

NATURAL RESOURCES COMMISSION
Meeting Minutes
June 28, 2023

Pursuant to the notice filed with the Town Clerk, a public meeting of the Natural Resources Commission was held on Wednesday, June 28, 2023 at 7:00 p.m., at 141 Keyes Road, First Floor Conference Room. The following Commissioners were present: Ed Nardi, Chair, Nick Pappas, Gary Kleiman, and Bill Kemeza. Dr. Grimwood was absent. Assistant Natural Resources Director Bert Comins and Natural Resources Administrative Assistant Karen Bockoven were also present.

APPROVE MEETING MINUTES <ul style="list-style-type: none">• March 15, 2023 (Regular and Executive Session)• April 5, 2023 (Regular and Executive Session)
COMMISSIONER COMMENTS
DIRECTOR'S UPDATE
NEW APPLICATION (TO BE HEARD ON JULY 19, 2023) <ul style="list-style-type: none">• COOKE, 88 Hugh Cargill Road, NOI
CONTINUANCES <ul style="list-style-type: none">• NATALIE & OLSEN, 54 Laws Brook Road, NOI• LABADINI, 154 Southfield Road, NOI• WHITNEY, 178 Heaths Bridge Road, NOI• THE DARTMOUTH GROUP, 1024 Main Street, NOI
NEW APPLICATIONS <ul style="list-style-type: none">• KROL, 36 Laws Brook Road, RDA• GOULET & LINNIK, 311 Garfield Road, RDA• BUSHNELL CONSTRUCTION, 76 Bruce Road, NOI• 166 COMMONWEALTH AVENUE CONCORD, LLC, 166 Commonwealth Avenue, NOI• MASSACHUSETTS DEPARTMENT OF CONSERVATION AND RECREATION, 90B Walden Street, NOI
CERTIFICATE OF COMPLIANCE <ul style="list-style-type: none">• HOLY FAMILY PARISH, 70 Monument Square
OTHER BUSINESS <ul style="list-style-type: none">• Warner's Pond Dam Removal Preliminary Design – Scope of Work Review
ADMINISTRATIVE APPROVALS <ul style="list-style-type: none">• TOWN OF CONCORD, 1A Warner Street, Tree Removal• TOWN OF CONCORD, 6B Lowell Road, Tree Removal• CLCT, 115X Lowell Road (Newbury Field), Invasives Removal

Mr. Nardi called the meeting to order at 7:00 p.m.

APPROVE MEETING MINUTES

Mr. Kemeza moved to approve the March 15, 2023 (Regular Session) NRC meeting minutes, as written. Mr. Kleiman seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

Mr. Kemeza moved to approve the March 15, 2023 (Executive Session) NRC meeting minutes, as amended. Mr. Kleiman seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

The April 5, 2023 (Regular and Executive Session) minutes were tabled to the July 19, 2023 NRC meeting.

COMMISSIONER COMMENTS

None.

ASSISTANT DIRECTOR'S UPDATE

- Mr. Comins informed the Commission that the community meeting for the Assabet River Bluff property was held on June 13, 2023, at the Harvey Wheeler Community Center. Approximately 30 people attended. Parking locations were a significant topic of discussion. Mr. Comins said that currently the closest public and handicap accessible parking is about ¼ mile away and it would be helpful to have handicap accessible parking closer to the all-persons trail.

NEW APPLICATION (to be heard on July 19, 2023)

Notice of Intent, Cooke, 88 Hugh Cargill Road, DEP File #137-1645

At the request of the Applicant, Mr. Kleiman moved to continue the hearing to July 19, 2023. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

CONTINUANCES

Notice of Intent, Natalie & Olsen, 54 Laws Brook Road, DEP File #137-1640

Dan Wells of LEC Environmental attended tonight's meeting. Mr. Wells said at the previous NRC meeting, the Commission had requested plant diversity. Therefore, some of the proposed highbush blueberries have been replaced with winterberry and sweet pepperbush. The homeowners have agreed to remove the fencing on both sides of the property from the 25-foot NDZ. An operation and maintenance plan for the permeable pavers has been noted on the plan.

There were no public comments.

Mr. Kleiman moved to close the hearing and issue an Order of Conditions for DEP File #137-1640 with Findings A and B, Standard Conditions 1-20, and Special Conditions 21-53. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

Notice of Intent, Labadini, 154 Southfield Road, DEP File #137-1641

Homeowners Kevin and Tina Labadini and Seth Donohue of Dillis & Roy Civil Design Group attended tonight's meeting. Mr. Donohue said the homeowners have agreed to remove a portion of the existing patio that was constructed without approval. They are proposing 1,660 sf of mitigation where there is currently lawn within 25-foot NDZ. Mr. Nardi said he appreciates that a portion of the patio will be removed. However, if the patio, fireplace, or sitting wall were presented for NRC approval previously, the Commission would not have allowed it. Mr. Donohue said the homeowners are providing generous

mitigation. Mr. Nardi said the NRC needs to be mindful of a precedent being set, this is not a trade-off issue but a policy issue. Mr. Kemeza and Mr. Kleiman agreed. Mr. Labadini said he did not think the Commission discussed structures last time. Mr. Donohue said the prior approval allowed structures 43 feet from the wetlands. Mr. Donahue said the homeowners are proposing improvements to a restrained area with mitigation and these items would not have been an issue if the homeowners were not applying for a building permit for a new addition. Ms. Labadini said they did not know a patio, fireplace, or wall were considered structures.

Mr. Kemeza said the NRC would be okay with a permeable patio but not the other structures. Mr. Kleiman said the NRC is referring to anything within 50-foot NBZ. He said allowing structures to remain in the 50-foot NBZ would be inviting people to ask for forgiveness rather than to allow it to remain as an unpermitted structure. He said he does appreciate the significant amount of mitigation that the homeowners are proposing.

Mr. Labadini did not understand why the NRC would not want them to replace grass near the wetland with native plantings. Ms. Labadini was confused as to why a fireplace and wall were not allowed as compared to large homes being constructed.

Mr. Nardi said he appreciated the homeowners' perspective, however, if they had requested permission previously to construct a patio, fireplace, and wall in the NBZ it would have been denied. Perhaps a permeable patio would have been allowed. Mr. Donohue will discuss this with Mr. and Mrs. Labadini to find out how they would like to proceed.

The Applicant agreed to continue the hearing to July 19, 2023 to allow additional information to be provided.

Notice of Intent, Whitney, 178 Heaths Bridge Road, DEP File #137-1642

Ted Doucette of Doucette Engineering attended tonight's meeting. Mr. Doucette said they have submitted revised plans. Mitigation has been provided, the septic system has been moved further away from the 25-foot NDZ, and the access route for construction vehicles has been noted on the plan. A waiver request for work within the 25-foot NDZ has been submitted.

There were no public comments.

Mr. Kemeza moved to close the hearing and issue an Order of Conditions for DEP File #137-1642 with Findings A and B, Standard Conditions 1-20, and Special Conditions 21-52. Mr. Kleiman seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

Notice of Intent, The Dartmouth Group, 1024 Main Street, DEP File #137-1634

Sonja Kreh of The Dartmouth Group and Dominic Meringolo of SOLitude Lake Management attended tonight's meeting. Mr. Meringolo said an addendum to the NOI to address questions/comments from the last NRC meeting has been submitted. One concern was making sure to minimize outflow from the Concord Greene ponds to the Assabet River following treatment. Treatment will not occur when a significant rain event is forecasted within 72 hours or immediately after a rain event. For any treatments they will try to slow down any natural outflow from the ponds by placing six-inch boards in the outlets of the upper and lower ponds. The middle pond does not have an outlet structure that would allow another board to be put in. The boards in the upper and lower ponds will help minimize any outflow of the products that would be used. They would also not conduct a treatment within 50 feet of the outlet of the

lower pond that discharges to the river. Mr. Meringolo said fertilizers are not applied within 50 feet of the pond and the products that are applied do not contain any phosphorous. Mr. Nardi said there may be opportunities around the pond to not mow so close and asked that the Applicant take a closer look at that. Mr. Meringolo said he will discuss with the property manager. He informed the Commission that catch basins are cleaned annually. Also, an arborist is hired every year to manually remove invasive plants. Mr. Meringolo said during the permitting process for their first permit, they said the ponds would all be tested for water quality twice a year. Testing would be done once at the beginning of the season and once at the end of the season. They also proposed to conduct stormwater sampling every year. He said they will test a different outfall every year and a map of the outfall locations has been provided in their addendum. They will also do a one-time sediment sampling from each pond to see what the nutrient content of the sediments in the ponds to help them determine if nutrients are coming from stormwater or the ponds.

Mr. Nardi said that staff recommends all outlets with five or more catch basins contributing to the outlet to the pond be sampled twice annually. Mr. Meringolo said they can incorporate into their program. He said they will try to do within the first hour of a storm.

Mr. Comins requested that a note be shown on the plan to determine how information will get reported. The previous project file does not have all the reports. Mr. Meringolo will provide any missing reports.

Mr. Comins requested that the “no mow” areas be noted on the plan. Mr. Meringolo will provide that information.

Mr. Kemeza asked if there was a management plan for the no mow zones. Mr. Comins said if planting is proposed in those zones, a planting plan should be submitted.

Mr. Kleiman said if Concord Greene is already implementing an invasives management plan, perhaps an addendum to the plan could be provided. Mr. Meringolo said he is not sure if there is a management plan.

Ms. Kreh said they pay their arborist \$5,000 a year to hand pull invasives around the ponds. She said a few years ago they did extensive tree replacement in conjunction with a previously approved project. There is no plan currently to put in anymore plantings around the ponds.

Mr. Nardi requested an update to the plan which could include a simple paragraph stating that no foliar spraying or chemicals will be used close to the water. Ms. Kreh said she will ask her arborist to write something up.

Mr. Nardi said the five catch basin outlets should be checked twice annually.

There were no public comments.

The Applicant agreed to continue the hearing to July 19, 2023 to allow additional information to be provided.

NEW APPLICATIONS

Request for Determination of Applicability, Krol, 36 Laws Brook Road, RDA File #23-8

Homeowner Melissa Krol attended tonight’s meeting. She explained that she is seeking approval to replace an old shed with a smaller shed. The Commission did not have any questions or concerns.

There were no public comments.

Mr. Kemeza moved to issue a Negative Determination of Applicability #3. Mr. Kleiman seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

Request for Determination of Applicability, Goulet & Linnik, 311 Garfield Road, RDA File #23-9

Rich Kirby and Nicole Ferrara of LEC Environmental, Timothy Lee of Timothy Lee Landscape Design, and Anthony Frausto of Morehouse McDonald and Associates attended tonight's meeting. Mr. Kirby said the homeowners are requesting approval to partially demolish an old pump house and install an access road for construction vehicles. The goal is to turn the pump house into a studio. He explained to get access to the pump house they need a temporary access roadway (10 feet wide) which will be just outside the 25-foot NDZ where there is currently lawn. They will use compacted wood chips over Geotech fabric and swamp mats will be used for the first section of the road to provide additional stabilization where the grade changes off the driveway. A portion of the access roadway has gone fallow over the years with a handful of saplings growing (eastern white pines). They have provided tree protection for some of the larger pines. A waiver request for work within the 50-foot NBZ has been submitted. They will be filing a Notice of Intent application when plans are finalized for the construction of the new studio, native plantings, grading, and invasive species management within the scrub shrub wetland which currently has a fair amount of porcelain-berry.

Mr. Kleiman asked what the fate of the scrub shrub wetland around the pump house will be when the studio is constructed, and if there will be a path created to access the new studio. Mr. Kirby replied that construction of a path is still to be determined. He said ideally, they will reconstruct in the same footprint on the same foundation. The scrub shrub swamp mostly contains porcelain-berry. Mr. Kirby explained that it is more of a meadow dominated by goldenrods fern and sensitive fern. They will be proposing an annual mow to keep out the porcelain-berry and other woody invasives. On the north side of the pump there is an existing septic leaching field. They are looking to convert that area to lawn so the homeowners have a play area for their children.

Mr. Pappas asked what would happen to the construction access road after the demolition work is completed. Mr. Kirby replied that they will probably remove the wood chips. He said there is an easement on the property for utility lines and the utility company needs the roadway to be maintained so they can have access to the poles when necessary. Mr. Kirby said when they do file a Notice of Intent application, they will be requesting approval to move the utility lines underground. Mr. Pappas asked if the Commission was okay with the wood chips remaining for the road so it can be used for the second phase of the project. Mr. Kirby said there will be fabric under the wood chips and the wood chips are temporary for the duration of the project. Mr. Kirby said if the second phase of the project does not move forward, the wood chips will be removed and the road that was previously lawn will be restored. Mr. Comins said a condition can be added to the permit requiring wood chips and swamp mats to be removed within six months of the issuance of the Determination unless an Order of Conditions is issued allowing this roadway to remain in place for an additional period of time. Mr. Frausto said they have been on site several times with the CMLP, the contractor, and Mr. Lee. The electrical poles have been there for a very long time. The access path to service the poles is not an actual easement but has been there and used for many years. The owners of the property have tried to investigate multiple ways to reconfigure the electrical lines to take some of the poles off the property. The poles would have to be relocated and would require neighbor input.

There were no public comments.

Mr. Kleiman moved to issue a Negative Determination of Applicability #3. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

Notice of Intent, Bushnell Construction, 76 Bruce Road, DEP File #137-1646

Mike Bushnell of Bushnell Construction, Rich Harrington of Harrington Associates, and Dave Fisher of Fisher Design Group attended tonight's meeting. Mr. Harrington said the existing septic system is in the backyard and within the 100-foot BZ. The new system will be installed in the front yard outside the 100-foot BZ. The new house will be 69 feet away from the edge of the wetlands. Mr. Harrington said that staff informed them that they needed additional mitigation (213 sf) and that nine shrubs have been added to a revised plan emailed to staff this afternoon. Mr. Harrington said a portion of the driveway will also be within the BZ. All the roof leaders that are currently in the BZ will be relocated to the front of the property and will be recharged outside the BZ. Stockpiling will be outside the 100-foot BZ. Mr. Comins said he has not had the opportunity to review the revised plan.

Mr. Nardi requested a waiver be submitted for work within the 25-foot NDZ. Mr. Harrington will provide. Mr. Nardi also requested that old fencing within the 25-foot NDZ be removed. Mr. Harrington replied that change was made and is noted on the revised plan submitted today.

There were no public comments.

The Applicant agreed to continue the hearing to July 19, 2023 to allow additional information to be provided.

Notice of Intent, 166 Commonwealth Avenue Concord LLC, 166 Commonwealth Avenue, DEP File #137-1643

Applicant Anthony Gagliardi, Property Owner Joseph Soberg, John Rockwood of EcoTec, Oliver Guzman of Spruhan Engineering, PC, Jen Kettell of Radiant Leaf Consulting, and Steve Cosmos of Cosmos Associates attended tonight's meeting.

Mr. Nardi said the Applicant first needs to review their project with the Planning Board. He requested this evening that the NRC be presented only with a broad overview of the project.

Mr. Rockwood said the existing site is almost entirely paved with a gas station and pumps with a canopy and the project involves completely redeveloping the site. The property will be redeveloped as a mixed-use residential building, with associated parking and a large stormwater infiltration system to address roof and parking lot runoff. Part of the project includes connecting a bike path to an existing walking path. Stormwater sheet flows across the site and either infiltrates into a thin strip or goes over the wall into Nashoba Brook. He noted that there are a few trees along the retaining wall. The gas station and all the amenities associated with the gas station will be removed, permits will be obtained for excavating the tanks and soil samples will be tested. He informed the NRC that landscaping includes 22 saplings, 111 shrubs, and 209 herbs and forbs. At the northern part of the property there are five Norway maple trees that will be removed. In addition, there is one American elm tree that is dead which will be cut, leaving a 15-foot snag for wildlife habitat.

Mr. Pappas asked what the surface of the walking path would consist of. Mr. Rockwood replied that bituminous pavement is being proposed. He noted that the path on the adjacent property is paved. Mr. Nardi suggested installing a permeable surface. Mr. Rockwood agreed.

Mr. Nardi asked if the site was still sloping towards the brook, so the runoff collects in the limited landscaped area before it flows over into the brook. Mr. Rockwell explained that this portion of the site is within the 100-year floodplain so they cannot do any grading. The roof and pavement runoff goes to a stormwater system at the southern end of the site. There is only a small portion of the site that still flows towards the brook. He said they are providing extra flood storage on the site (approximately 115 cubic feet) and some fill in the floodplain is needed. A waiver request for work within the 25-foot NDZ has been submitted. Mr. Nardi noted that the permeable pavers may address the issue of infiltration.

Mr. Kleiman asked if the new building would be closer to the wetland. Mr. Rockwood replied yes but what is existing is pavement. Mr. Comins said currently the entire site is impervious.

There were no public comments.

The Applicant agreed to continue the hearing to August 9, 2023 so they can meet with the Planning Board prior to the Natural Resources Commissions full review of the project

Notice of Intent, Massachusetts Department of Conservation and Recreation, 90B Walden Street, DEP File #137-1644

Carl Nielsen of TRC Companies and Jim Straub of Mass. DCR attended tonight's meeting. Mr. Nielsen said the Applicant is looking to improve the existing facility. The goal is to improve stormwater conditions on the site. Erosion is a problem and they want to stop nutrients and sediment from going into Walden Pond. A secondary goal is to update the boat launch and parking area, so it is ADA compliant. Mr. Nielsen said only a small piece of their project is in Concord (mostly the ramp). The remainder of the project is in Lincoln. They just finished their meeting with the Lincoln Conservation Commission a few minutes ago.

Mr. Nardi asked how far the precast planks would go into the water. Mr. Straub said about 20 feet. The ramp has been successful in Massachusetts and is approved by the state. Mr. Nielsen said the planks are essentially the same footprint as the current ramp. Mr. Kemeza said he usually sees boats on racks on top of cars here and asked if trailers were commonly used. Mr. Straub said there are many people who trout fish and haul their boats on trailers. He also said the state is mandated to provide ADA access. Their new parking area will provide two ADA compliant trailer parking spots.

There were no public comments.

Mr. Nardi said that staff will connect with Lincoln staff to make sure everything is coordinated.

The Applicant agreed to continue the hearing to July 19, 2023 to allow additional information to be provided.

CERTIFICATE OF COMPLIANCE

Holy Family Parish, 70 Monument Square, DEP File #137-1456

Mr. Kleiman moved to issue a Certificate of Compliance for DEP File #137-1456. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

OTHER BUSINESS

Warner's Pond Dam Removal Preliminary Design – Scope of Work

Mr. Nardi said the write-up for the scope of work was thorough. He mentioned the proposed Talbot's Mill dam removal in Billerica, and he believes it would be a good idea for the NRC to stay informed about that project. He noted under Task 5 of the report (Recreational Opportunities and Amenities) if dam removal moves forward, and the pond does shrink, including activities and recreational opportunities in the scope of work is good. Other item listed under Task 5 (larger pool could be retained and expanded via dredging). Could that be done and divert the river behind Scout Island. Mr. Nardi noted that for Task 6 renderings of models are very helpful. Also, under Task 6 (Cost Estimate) it is important that grant approval is considered, and that the chosen consultant provide an estimate of the low and high range of potential grant funding.

Mr. Kleiman noted that in the introduction it refers to the division as seeking to advance the dam removal alternative and address public feedback and acknowledged that addressing public feedback is an important goal of the scope of work. Mr. Kleiman noted under Task 5 - (Evaluate Recreational Opportunities and Amenities) that the scope of work includes evaluation of trails and boardwalks to be included on town land and that there are other access considerations that should also be evaluated, for example, access to BFRT. He noted under Task 5 (Address Public Comments on Alternatives Analysis Report) that people did ask if a larger pond could be retained or expanded along the northwestern boundary of Warner's Pond under both the dam removal scenario or under a non-dam removal scenario (side channel pond). Mr. Kleiman said to effectively address public feedback, questions about the feasibility of a larger ponded area and side channel pond will need to be answered. Mr. Kemeza agreed. Mr. Kleiman suggested the RFP include a request for qualifications that encouraged those with side channel pond experience to submit a bid.

Mr. Pappas noted there were two sections labeled Task 5. Mr. Comins will correct.

Paul Denaro of 189 Commonwealth Avenue said he was pleased that the NRC was seeking public comment regarding the dam removal. He said that at another meeting the topic of fish ladder was discussed. Mr. Kleiman said the idea of the fish ladder in association with the idea of a side channel pond was brought up. Mr. Denaro informed the NRC that he spoke with the Town Manager's office in Billerica this morning who explained that the Talbot Mills dam is not being torn down because it affects the town's water supply.

Anna Feldweg of 343 Commonwealth Ave. was relieved to hear that more investigation will be happening. She thought the Warner's Pond issue came to the NRC initially because people wanted help cleaning up the pond. She believes the Recreation Department should be equally involved. Mr. Nardi said that the Recreation Director has been present at all the community meetings. Mr. Comins confirmed that the Recreation Department has been involved. He explained that what is being discussed now is the scope of work. Ms. Feldweg asked if the Recreation Department had opinions about the different recreational options. Mr. Nardi confirmed that they will continue to be fully involved going forward. Ms. Feldweg asked if the public had a way of following along. Mr. Nardi said that everything is public record. Ms. Feldweg asked how the public would find the information. Mr. Comins said information will be listed on the Town's website.

Mr. Kleiman commented that the NRC reviews anything relating to their jurisdiction ie. wetlands. The same would be true for anything under the jurisdiction of the Recreation Commission.

Administrative Approvals:

- **Town of Concord, 1A Warner Street, Tree Removal**
Mr. Comins requested approval for a small tree on the property. A snag will remain. Approval was granted.
- **Town of Concord, 6B Lowell Road, Tree Removal**
Mr. Comins requested approval for a Norway maple. A snag will remain. Approval was granted.
- **CLCT, 115X Lowell Road (Newbury Field), Invasives Removal**
Mr. Comins said that Director Kaye has reviewed. There are no issues. Approval was granted.

At 8:58 pm, with no further presentations or public comment, the Chair adjourned the meeting.

Respectfully submitted,

Karen Bockoven
Administrative Assistant

A video of the meeting can be seen by clicking this link or entering it into a web browser:

https://www.youtube.com/watch?v=0PqFoCnxjNw&list=PL1TTzrWEKOOmVv84OJSDa6rdv9_Uu7NrN&index=1