

NATURAL RESOURCES COMMISSION
Meeting Minutes
July 19, 2023

Pursuant to the notice filed with the Town Clerk, a public meeting of the Natural Resources Commission was held on Wednesday, July 19, 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. Commissioner Grimwood was absent. Natural Resources Director Delia Kaye, 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"> • April 5, 2023 (Regular and Executive Session)
COMMISSIONER COMMENTS
DIRECTOR’S UPDATE
TO BE CONTINUED WITHOUT DISCUSSION TO AUGUST 9, 2023
<ul style="list-style-type: none"> • LABADINI, 154 Southfield Road, NOI • THE DARTMOUTH GROUP, 1024 Main Street, NOI
OTHER BUSINESS
<ul style="list-style-type: none"> • Windmill – 2022 Blanding’s Turtle Report and Request for Funding
CONTINUANCES
<ul style="list-style-type: none"> • MASSACHUSETTS DEPARTMENT OF CONSERVATION AND RECREATION, 90B Walden Street, NOI
NEW APPLICATIONS
<ul style="list-style-type: none"> • COOKE, 88 Hugh Cargill Road, NOI
CLOSE and ISSUE
<ul style="list-style-type: none"> • BUSHNELL CONTRUCTION, 76 Bruce Road
EMERGENCY CERTIFICATION
<ul style="list-style-type: none"> • MIDDLESEX SCHOOL, 1400 Lowell Road, Beaver Dam Maintenance
CERTIFICATES OF COMPLIANCE
<ul style="list-style-type: none"> • ANNURSNAC HILL ASSOCIATION, off College Road
OTHER BUSINESS (continued)
<ul style="list-style-type: none"> • Hosmer Meadow Conservation Restrictions Acceptance, 24 and 38 McCallar Lane • 649/657 Sudbury Road, Vote to Release Temporary Easement
ADMINISTRATIVE APPROVALS
<ul style="list-style-type: none"> • FENNEY, 25 Spencer Brook Road, Tree Removal • LI, 228 Hunters Ridge Road, Tree Removal • TOWN OF CONCORD, 20A Border Road, Tree Removal

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

APPROVE MEETING MINUTES

Mr. Kemeza moved to approve the April 5, 2023 NRC meeting minutes (Regular Session), as amended. 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 April 5, 2023 NRC meeting minutes (Executive Session), as amended. Mr. Kleiman seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

COMMISSIONER COMMENTS

Mr. Pappas informed the NRC that the *Concord Bridge* ran an article about cyanobacteria and pollen at White Pond. The study compared White Pond to Walden Pond and Mr. Pappas said it is inaccurate to compare these two ponds since Walden Pond, unlike White Pond, does not have any houses surrounding it with associated septic systems. Mr. Pappas asked Ms. Kaye if she could check into this matter before it goes too far. Ms. Kaye said that Higgins Environmental is collecting samples at White Pond where there is a high nutrient content. Mr. Pappas would like to make sure that what they are comparing is equal. Ms. Kaye agreed.

DIRECTOR'S UPDATE

- The RFP for the preliminary design to remove the Warner's Pond Dam was issued on July 17th with bids due August 9th. Mr. Nardi, Ms. Kaye, Mr. Comins, Paul Boehm (Recreation Commission) and Steve Dookran (Town Engineer) are on the review panel. Ms. Kaye said they anticipate having someone on board in September and work will include responses to public comments and further community outreach. The goal is to have this completed by March, in advance of Town Meeting. The Talbot Mill dam owner received \$800,000 towards removal of the dam. The Department of Ecological Restoration lists this as a priority project. Billerica does not have complete buy-in from the town to remove the privately owned dam because of concern from some Town officials on the effect to Billerica's public water supply. They have filed an expanded ENF for state review. Mr. Nardi asked if all dam removal projects go through the MEPA process. Ms. Kaye replied any restoration greater than one acre requires MEPA review.
- OARS has requested whether the Commission would like to submit a letter of support for the Talbot Mills Dam Removal project, which is currently under MEPA review. After discussion, the Commission decided against submitting a letter because they don't have enough information about the project and do not want to appear to have an agenda regarding dam removal.
- Ms. Kaye said the permit for construction of Concord Market at Millbrook Tarry has expired. Compensatory flood storage was not constructed, and landscaping was not finished. Ms. Kaye has had several conversations with the owner about completing these items and he has indicated that he does not plan to do so. The owner will need to file a new Notice of Intent application to complete the flood storage requirements and landscaping that was approved under the prior plan or propose something that will meet with the NRC's satisfaction.

TO BE CONTINUED TO AUGUST 9, 2023

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

At the request of the Applicant, Mr. Kleiman moved to continue the hearing to August 9, 2023. Mr. Kemeza 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

At the request of the Applicant, Mr. Kleiman moved to continue the hearing to August 9, 2023. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

OTHER BUSINESS

Windmill - 2022 Blanding's Turtle Report and Request for Funding

Bryan Windmill of 65 Arrowhead Road and Zoo New England's Grassroots Wildlife Conservation attended tonight's meeting. Mr. Windmill thanked the NRC for their continued support in funding their research. The project continues to be successful. He said they continue to trap Blanding's turtles to assess the population size and demographics. Most of the funding pays for staff to go out every evening in June and radio track females to see where they are nesting so the nests can be protected. Mr. Windmill said in 2022 they were able to protect 13 nests. This year they will protect 14 nests. Mr. Windmill noted that most of the nests are outside Great Meadows National Wildlife Refuge property. There are a few nests on Peter Spring field. Six hundred and 16 headstarted turtles were released this year, half of which are still alive. They estimate approximately 300 larger juvenile Blanding's turtles are alive now as compared to 54 in 2004. This year they trapped 25 turtles on the first night. They continue to work with the US Fish & Wildlife Service on habitat enhancement by planting buttonbush shrubs in the impoundments. Over time, the plants will provide good cover habitat. FWS had been draining the impoundments which did not help the Blanding's turtles or other wildlife, but that practice stopped a few years ago. Mr. Windmill said that turtles are more exposed to predators during drought conditions.

Mr. Kleiman asked if there was a healthy turtle population. Mr. Windmill replied that it was difficult to know when the males are mature. They know when females are mature because they lay eggs (approximately 20 years of age). He said their original goal was to have an adult population of at least 200 turtles. They believe that by 2025 they will be able to scale down and eliminate the headstarting program and then they will focus their efforts on nest protection. He said there have been some Blanding's turtles in the wetlands (former heronry) on the Sudbury/Concord line. Mr. Kleiman suggested getting the school kids involved with nest protection or other activities when the headstarting program ends.

Mr. Windmill informed the Commission that there is one small population of wood turtles entirely within Concord along the section of Elm Brook that runs through the land at the Hanscom Air Force Base. Many turtles died in 2016 because of the drought. He said that three of the females they were radio tracking that year were killed. In recent years, they have been tracking one male. They have seen one juvenile. Mr. Windmill said the hangar expansion being considered at Hanscom is far away from where the wood turtles are. There is still a very small population in Acton along Fort Pond Brook just before the confluence with Nashoba Brook. Last year, with the state's permission, they translocated some headstarted young wood turtles from a population along the upper Charles River over to this site. They have at least one adult male which they are radio tracking. They also know from a picture from 2009 that a female was nesting on Acton Water Department land. They released some juveniles there last year. This year some of the turtles have dispersed up Nashoba Brook and around Warner's Pond. Mr. Windmill said this is good information in conjunction with the discussion regarding the Warner's Pond dam removal. He noted that removing the dam would create additional habitat that wood turtles would likely use.

Mr. Windmill requested \$3,000 for Blanding's turtles work and \$300 for radio transmitters for wood turtles. Mr. Kleiman said if there is a stable population of Blanding's turtles in a few years then maybe shift resources towards wood turtle efforts. Mr. Windmill said they have found that predators are a big factor affecting wood turtle populations in northeastern Massachusetts. They are trying to learn how the

predators are finding the wood turtles. Their plan is to install high quality 3D printed fake wood turtles and tubes with scent to attract predators. They will also have real wood turtles, secured cages, to attract predators and film with cameras any activity. Mr. Windmiller said some people believe the solution is killing the predators which isn't something that they are considering. They may consider the tactic of using chili pepper oil to deter predators. Mr. Windmiller said wood turtles were once abundant in Concord.

Mr. Kemeza moved to authorize the expenditure of \$3,300 from the wetlands account to be used for Blanding's turtle and wood turtle research and protection. Mr. Kleiman seconded. All so voted. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

CONTINUANCES

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

Carl Nielsen of TRC Companies and Vanessa Curran of Mass. DCR attended tonight's meeting. Mr. Nielsen said they have met with the Lincoln Conservation Commission just prior to tonight's meeting in Concord. The Lincoln Conservation Commission approved the work in Lincoln Mr. Nielsen said they received a letter from NHESP requesting that a qualified botanist be hired to evaluate the area of the proposed boat launch for two state-listed plants prior to the start of construction. He said Lincoln Conservation Commission wanted to ensure the 80% survival of trees that are being replanted.

There were no public comments.

Mr. Kemeza moved to close the hearing and issue an Order of Conditions for DEP File #137-1644 with Findings A, B, and C, Standard Conditions 1-20, and Special Conditions 21-51. Mr. Kleiman seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

NEW APPLICATIONS

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

Homeowner Alan Cooke and Mark Warfel of Crowley Cotrell attended tonight's meeting. Mr. Warfel explained that the wetlands were delineated and a survey plan was done by Stamski and McNary. Mr. Warfel said the initial survey plan identified trees greater than five inches dbh. The demolition plan identifies nine trees and three stumps to be removed. The trees are all mature white pines and showing dead wood. Mr. Warfel said the stumps pose a safety risk. Invasive species located with the BZ have been identified and well as the method for removal. He explained that there are not big colonies of invasives species, therefore, they will do a targeted approach. They will try to leave as much of the native vegetation in place. Mr. Warfel said they have identified on the plan the removal of some dead wood snagged in trees or up against some trees. Any disturbed soil will be lightly raked to prepare the area for seeding. They are trying to be mindful of the trees that are remaining (approximately 19-20). Mr. Warfel said they are proposing a native conservation wildlife seed mix. They are also proposing a six-foot high wooden stockade fence with a 6-inch gap at bottom to allow wildlife movement. The fence will run to the edge of the property just outside the 25-foot NDZ. The fence will have a gate for maintenance purposes. They will also leave gaps in the fence to allow people to access the trail that runs through the property.

Mr. Nardi noted that there is a discrepancy with the amount of mitigation needed. Ms. Kaye explained that credit can be given for existing trees. Most of the trees are oak. She requested that mitigation plantings

including existing trees be noted on the plan. She also requested that any additional plantings needed to meet the mitigation requirement be shown on the plan as well.

Mr. Nardi requested that all fencing be relocated outside the 50-foot NBZ. Ms. Kaye said another option is to not having fencing in the BZ – plenty of vegetation which will provide adequate screening.

Mr. Nardi requested that FENO markers be installed to demarcate the 50-foot NBZ. Ms. Kaye noted that an annual mow should only be done in the outer BZ. FENO markers should be placed every 25 feet.

Jeff Adams of 142 Farmers Cliff Road asked how many trees were removed in the BZ. Mr. Cooke replied six trees. He said the stumps are old and are from trees that were cut down before he owned the property. Mr. Adams thanked Mr. Cooke for allowing the neighbors to still have access to the trail. He was, however, concerned about the height of the fence and noted that no one around Mr. Cooke’s property has fencing. Mr. Cooke replied that he understood the concerns of his neighbors and that is why he is putting gaps in the fencing. He explained that the fence will be an olive-green and blend into the environment. Ms. Kaye encouraged Mr. Cooke to continue his conversations about the fencing with his neighbors.

James Tull of 86 Farmers Cliff Road asked Mr. Cooke if he had considered other types of fencing similar to what other people in the area have.

The Applicant agreed to continue the hearing to August 9, 2023 to allow additional information to be provided.

CLOSE AND ISSUE PERMIT

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

Mr. Kleiman moved to close the hearing and issue an Order of Conditions for DEP File #137-1646 with Finding A, Standard Conditions 1-20, and Special Conditions 21-56. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

EMERGENCY CERTIFICATION RATIFICATION

Middlesex School, 1400 Lowell Road, Beaver Dam Maintenance

Mr. Kemeza moved to ratify the Emergency Certification to breach the beaver dam at the Middlesex School, 1400 Lowell Road. Mr. Kleiman seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

CERTIFICATES OF COMPLIANCE

Annursnac Hill Association, off College Road, DEP File #137-638

Mr. Kleiman moved to issue a Certificate of Compliance for DEP File #137-638. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

OTHER BUSINESS (continued)

Hosmer Meadow Conservation Restrictions Acceptance, 24 and 38 McCallar Lane

Rachel Watsky of Watsky Law attended tonight's meeting. Ms. Watsky said that granite bounds with Feno markers have been placed along each of the property boundaries to demarcate the bounds of the CR. Ms. Watsky spoke to Town Counsel and they were satisfied with the edits made. She also spoke with EEA and has received approval letters for the revisions. Each grantor has signed their specific CR.

Ms. Kaye noted that the CR over 24 McCallar Lane covers 1.06 acres, and the CR over 38 McCallar Lane covers 8.58 acres.

There were no public comments.

Mr. Kleiman moved to approve and accept a Conservation Restriction over 1.06 acres of land at 24 McCallar Lane from Keuka Road LLC, granted on June 5, 2023, shown as Conservation Restriction Area on Lot 1 on a plan titled Plan of Land in Concord, Massachusetts, for Keuka Road LLC, last revised June 14, 2023, pursuant to Massachusetts General Laws, Sections 31 through 33 of Chapter 184. Move to recommend approval of this Conservation Restriction to the Concord Select Board. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

Mr. Kleiman moved to approve and accept a Conservation Restriction over 8.58 acres of land at 38 McCallar Lane from Morgan Burks Kettler Irrevocable Trust, granted on June 5, 2023, shown as Conservation Restriction Area on Lot 2 on a plan titled Plan of Land in Concord, Massachusetts, for Keuka Road LLC, last revised June 14, 2023, pursuant to Massachusetts General Laws, Sections 31 through 33 of Chapter 184. Move to recommend approval of this Conservation Restriction to the Concord Select Board. Mr. Kemeza seconded. It was **UNANIMOUSLY VOTED** by roll call vote: Pappas, Aye, Kleiman, Aye, Kemeza, Aye, Nardi, Aye.

649/657 Sudbury Road, Vote to Release Temporary Easement

Ms. Kaye said in the early 2000s, the property owner cut several acres of trees without approval. Some of the tree clearing was done within an existing view easement to obtain a better view of the Sudbury River. An Enforcement Order was issued then the parties entered into a Settlement Agreement. The property owner granted the NRC an Easement allowing them to enter the property to ensure that restoration activities were taking place. As part of the Settlement Agreement, \$75,000 was given to the Town to make sure that restoration occurred. A small amount of restoration was done in the early 2000s. Ms. Kaye said the current owner wants to have the easement released to clear the title of the property. Ms. Kaye said over the past 20 years the clearcut area has grown up, mostly with invasives, but the site is stable. The land adjacent to the formerly cut area is also full of invasives and the money in the escrow account (now amounting to \$85,950) would not effectively manage invasives here but could go towards other conservation projects. Town Counsel and the current homeowner agree that it would be better to put the money towards actual restoration projects that are feasible and achievable.

Mr. Nardi noted that using the money for invasives removal would probably not be money well spent since the abutting properties have so many invasives. A better use may be for Old Calf Pasture restoration activities.

There were no public comments.

Mr. Kemeza moved:

At a duly called public meeting of the Town of Concord Natural Resources Commission (hereinafter, the “Commission”) on July 19, 2023, the Commission voted as follows with regards to a Grant of Easement affecting the property known as 649 Sudbury Road, Concord, Massachusetts (the “Site”) dated April 18, 2002 and recorded with the Middlesex South District Registry of Deeds at Book 35301, Page 75 (the “Grant of Easement”):

- (1) As of the date hereof, the Commission has not filed nor does it intend to file, a Notice of Intent to obtain an Order of Conditions to perform restoration at the Site, as described in the Grant of Easement;
- (2) The Enforcement Order dated March 1, 2002 referenced in the Grant of Easement is no longer necessary;
- (3) The terms of the Settlement Agreement referenced in the Grant of Easement are fully satisfied and no further action by the Commission is contemplated relative to said Agreement;
- (4) The Commission does not intend to use the temporary easement rights established by the Grant of Easement; and
- (5) The Commission does irrevocably relinquish, extinguish, discharge and release all of its right, title and interest in and to the Site as set forth in the Grant of Easement, to the extent permissible by law.

Administrative Approvals:

- **Fenney, 25 Spencer Brook Road, Tree Removal**
Mr. Comins said the homeowner would like to remove four large white pines in the outer BZ which are not in good health. The stumps will remain. 1:1 replacement of trees will be done. Approval was granted.
- **Li, 228 Hunters Ridge Road, Tree Removal**
Mr. Comins said the homeowner would like to remove one very large white pine, one Norway maple, and another dead white pine which has already fallen. A 12-foot snag will be left. The work is within the outer BZ and Riverfront area. Approval was granted.
- **Town of Concord, 20A Border Road, Tree Removal**
Ms. Kaye said the Town is concerned about three large pine trees falling on the well house. She said the trees are located in the outer BZ and outer Riverfront. Approval was granted.

At 8:26 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=wGQDdORckY&list=PL1TTzrWEKOOmVv84QJSDa6rdv9_Uu7NrN&index=2

