

Concord Lawsuit/Change
(11/9/17 modification)

Concord Lawsuit

Counts 56-66: The Water Management Act (WMA) allows Concord to “forever withdraw water at the rate of its existing withdrawal,” ... “regardless of alleged impacts on other potential hydrologically inter-connected water sources...”

Counts 67-77: The Monitoring Program
Violates Concord’s rights under the WMA.

Counts 78-79: Concord appeals that its use of Nagog Pond should (1) protect and preserve Nagog Pond and Nagog Brook, and (2) avoid adverse impacts on Acton’s groundwater resources.

Change in Revised Conditions Approving Project

Permit specifies that the Water Management Act applies (2.4). (Note: This is a new addition. The original permit did not reference the Water Management Act. However, the new modified permit is silent regarding assertions in Concord’s lawsuit, meaning that nothing is specified that Concord has a right to forever withdraw water from Nagog Pond).

Deleted in its entirety. No monitoring program. The original monitoring program required Concord to study the relationship between Nagog Pond withdrawals on Nagog Brook and Acton’s Conant wells. This monitoring was required for the entirety of plant operation and 5 years post-operation, and a plan for this monitoring was to be submitted within 40 day so of permit issuance.

Adds that Concord’s water withdrawals will not impact Acton’s wells. Deletes any specific provision to protect Nagog Pond and Nagog Brook (3.3.7) Deleted the language stating that the Board of Selectmen can’t conclusively determine whether there is an interrelation, and quotes the Acton Water District as saying there is no interrelation to Conant wells.

Counts 8-82: Acton can revoke Concord's permit if there is "a negative impact on the quantity and quality of Acton's water resources."

Counts 83-92: -Concord must participate in discussions to resolve water rights to Nagog Pond, with regional planning to start within 45 days of the agreement.

Counts 93-104: Acton "exceeded its authority when it imposed an obligation on Concord to meet the ... water needs of development along Great Road in Acton.." Acton is trying to "illegally extract major concessions from Concord."

Counts 105-125: "the conditions the board imposed on Concord with respect to the proposed security fence were arbitrary and capricious," and Counts 126-129: the condition that Concord negotiate with others "to discuss the possibility of a more limited fence...." "is arbitrary" and "amounts to a taking by the Board..."

This provision is deleted in its entirety (3.3.2) Instead of specifying that Acton can pull Concord's permit, it says that Acton can use legal remedies for enforcement. (Note: This is the only language remaining for enforcement).

Deleted. The original language required Concord to agree on a regional water supply agreement and work together and resolve the issues associated with use of Nagog Pond by Acton and Littleton (3.3.8)

"The Board expects that Concord will (1) provide ... water service to all properties along Great Road in Acton..." (2.21 – this is no change from the original permit language). "Good faith discussions" about water supply along Great Road will occur, but no time frame (3.3.8). Five-year progress report is deleted. Also deleted is that providing water on Great Road must be final before the building permit is issued.

Appeal Count 122: "The final design for the security fence ... maintains at least a 40-foot setback to all abutting properties..." (good for Quail Ridge). (Note: while no site plan is contained in the materials for the 11/20 hearing, Board Selectwoman Chair Adachi confirms that the site plan remains unchanged from the plan approved with the original permit.). However, deleted is the express language to build a shorter fence based on discussions with abutters."

No Count, but change

Deleted any requirement to provide a foot trail from Breezy Point to Acton's conservation land (3.2.4). Concord can deny pathways through their land (3.9). Also deleted the requirement to include abutters from Quail Ridge, Acorn Park and Breezy Point in any conversations with town staff regarding a pathway through Concord's property. Also, Concord only needs to report annually on fence maintenance for 3 years (3.3.5.2), but town staff can investigate the fence in perpetuity.

Counts 130-144: Allowing Archaeological Investigations into the exposed bottom of Nagog Pond exceeded Acton's authority.

Specifies that the state found no likelihood of underwater archaeological resources, but if Concord finds anything they must address it (2.18 - NEW). In the archaeological study, Acton can only observe ("inspect" is deleted) (3.3.4.2). Concord's archaeological consultant will only visit the site monthly, and deleted is the provision that archaeological organizations in Acton can view the pipe placement activities daily (3.3.4.5). It is now Concord's Resident Inspector who will directly observe intake pipe replacement work that could result in exposed archaeological resources. Also, expressly deleted is Acton's Friends of Pine Hawk as having any authority at the site.

Counts 145-148: Limiting chemical delivery times is a violation.

Stays the same (3.3.6). However, it deletes the "teeth" that allow the Selectmen to impose additional limitations if there are violations.

Counts 149-153: Road inspections/repairs during construction “will impose significant costs and burdens on Concord.”

OTHER:

Permit Findings are unchallenged

Bald Eagle habitat (new since nesting eagles discovered recently)

Construction Times

Concord is only responsible for damage to roadways (the requirement to repair “associated infrastructure” IS DELETED – impacts Acorn Park)

Sections 2.23-2.27: No change from original permit:

The Board of Selectmen finds Concord’s project:

- (1) is consistent with the Master Plan (10.3.5.1 & 10.4.5.1)
- (2) Is in harmony with the purpose and intent of this Bylaw (10.3.5.2)
- (3) WILL NOT BE DETRIMENTAL OR INJURIOUS TO THE NEIGHBORHOOD (10.3.5.3)
- (4) Is appropriate for the site (10.3.5.4)
- (5) Protects the neighborhood and town against seriously detrimental or offensive uses of the site (1.4.5.2)
- (6) Provides for convenient and safe vehicular and pedestrian movement (10.4.5.3)

Concord “shall undertake reasonable efforts to avoid Disturbance” of nesting bald eagles (8). Page 6 of Concord’s 10/26 letter to Janet Adachi (included with materials for 11/20 hearing) states that “Concord is confident that the proposed work for the WTP will not have a detrimental impact on the eagles.

Unchanged – Monday through Friday 7 a.m. to 5 p.m., Saturday 8 a.m. – 5 p.m.

Health Director

There is no longer an obligation to comply with Health Director requirements (3.3.16)