



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

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Secretary

KENNETH L. KIMMELL  
Commissioner

December 11, 2013

John P. Murray, Commissioner  
Department of Conservation & Recreation  
251 Causeway Street, Suite 600  
Boston, MA 02114-2119

RE: WETLANDS/Newton  
DEP File #239-0659  
**Superseding Order of Conditions  
Hammond Pond Access  
Enhancements & Restoration**

Dear Commissioner Murray:

The Northeast Regional Office of the Department of Environmental Protection, Wetlands Program (MassDEP) has completed its review of the above-referenced file in preparation to issuing a Superseding Order of Conditions. Pursuant to the provisions of Massachusetts General Laws, Chapter 131, section 40, MassDEP is issuing the enclosed Superseding Order of Conditions (SOC) allowing the project based upon: 1) information contained in the file to date and plans submitted; 2) information gathered during the on-site inspection; and 3) reasons MassDEP has deemed necessary to protect the statutory interests identified in the Wetlands Protection Act ("the Act").

The proposed project is for the installation of a floating boardwalk, improvements to on-ground pathways, landscape restoration, resource area enhancements, and drainage improvements at Hammond Pond in Newton, Massachusetts. This project is intended to be a living memorial for Michael Rudyak, who spent many hours at Hammond Pond and was an advocate for its restoration.

MassDEP's review of the file and on-site inspections confirm that the project site contains the following Areas Subject to Protection: 1) Bank, 2) Land Under Waterbodies (LUW), 3) Bordering Land Subject to Flooding (BLSF), and 4) Bordering Vegetated Wetlands. In accordance with the Act and its regulations (310 CMR 10.00), these Areas are presumed to protect one or more of the interests identified in the Act and as listed in the attached Order. The project, as proposed, will alter Land Under Water and buffer zone to BVW.

An Abbreviated Notice of Resource Area Delineation was submitted to delineate on-site resource areas in the vicinity of the Hammond Pond in November of 2011, and an Order of Resource Area Delineation was issued by the Newton Conservation Commission on March 5, 2012.

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TDD# 1-866-539-7622 or 1-617-574-6868  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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A Notice of Intent was subsequently submitted in May of 2012. The Conservation Commission issued an Order of Conditions denying the proposed project on October 16, 2012. The Conservation Commission denied the project based on a finding that the proposed work would adversely affect the capacity of Hammond Pond to provide important wildlife habitat functions and because no alternatives analysis was provided. The applicant appealed the denial and MassDEP conducted a site inspection on November 27, 2012. In attendance were the Massachusetts Department of Conservation and Recreation (DCR), its representative, the Newton Conservation Commission, the Chestnut Hill Garden Club, the Chestnut Hill Association, the Friends of Houghton Garden, as well as several interested residents.

Hammond Pond is a 22-acre kettlehole pond within the Charles River watershed; it is also a Great Pond as defined by Massachusetts statute. Its outlet is at the southerly end of the pond where Saw Mill Brook begins at the overflow spillway. During periods of high water, water will overflow into Hammond Brook on the wooded northerly side of the pond. The main portion of the area surrounding the pond is heavily wooded open space; however, approximately 38 percent of the watershed is commercially developed and includes the Chestnut Hill shopping center and parking lots as well as Route 9. The large stormwater contribution has accelerated eutrophication within Hammond Pond which is characterized by excessive aquatic vegetation. The pond itself consists of a mosaic of floating peripheral marsh mat with an interior patchwork of open water, rooted macrophytes, and water lily islands.

The original proposal reviewed by the Newton Conservation Commission consisted of walkways on both land and water. Floating boardwalks were proposed along the southern shore for a length of 835 feet and along the western shore for a length of 537 feet. A land walkway comprised of both stabilized aggregate and boardwalk was proposed for a total of 975 linear feet. This proposal would result in the alteration of approximately 9,960 square feet of LUW.

The regulations at 310 CMR 10.56 provide that projects that alter up to 10 percent or 5,000 square feet (whichever is less) of LUW shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by the procedures established under 310 CMR 10.60. The regulations at 310 CMR 10.53 direct the issuing authority to consider the availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures are provided. An alternatives analysis is also required for projects that need a 401 Water Quality Certification, including those proposals that alter greater than 5,000 square feet of LUW.

Upon consideration of the relevant sections of the Wetlands Protection Act and a review of the project site and proposal, MassDEP concluded that there was neither a clear showing of no adverse effects on wildlife habitat nor a consideration of alternatives that minimized adverse impacts to LUW and wildlife habitat functions. In addition, MassDEP was concerned about potential impacts to the floating marsh mat due to the proximity of construction of the boardwalk to the marsh mat in several locations.

LUW

LIMITED PROT

DEP agreed w/ Con Com, then... approved a revision

The project proposal was subsequently revised to eliminate the boardwalk along the southern edge of the pond and to relocate the western floating walkway so that it would be no closer than eight feet to the floating marsh mat. These revisions reduce LUW impacts by 40 percent of the original proposal to a total of 3,837 square feet of LUW alteration.

In addition to the boardwalk, the proposed project will also include two overlook areas and approximately 520 linear feet of on-land stabilized aggregate walkway. A BVW area of 2,550 square feet will also be constructed by the northern end of the boardwalk and is intended to capture stormwater runoff from the walkways. Native plantings within BLSF and buffer zone are also proposed and include 185 shrub plantings and over 3,500 plugs of herbaceous plantings. There will also be targeted removal of invasive woody species. Lastly, the project includes improved site drainage and slope stabilization.

The floating walkway will be affixed to the pond bottom by helical anchors. The helical pier anchors will be installed either with equipment reaching from the shoreline or by using a hand-held device from a small boat. Installation will not require heavy equipment in the pond. Openings in the walkway pontoon structures will provide for waterfowl access beneath the floating walkway.

It should be noted that the Rudyak family has pledged to fund a maintenance endowment over a ten-year period for the floating walkway and appurtenant structures. DCR will assume maintenance upon completion of construction (see Special Condition #35).

It is MassDEP's conclusion that the proposed project meets all applicable performance standards; furthermore, it is MassDEP's determination that the enclosed Superseding Order of Conditions approving the project as proposed and conditioned serves to protect the statutory interests identified in the Wetlands Protection Act, M.G.L., Chapter 131, section 40. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should you or any concerned party dispute these findings, your attention is directed to the language at the end of the attached Order specifying the rights and procedures for appeal.

Should you have any questions regarding this decision, please contact me at (978) 694-3255.

Very truly yours,

Heidi M. Davis, Acting Section Chief  
NERO Wetlands and Waterways Program

Cc: Newton Conservation Commission, Town Hall, 1000 Commonwealth Avenue, Newton MA 02459

*Now  
permissible  
w/  
mitigation*

Dan Driscoll, Richard Corsi, Department of Conservation and Recreation, 251 Causeway Street, Suite 700, Boston MA 02114

Jason Bobowski, Bioengineering Group, 18 Commercial Street, Salem MA 01970

Chestnut Hill Garden Club, P.O. Box 67422, Chestnut Hill, MA 02467

Carla Benka, 26 Circuit Road, Chestnut Hill, MA 02467

Friends of Houghton Garden, P.O. Box 67155, Chestnut Hill, MA 02467

Gloria Mastrocola Gavris, Chestnut Hill Association, c/o 21 Monadnock Road, Chestnut Hill, MA 02467