partially developed by the existing dam/intake structure, disinfection facility, and associated appurtenances, but the majority of the Site is undeveloped forested land.

2.3 The Town of Concord proposes to expand and upgrade its existing water treatment facility at Nagog Pond. The current facility provides ozone water treatment and is housed within a ±1,300 sq.ft. single-story building. Concord is currently operating under a Filtration Avoidance Waiver under the federal/state Surface Water Treatment Rule. The project is proposed to bring the treatment facility into compliance with current Federal and State drinking water requirements and to improve the quality and reliability of the Nagog Pond water supply. The proposed expansion and upgrade would replace the existing plant with a new, modernized facility with multiple water treatment levels and methods including filtration, ozone treatment, disinfection, pH adjustment, and fluoridation. The new plant would be housed within a ±9,300 sq.ft. building on a ±7,200 sq.ft. footprint that includes related control rooms, tanks, storage areas, and staff accommodations. The proposed project also involves replacement of the 16" deteriorated intake pipe from Nagog Pond with a new 16" intake pipe (and associated surrounding site improvements), widening of the access road, and installation of a 6-ft. high perimeter fence over a distance of ±0.7 mile with a minimum ground clearance of 10-12 inches. Power supply will be from the grid; back-up generators will be installed at the facility. Previously-proposed solar PV system and gas fired power generators are no longer proposed. The Applicant represented that the plant’s design capacity will remain at 1.5 mgd, equivalent to the existing facility – although Concord’s withdrawal levels have been significantly below 1.5 mgd in recent years due to regulatory constraints associated with the Surface Water Treatment Rule.
2.4 Nagog Pond is a registered withdrawal source for Concord within the State’s drinking water program. and the Water Management Act, M.G.L. c. 21G, § 5. Concord’s use of Nagog Pond as a drinking water supply was established by an Act of the Massachusetts Legislature in 1884. That Act also acknowledged the rights of Acton and Littleton to use the waters of Nagog Pond. Concord has been using Nagog Pond as a water supply since the early 1900s.

2.5 The existing water intake pipe (like the dam) was constructed over 100 years ago. The existing water treatment facility was built in 1995 pursuant to a Variance decision issued by the Zoning Board of Appeals (ZBA) in 1994 (1994 Variance) and a Special Permit and Site Plan Special Permit decision issued by the Board of Selectmen in 1995 (#8/25/94-346) (hereinafter 1995 Special Permit).

2.6 In its 1994 Variance decision, the ZBA noted as follows: “Protection of water resources is a specific goal of the Acton Master Plan. Granting appropriate variances to allow the construction of the disinfection facility is consistent with the objectives of the Master Plan.”

2.7 In the 1995 Special Permit decision, the Board of Selectmen granted the requested Site Plan Special Permit, Special Use Permit, and Flood Plain Special Permit, subject to certain modifications, conditions and limitations, having found, among other things, as follows:

1. “[W]ill protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.

   * * * [findings 2-4 omitted here] * * * *

5. Is consistent with the Master Plan.

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

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

8. Is appropriate for the site and complies with all applicable requirements of this Bylaw.

2.8 Concord maintains a water main from Nagog Pond along Great Road in Acton into the Town of Concord. Certain property owners (residents and businesses) along Great Road rely on water supplied by Concord. Some Great Road property owners have had a difficult time securing new or expanded water service from Concord. Concord has implemented a water supply policy that is more restrictive for Acton customers along Great Road than for similarly situated Concord customers – apparently based on capacity concerns and its restricted use of Nagog Pond in recent years.

2.9 The Bylaw classifies Concord’s use of the Site as “Other Public Use” as defined in section 3.4.7. This land use may be allowed subject to a use special permit from the Board under Bylaw section 10.3 (subject to all applicable dimensional requirements of the underlying zoning districts). The Board’s special permit scope and authority also includes relevant matters within the applicable overlay zoning districts: Groundwater Protection Overlay District and Flood Plain Overlay District. The existing facility has the requisite special permit. Concord is seeking a new special permit for the expansion and upgrade.

2.10 The proposed work also requires, and Concord has applied for, a site plan special permit under Bylaw section 10.4 (with certain waivers) and a finding as related to the fence within the Floodway under Bylaw Section 3.1, Table of Principal Uses (Use 3.4.7), Note #4.
2.11 In its 1994 Variance decision, the Acton Board of Appeals granted certain variances related to Concord’s proposed use of the Site. The currently-proposed expansion, improvements, and changes as described in the special permit now before the Board either do not alter the premises on which the variances were granted, do not exceed the scope of the variances that were granted, are within the scope of the Board’s special permit authority pursuant to Bylaw sections 3.1 and 3.4.7, or are no longer applicable under the Bylaw as amended to the current date.

2.12 Bylaw section 3.1 (Table of Principal Uses), Note #4 provides that for an “Other Public Use” (Use 3.4.7), prior to issuing a special permit, the Board must make a finding regarding compliance with certain requirements for work in the Floodway and Floodway Fringe and Groundwater Protection District.

2.13 Floodway Finding – Note #4, Section 3.1: The Board finds that the Plans demonstrate compliance with Bylaw sections 4.1.8.1 and 4.1.9 - matters related to work in the Floodway.

2.14 The Bylaw requirements of sections 4.3.8 through 4.3.10 are not applicable in this case where the use is nonconforming and the Site is located in Zone 4 of the Groundwater Protection District.

2.15 The Plans demonstrate compliance with the dimensional requirements of the Bylaw including setbacks, building height, floor area ratio, and open space, and with the requirements for parking and parking lot design.

2.16 10.4.3.4 Sidewalk – WAIVER: Bylaw section 10.4.3.4 requires that a sidewalk be provided along the entire frontage of a lot. The Board is authorized to waive this requirement (subsection d). Concord has requested a waiver of this requirement pursuant to Bylaw section 10.4.3.4(d). The Board finds that requiring a sidewalk is not necessary for the safe movement of pedestrians and bicyclists. Therefore, the Board hereby grants a waiver from Bylaw section 10.4.3.4 (sidewalk) and, consistent with its usual practice in connection with sidewalk waivers, hereby requires Concord to donate $10,500 to Acton’s sidewalk fund (based on the Site having approximately 210 linear feet of frontage on Nagog Hill Road and using the Engineering Dept.’s $50.00/linear foot average cost estimate for retrofitting existing streets with sidewalks, not including the cost of R.O.W. takings).

2.17 Concord proposes a ±0.7 mile long fence to improve security and access control to the proposed facility and certain adjacent land areas. There is significant wildlife on the Site and surrounding area. Concord had originally proposed a taller and much longer fence and larger enclosure, which would have posed a significant impediment to the free movement of wildlife in the area and would have had an adverse aesthetic impact on the neighborhood. Based on the revised fence design and location and the opinions expressed by Concord’s wildlife consultant and the Board’s peer review wildlife consultant, the Board does not believe the fence as designed, located and proposed to be maintained, and as conditioned in this approval, will result in adverse wildlife impacts. Moreover, given its proposed 6 ft. height, more limited length, color and material (black, vinyl coated rails, posts and mesh) and setbacks from adjacent properties, any aesthetic impact that the fence may have on neighboring properties is minimal.

2.18 Acton’s archaeological sensitive maps suggest a high likelihood of Native American and early colonial settlement in the area of the proposed construction work and fence installation. The Applicant’s archaeological consultant and the Acton and Massachusetts Historical Commissions agree that portions of the Site where improvements are proposed are archaeologically sensitive areas. The Massachusetts Historical Commission (“MHC”)
has determined that an intensive (locational) archaeological survey must be conducted pursuant to 950 CMR 70 prior to any work beginning and has issued a permit for the same. To the extent required by other permits that Concord must obtain, including a Section 404 permit from the U.S. Army Corps of Engineers, Concord must also comply with Section 106 of the National Historic Preservation Act of 1996, as amended (36 CFR 800).

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

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

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

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

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

2.22 Nagog Brook, which drains Nagog Pond, is a coldwater fishery resource that is sensitive to water quality and quantity. Water levels in Nagog Pond and the related flow levels within Nagog Brook are also associated with the environment within and adjacent to the pond and brook and, potentially, the recharge levels associated with the Acton Water District’s Conant I well field. Nagog Brook traverses the Conant I well field about 1 mile below the pond. During the public hearing, residents expressed concerns that Concord’s expanded facility would lead to an increase of Concord’s reliance on Nagog Pond, an increase in Concord’s withdrawals from Nagog Pond as compared to recent and historic withdrawal rates/volumes and that the increased withdrawals may lead to lower water levels in Nagog Pond and lower flows in Nagog Brook – either or both of which may (1) adversely affect the water quality and/or environment in and near the pond and/or brook, and (2) adversely affect recharge levels within the watershed and, particularly, in the vicinity of the Conant I wellhead. Although the Board believes that these and other concerns merit further study as further required in Paragraph 3.3.7, the Board cannot conclusively determine whether or not any adverse impacts are likely to occur based on the materials and information presented to the Board. The Acton Water District, in comments dated November 1, 2016, stated: “Based on the hydrology and location of our wells, we do not see a direct correlation between water withdrawn from Nagog Pond and effects on our nearest well, Conant I well (599 Main St).” [TO BE CONSIDERED ON REMAND: The Acton Water District confirmed its position during the public hearing on the Modified Decision]. Furthermore, the Board also understands that water withdrawal rates are subject to State regulations and limitations, with consideration of regional issues and impacts to water supplies and quality.

2.23 Section 10.3.5 Special Permit Findings: The Board finds that the proposed use, as presented in the Plans and as modified, conditioned and limited in this decision:

10.3.5.1 Is consistent with the Master Plan.

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

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

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

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

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

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

10.3.5.4 Is appropriate for the site in question

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

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

2.24 Section 10.4.3 Site Plan Special Permit Design Standards: The Board finds that the proposed use and associated Plans, as modified, conditioned and limited in this decision, fully comply with the Site Plan Special Permit Design Standards set forth in Bylaw section 10.4.3, to the extent applicable, with the exception of section 10.4.3.4 (sidewalks), for which a waiver is granted through this decision. The Board notes that the Plans sufficiently demonstrate that the proposed facility will comply with the lighting requirements of sections 10.4.3.2 and 10.6. However, through this decision, the Board is requiring Plan Modifications that will provide additional details related to the lighting prior to construction (see Plan Modifications section below).

2.25 Section 10.4.5 Site Plan Special Permit Findings: The Board also finds that, “to the degree reasonable,” the proposed use and associated Plan(s), as modified, conditioned and limited in this decision:

10.4.5.1 Is consistent with the Master Plan (see above Findings and related discussion).

10.4.5.2 Protects the neighborhood and the Town against seriously detrimental or offensive USEs on the site and against adverse effects on the natural environment (see above Findings and related discussion).

10.4.5.3 Provides for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site (see above Findings and related discussion).

10.4.5.4 Provides an adequate arrangement of parking and loading spaces in relation to the proposed USEs of the premises (see above Findings and related discussion).

10.4.5.5 Provides adequate methods of disposal of refuse or other wastes resulting from the USEs permitted on the site (see above Findings and related discussion).

10.4.5.6 Will not derogate from the intent of this Bylaw to limit the adverse effects of the USE and development of land on the surface and groundwater resources of the Town of Acton (see above Findings and related discussion).

10.4.5.7 Complies with all applicable requirements of this Bylaw (see above Findings and related discussion).

2.26 The Board has received comments from various Town departments, which are listed in Exhibit 1.5 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.

2.27 The Board received and heard comments from abutters and other individuals and groups with interest; they are listed in Exhibit 1.6 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.

[ABOVE TO BE REVISED OR POTENTIAL ADDITIONAL FINDINGS TO BE INCORPORATED HERE BASED ON INFORMATION PRESENTED AT ADDITIONAL PUBLIC HEARING]
3  BOARD ACTION

3.1  BOARD VOTE

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

3.2  PLAN MODIFICATIONS

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

[PLACEHOLDER - FOLLOWING TO BE REVISED IF ADDRESSED DURING REMAND PUBLIC HEARING]

3.2.1 Provide updated and corrected storm water calculations. In the calculations, assume that catch basins are not available for storm water storage.

3.2.2 Provide a more detailed Outdoor Lighting Plan with specifications for the luminaires, lamp types, power limits and other details to confirm compliance with Bylaw section 10.6.

3.2.3 Provide documentation of any project changes that may be required by the MHC or may otherwise be advisable after completion of the Intensive Archaeological Survey. Any material plan changes resulting from this Survey or MHC’s review and approval of the Survey shall require further Board approval.

3.2.4 Provide a statement detailing what Concord is committed to undertaking with respect to providing or facilitating a foot trail from the rear of the lots in the Breezy Point subdivision to the Town’s Nagog Hill conservation land parcel.

3.2.5 The Plan shall be modified to comply in all respects with the Bylaw. Unless directed otherwise by this decision, the Plan shall also be modified to comply with all requirements of the Rules, and to address all departmental comments received by the Board in a manner that resolves any concerns raised therein.

3.3  CONDITIONS

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

3.3.1 Compliance with the Plans and this Decision: The Applicant shall construct, operate and manage its proposed facility and the Site in accordance with this Decision and the Plans approved hereunder. The Applicant shall provide reasonable access to Acton officials to the Site for purposes of monitoring compliance with the Plans and this Decision.

3.3.2 Enforcement: Failure to adhere to these conditions shall constitute grounds for the Board of Selectmen to revoke or modify this Site Plan Special Permit and Special Permit, in addition to other remedies, such as revocation of any building or occupancy
permit issued for this facility. **Enforcement:** The Town of Acton may elect to enforce compliance with this Site Plan Special Permit and Special Permit using any and all powers available to it under the law.

3.3.3 **Improvements/Activities Limited to Those Approved:** Improvements to and activities at the Site shall be limited to those shown on the Plans and approved in this Decision. Any additional or modified improvements or activities at the Site shall be subject to the Board’s further review and approval.

3.3.4 **Archaeological Resources:**

1. Prior to commencing any construction or site work associated with the proposed facility (including the fence) at the Site, Concord’s archaeological consultant shall (A) complete an **Intensive Archaeological Survey** in the areas designated for the proposed infiltration system and security fence (the “Intensive Archaeological Survey”) and prepare a mitigation plan, (B) secure MHC’s approval of the survey and mitigation plan, and (C) provide a copy of MHC’s approval to the Board.

2. As part of its survey, Concord’s archaeological consultant shall solicit input from local archaeologists and/or historians – including the Acton Historical Society (“AHS”), Acton Historical Commission (“AHC”), Mashpee Wampanoag Tribe and Friends of Pine Hawk – and, if requested by any of those organizations, shall allow qualified individuals identified by them to accompany Concord’s archaeological consultant on the Site to inspect the relevant areas while their work.

3. If the archaeological survey reveals evidence of, or a high likelihood of, the presence of Native American or early colonial artifacts in areas to be impacted by its project, the Applicant shall develop and implement a mitigation program. At least 45 days prior to submitting the survey results and proposed mitigation program to the MHC, the Applicant shall provide copies of the survey results and proposed mitigation program to the AHS, the AHC, the Mashpee Wampanoag Tribe and Friends of Pine Hawk and shall provide those entities a reasonable opportunity to review and comment.

4. The Applicant shall also allow reasonable access to the Site throughout the duration of construction to a qualified consultant approved or recommended by the Massachusetts Historical Commission (MHC).

5. **Dewatering Period:**

   A. Concord shall undertake appropriate efforts to identify and protect archaeological resources within Nagog Pond as related to its replacement of the intake pipe and proposed temporary dewatering of a portion of the pond.

   B. Prior to commencing the dewatering activities, Concord shall consult Resident Inspector for the project, who will directly observe those aspects of the intake pipe replacement work within the dewatered area of Nagog Pond that involve an excavation or disturbance to the pond bottom that could result in the exposure of archaeological sensitive material. Consistent with the AHS, AHC recommendation in the Board of Underwater Archaeological Resources’ November 23, 2015 letter, if Concord...
encounters any submerged or terrestrial cultural resources during the course of replacing the intake, it will “take steps to limit adverse affects and notify the [Board of Underwater Archaeological Resources] and the Massachusetts Historical Commission, as well as other appropriate agencies including the Board of Selectmen and the Mashpee Wampanoag Tribe and Friends of Pine Hawk—and, if requested by any of those organizations, shall allow qualified individuals identified by them to inspect and/or survey the dewatered area and to monitor Concord’s intake pipe removal and replacement activities. Through this condition, the Board is not intending to impose any obligations on the Applicant, immediately in accordance with respect to archeological resources beyond those imposed by State law, except as to requiring specific coordination and access as described herein.

6.5. Concord’s archeological consultant shall be present and monitor the Board’s Policy Guidance for the Discovery of Unanticipated Archaeological Resources,” and shall otherwise comply with the all intake pipe removal state and federal laws and installation activities that involve disturbing the pond bottom, shall appropriately document any observations made during the work activities of archeological resources and ensure that any observed artifacts are appropriately handled and protected, policies pertaining to such discoveries, including Section 106 of the National Historic Preservation Act of 1996, as amended (36 CFR 800).

3.3.5 Fence Installation, Maintenance and Reporting:

1. The Applicant shall install and maintain the fence in accordance with the Plans – in compliance with the construction protocol, timing and other details presented in the Plans—except to the extent the Applicant agrees to build a shorter fence based on the discussions required by Condition 3.3.10. Among other things:

- Installation shall occur between August and March.
- Installation shall avoid mature trees to the maximum extent feasible.
- Actual ground disturbance during installation shall be limited to the posts, to be separated by a maximum of 10 feet.
- Concord shall implement an Operations and Maintenance Plan, as described in the January 6, 2017 letter from LEC Environmental, Inc. to monitor and maintain clear round clearance under the fence – including full perimeter inspection at least once a month to maintain the 10-12” clearance and keep the fencing free of vegetation or debris, and inspection of the fence crossing the Floodway weekly during the spring months to remove any potential debris.

2. ANNUAL REPORTING: Annually, by April 1, for as long as three years after the fence is in place, the Applicant shall provide the Board with a report documenting the fence maintenance work completed by the Applicant during the preceding year. The Applicant shall provide reasonable access to representatives of Acton’s Land Steward Committee and Natural Resources Department to inspect the fence and adjacent areas, for as long as the fence is in place.

3.3.6 Chemical Deliveries and Residuals Removal:

1. Time Restrictions: Deliveries of chemicals to the plant and removals of residual matters from the plant shall routinely occur only on weekdays between the hours of 8 AM – 2:30 PM (matching the Acton Water District’s routine delivery times and
avoiding routine deliveries during school pickup and drop-off times and federal holidays).

2. **Routes:** Vehicles making deliveries of chemicals to the plant and removing residuals from the plant shall access the facility via the northwestern portion of Acorn Park Drive and via Hazelnut Street – and shall not be permitted to use the southeastern portion of Acorn Park Drive, Quail Ridge Drive or Skyline Drive (except that portion between Hazelnut Street and the facility drive).

3. **Compliance with Laws and Additional Mitigation:** In addition to informing vendors about the time and route restrictions in subsections 1 and 2 above, Concord shall include the following language in any contracts awarded to vendors retained to supply bulk chemicals to or residual pick-ups from this Site; “contractor shall take reasonable steps to ensure that all drivers delivering chemicals to or removing residuals from the treatment plant comply with any facility served under this contract shall be aware of all applicable laws related to their use of the public and private roadways approaching the Site from Great Road these sites, including speed limits. In the event of violations of those laws or the conditions imposed in this Condition 3.3.6, the Board may impose additional mitigation requirements or limitations on Concord as appropriate to prevent future violations or associated potential impacts.”

3.3.7 **Monitoring Program — Board Approval Required Prior to Start of Site Work:**

1. The Applicant shall develop a reasonably tailored monitoring and reporting program to be implemented at the Applicant’s expense, with the objective of the program being to generate data that will enable Concord, the Acton Water District, Littleton and state regulatory agencies to better understand the relationship between Nagog Pond water withdrawal rates and water levels, Nagog Brook flow levels and rates, and recharge of groundwater in the vicinity of the Acton Water District’s Conant I and Conant II wells. The Applicant shall work actively and in good faith with the Acton Water District and the Acton Health Department in its efforts to develop this program. The program shall include a baseline data collection component – data collected for some specified period of time prior to operation of the new plant.

2. The Applicant shall present the program to the Board of Selectmen for its administrative review and approval within 4 months of this decision becoming final. The Board’s approval shall be secured prior to commencement of any site work and prior to issuance of a building permit for the project. The program shall be commenced within 30 days after the Board’s approval of the program and shall be implemented for the duration of the Applicant’s operations of the new treatment plant and for five years thereafter, except as the Board may otherwise approve.

3. The Applicant shall compile and provide to the Acton Water District and Acton Health Department any currently available data directly relevant to the relationship between Nagog Pond water withdrawal rates and/or water levels, Nagog Brook flow levels and rates, and recharge of groundwater in the vicinity of the Acton Water District’s Conant I and Conant II wells.

3.3.8 **Protection of Environment and Water Supplies Natural Resources:** The Applicant shall construct and operate its facility and manage its withdrawals from Nagog Pond in a manner that (1) appropriately preserves and protects the water and in compliance with any applicable laws and regulations regarding the protection of the environment in and near Nagog Pond and Nagog Brook, and (2) avoids adverse impacts to Acton’s
groundwater and natural resources, including, but not limited to, the Massachusetts Water Management Act and any other applicable state and federal laws and regulations.

3.3.9 Water Supply Coordination and Planning:

3.3.10 Regional Planning: Commencing within 45 days of this decision becoming final and prior to issuance of a building permit for the project, the Applicant shall actively and in good faith participate in good faith discussions with the Acton Water District, and the Town of Acton, and appropriate Littleton and State officials to discuss the short and long-term about the water supply needs and functions of all three both communities, to discuss including along Route 2A in Acton, and about mutual aid, assistance and coordination in support of each other’s short term and long-term water supply needs and functions, and to develop a regional water supply agreement. The Applicant shall also coordinate in good faith with Acton, Littleton and state officials with respect to the complicated legal issues associated with the use of water from Nagog Pond and shall proactively involve Acton in any efforts the Applicant undertakes to resolve those issues legislatively or judicially.

1. 5-Year Progress Reports: Resolution of these regional issues is not expected before construction begins. However, an agreement should be reached by 1/1/2023. If an agreement is not reached prior to that date, the Applicant shall report to the Board and obtain from the Board a statement affirming that, in the Board’s opinion, the Applicant is continuing to participate in negotiations in good faith. The Applicant shall provide a progress report and obtain a similar statement from the Board every five years thereafter until a regional agreement has been reached.
2. Concord Water Service to Acton Parcels on Great Road: Concord shall continue providing water service to all properties along Great Road in Acton to which Concord is currently providing water. Commencing within 45 days of this decision becoming final and prior to issuance of a building permit for the project, the Applicant shall also coordinate regarding trails: Within 45 days of this decision becoming final, the Applicant shall engage in active and good faith discussions with the Acton Water District and Town of Acton officials with respect to Acton’s expectation that Concord will (1) provide new and expanded water service to all properties along Great Road in Acton that have direct Great Road access to Concord’s water service but do not have direct Great Road access to service from the Acton Water District; and (2) offer water supply to its customers in the Acton service area in the same manner, under the same terms, under the same conditions, and for the same cost as to its customers in its Concord service area.

3.3.11 Coordination Regarding Trails:

3.3.123.3.9 The Applicant shall engage in active and good faith discussions with the Acton Natural Resources Department, and the Acton Land Stewardship Committee and representatives of Breezy Point, Quail Ridge, and Acorn Park to (1) discuss the possibility of a more limited fence, keeping in mind the Applicant’s objective of protecting the treatment plant and protecting Nagog Pond; and the objective of public access to open space for appropriate passive recreation, (2) discuss issues associated with the use of designated trails by pedestrians on Concord’s water supply land and Acton’s adjacent conservation land, and (3) explore possibilities for providing connectivity from the Breezy Point residents with a foot trail from their neighborhood subdivision to Acton’s Nagog Hill conservation land parcel. Such discussions shall include, at a minimum, a meeting with representatives from Concord, the Acton Natural Resources Department, the Acton Land Stewardship Committee and representatives of Breezy Point, Quail Ridge, and Acorn Park within 45 days of this decision becoming final. It is understood that during and after such good faith discussions, Concord may, in the exercise of its discretion to assure a safe and clean public water supply, impose restrictions on public access to its land at Nagog Pond, including, but not limited to prohibiting such public access.

1. The Applicant shall report back to the Board as to the progress of these discussions prior to the issuance of a building permit or commencement of site work.

3.3.133.3.10 Construction Period:

1. Building Permit: No work on the Site shall begin prior to the issuance of a building permit.

2. Roadway Monitoring, Repairs and Surety:
   a. Prior to the start of construction, the Applicant shall inspect and submit to the Acton DPW Director a report and video survey documenting the general conditions of the public and private roadways (including drainage and other infrastructure within the roadways) between Great Road and the site that will be utilized by construction vehicles.

   b. During construction, the Applicant shall monitor and periodically document the conditions of the roadways.

   c. The Applicant shall be responsible for repairing any damage to the roadways and associated infrastructure to the extent caused by such damage can be directly
attributed to the Applicant, its employees, contractors or suppliers. The Applicant may include a provision to this effect in during the construction contract; however, doing so shall not relieve the Applicant of its ultimate responsibility hereunder period.
d.
Construction vehicles shall not access the Site via the southeastern portion of Acorn Park Drive, Quail Ridge Drive or Skyline Drive (except that portion between Hazelnut Street and the facility drive).
e. Prior to issuance of an occupancy permit, the Applicant shall secure a letter from Acton’s Department of Public Works either confirming that any necessitated repair work has been completed to its satisfaction or that no repair work was required the subject public and private roadways.

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

4. Erosion Controls: The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Building Commissioner may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

5. Work Times: All construction activity on the Site relating to this Special Permit shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm and Saturday 8:00am – 5:00pm. No work is permitted on Sundays & Holidays.

6. Minimize Neighborhood Impacts: Every reasonable attempt consistent with standard construction management practices shall be made to minimize any adverse construction conditions and impacts to neighboring and abutting properties (such as, but not limited to, dust, noise, etc.).

7. Communication Plan with Neighbors: Prior to commencement of construction, the Applicant shall work in good faith with the surrounding neighbors to develop a communication program that will afford the neighbors meaningful opportunities to
anticipate construction schedules and activities, to obtain construction-related information during construction, to communicate any construction-related concerns and to facilitate efforts to resolve any issues that may arise during construction.

8. Bald Eagle Habitat: Concord shall undertake reasonable efforts to avoid disturbance of nesting bald eagles, as provided in the National Bald Eagle Management Guidelines and as officials of the U.S. Department of Fish and Wildlife and Massachusetts Division of Fisheries and Wildlife may additionally require.

3.3.14 Post-Construction Noise Monitoring: After construction and prior to issuance of a certificate of occupancy, the Applicant shall have conducted an acoustical study to confirm that the facility, including emergency generators while operating, comply with applicable sound regulations (as the Applicant represented that they would during this process). If that study concludes that further noise attenuation is required (e.g. sound enclosures or walls), the Applicant shall be responsible for proposing and implementing such measures subject to the prior approval of the Board.

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

3.3.16 Health Director Requirements: The Applicant shall comply with all requirements of the Health Director.

3.3.17 Water Service Lines: All water service lines that bring Acton Water District supplied water to the facility shall be installed in accordance with the specifications of the Acton Water Supply District. Subject to Acton Water District's discretion and approval and to the extent feasible, the water service for the facility may access the Acton Water District water main located on Skyline Drive.

3.3.18 Recording of Decision: This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

3.4 LIMITATIONS

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

3.4.1 Acton’s Right to Use Nagog Pond: Issues regarding the respective rights of Acton, Concord and Littleton to use Nagog Pond as a drinking water supply are complex and are beyond the scope of this permitting process or decision. The Board’s approval of the zoning approvals in this decision is not intended to diminish, limit or advance in any way Acton’s legal authority to use Nagog Pond as a water supply in the future or to constrain Concord from using Nagog Pond as may be deemed warranted to protect Acton’s water supplies.

3.4.2 Except as specifically provided herein, this decision does not limit or negate the applicability of any other portion of the Bylaw or Rules.

3.4.3 This special permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
3.4.4 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

3.4.5 This Site Plan Special Permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

3.4.6 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

[NUMBERING AND REFERENCES IN MODIFIED DECISION TO BE REVIEWED FOR ACCURACY]
4  **APPEALS**

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

The Town of Acton Board of Selectmen

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**Peter Berry**, Janet Adachi, Chair

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

Eva Szkaradek, Town Clerk

Date

Copies furnished:

- Applicant - certified mail #
- Building Commissioner
- Health Department
- Engineering Department
- Tree Warden
- Natural Resources Dept.
- Town Manager
- Police Chief
- Acton Water District
- Historical Commission
- EDC
- Assessors Department