

New Hampshire Council on Resources and Development

NH Office of Energy and Planning
107 Pleasant Street, Johnson Hall
Concord, NH 03301
Phone: 603-271-2155
Fax: 603-271-2615



TDD Access: Relay NH
1-800-735-2964

Wild Goose Public Boat Launch Decision **April 9, 2012**

Sources of Authority

RSA 162-C:6 delegates to CORD the responsibility to manage and administer lands acquired by the former Land Conservation Investment Program (LCIP). Specifically, RSA 162-C:6, I requires that “economic growth must be balanced with responsible conservation...”, keeping in mind the “... citizens of the state who intended that the conservation value of these lands be protected in perpetuity.”

Under RSA 162-C:6, II, “[T]he council shall manage and administer the lands acquired and funds established under the land conservation investment program under the former RSA 221-A, according to the provisions of this subdivision and consistent with agreements entered into with the persons with ownership interests in such lands.” Further, “The council shall manage the lands acquired under the former RSA 221-A so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire. The council shall maintain and protect benefits derived from such lands and maintain public access to such lands, where appropriate.”

RSA 221-A, which governed the former LCIP acquisition of land, and which was repealed but incorporated by reference into RSA 162-C, provides that LCIP lands “may include ... recreation lands” and that lands shall be acquired “for the primary purposes of protecting and ensuring benefits from and public access, where appropriate, to natural resource lands of statewide, regional, and local significance.” In addition, RSA 221-A:9, which was repealed but incorporated by reference into RSA 162-C, provided that criteria for acquiring lands included, but was not limited to, “land [that] protects a unique natural or recreational resource” and “land [that] allows for public access, where appropriate.”

In evaluating F&G’s proposal, CORD has taken into account its responsibilities under RSA 162-C, including the incorporated references to the language of RSA 221-A, as well as the language of the deed. For the purposes of its evaluation, CORD has attempted to balance the

conservation purposes and the recreational needs for this property in making its decision. See February 8, 2012 Notice of Decision from Merrimack County Superior Court.

Memorandum on CORD Authority

On April 2, 2012, the Town of Newbury and the LSPA submitted a document entitled “Memorandum on CORD Authority” which alleges that CORD does not have authority to approve the so-called Wild Goose Project. This memorandum conflicts with other documents filed with the Merrimack County Superior Court, with which the Court eventually agreed, wherein both the LSPA and the Town of Newbury alleged that CORD failed in its *duty* to review the Wild Goose Project. CORD agrees with the decision of the Merrimack County Superior Court wherein it states that CORD is charged with balancing the purposes of conservation and recreation including public access on former LCIP lands. The statutory authority for CORD review stems from its management of LCIP lands as stated in RSA 162-C:6.

The Town of Newbury and the LSPA also argue that the project is a type of highway project known as a “limited access facility” requiring a hearing under RSA 162-C:6, IV. CORD has reviewed this argument and determined that RSA 162-C:6, IV and the paragraphs that follow do not apply to this type of project. RSA 162-C:6, IV through VII refer to a situation in which the N.H. Dept. of Transportation (DOT) “condemns” LCIP land for highway purposes as is evident by the provisions requiring a DOT application and compensation from DOT for the land acquired. These paragraphs do not apply to projects proposed by CORD itself or those to whom management of land has been assigned for a project in furtherance of LCIP purposes. Nevertheless, CORD has attempted to provide interested parties with notice and an opportunity to be heard in a manner very similar to that which would be required in a hearing.

Background

The Wild Goose property, a 3.3-acre parcel in Newbury, was acquired by the State of New Hampshire in November 1990 through the Land Conservation Investment Program (LCIP) for the purpose of providing a public boating access location on Lake Sunapee. Lake Sunapee is approximately 4,000 acres in size and is the sixth largest water body in the state. The Wild Goose property has 1,100 linear feet of shoreline frontage, according to the LCIP application for acquisition. The LCIP Board of Directors assigned management responsibilities for the Wild Goose site to the NH Department of Fish and Game (F&G) following acquisition of the property.

Prior to the State’s acquisition, the property had been developed and was historically used as the Wild Goose Lodges and Motel, which at one time included about a dozen waterfront cabins, an eight-room motel, recreation room/assembly hall, manager’s quarters, several waterfront docks, a beach, an access road, and associated paths. Information provided by F&G indicates that the buildings were demolished in the mid 1990s and that the site now contains a mix of old field and forested areas with several stonewalls, rubble piles, a chimney and gravel driveway. The existing gravel driveway covers approximately 7,493 square feet of the site.¹

¹ Gravel is considered an impervious surface under RSA 483-B, the Comprehensive Shoreland Protection Act.

On July 14, 2011, April 2, 2012, and April 9, 2012, the Council on Resources and Development (CORD) held publicly noticed meetings to determine whether the F&G boat launch and parking facility proposal was appropriate for the site under RSA 162-C:6. The April 2 meeting was publicly noticed at least 13 days in advance by posting on the NH Office of Energy and Planning (OEP) website, delivered electronically and by inter-agency messenger to F&G and its attorney, and by U.S. Mail to attorneys representing the Town of Newbury, the Lake Sunapee Protective Association and other interested parties.

July 14, 2011 CORD Meeting

At the July 14, 2011 meeting, F&G, through its counsel, presented a memorandum of law that included information and various documents, affidavits, and reports in support of its proposal. F&G counsel, the Executive Director, and staff also provided additional information about the proposed project, relevant statutes, and described the need for additional trailered public boating access on Lake Sunapee.

The Town of Newbury, through its counsel, presented an informational packet that included various documents and other information in support of its position relative to the intended use of this property, concern about the amount of proposed disturbance, that the proposed facility is too large for the small size of the property, and that the project will impair the natural beauty and natural character of Lake Sunapee. They expressed their desire for F&G to revise its proposal to a Type IV access (Remote Walk-in Facility) as described in the State's Public Access Plan (published in 1991), which they believe is the appropriate level of development for a 3.3 acre site. The Town also expressed its concerns related to public safety, impacts to surrounding homes, road safety, and extra cost to the town.

Similar concerns were raised at the July meeting by the Lake Sunapee Protective Association (LSPA), which also submitted an informational packet. In addition, LSPA raised concerns about the lack of need for additional trailered access, potential for additional contaminants and pollutants entering the lake, lighting, and invasive species, such as milfoil. LSPA indicated that it would support a Type III (Carry-in Launch Facility) or Type IV (Remote Walk-in Facility) for the site.

In addition, CORD received comments from the public, including Sullivan County Sportsmen's Club members Donald Clarke and Howard Dunn and F&G Commissioner Tom Hubert, who expressed a need for public access to the lake for those without lakefront property as well as Representative Steve Winter, who was opposed.

April 2, 2012 CORD Meeting

In consideration of the February 8, 2012 Notice of Decision from Merrimack County Superior Court, CORD decided to hold another meeting on April 2, 2012 to consider the F&G boat launch proposal.

F&G presented detailed project plans, visual renderings of before and after site conditions, and information from its design engineer regarding pervious surfaces, water quality bio-retention, lighting, and mitigating measures for potential aesthetic and viewshed impacts. Staff from the Department of Environmental Services (DES) also provided information regarding DES dredge and fill, shoreland and alteration of terrain permitting requirements, environmental impacts, and the status of various DES permits required for the project. In addition, staff from the Department of Transportation (DOT) answered questions about its role in the permitting of this project.

Counsel for the Town of Newbury, joined by the LSPA, reiterated their concerns for the amount of land area proposed for disturbance, considering the total lot size, and the close proximity of the project impacts to the property boundaries. They submitted a series of photographs depicting leaf-on vegetated conditions of the property. They also joined in a memorandum advocating the need for CORD to conduct a public hearing with respect to limited access highways.

Description of Project

According to information presented to CORD by F&G's legal counsel, engineering consultant, and Executive Director, F&G's public boat access facility proposal includes the following:

- Double boat ramps 12 feet wide connected by a removable central floating dock. The ramp location appears to be in the same general vicinity as the original Wild Goose recreation/assembly hall building.
- Twelve (12) parking spaces for vehicles with car-top boats, one law enforcement parking space, and thirty one (31) spaces for vehicles with boat trailers. Parking is proposed in the central portion of the property.
- A 22-foot wide access road through the site that would accommodate two-way traffic.
- The project will require slightly over 80,000 square feet (approx. 1.84 acres) of total disturbance to the site; 26,000 square feet (approx. 0.6 acres) of the total disturbed area is proposed to be re-vegetated with native landscaping.
- 45,000 square feet (approx. 1.03 acres) of the total disturbed area will become porous paved surfaces (vs. a traditional impervious surface), which are designed to allow rainfall to pass directly through it to a sand filter layer for treatment underneath, rather than discharging directly into the lake.
- Low-impact design features, in addition to the porous pavement, including bio-retention areas to collect and treat stormwater close to the source, rather than in large detention basins.
- Preservation of native vegetation, particularly along the 50-foot shoreline setback, where possible (except for the actual boat ramp itself), supplemented with replanted native vegetation to visually screen the parking area from lake users.
- Safety/security lighting, which is designed to include variable lighting levels and downcast, night-sky friendly fixtures intended to have less visual impact.

- 24 hour free access, which will allow fishermen access to the lake in the early morning or late evening, which is not currently available at the nearby state park beach access point.
- Gates in the winter months to eliminate the need for salt and sand, which can be detrimental to the health of the lake and which will reduce the need for maintenance of the porous pavement.
- Portable toilets, which will not require a septic system.
- Space for an invasive species/exotic weed identification volunteer
- A kiosk to display information about prevention of invasive species, rules and regulations, and other information.

In addition, F&G has represented that the project will not result in impacts to exemplary natural communities or endangered/threatened plants or animals, historic or cultural resources, or to the existing small beach and beach access path that currently exists on the property. CORD understands that F&G has sought and received Department of Environmental Services (DES) Wetlands and Shoreland permits, which have been appealed and upheld (Shoreland permit re-issued) and are now waiting for further potential appeal. In addition, F&G is in the process of preparing a new DES Alteration of Terrain application under that program's new administrative rules, which will propose the same amount of ground disturbance as was presented to CORD.

Deliberations

After careful consideration of the complete record, as maintained by the Office of Energy and Planning, and discussions held at the July 14, 2011², April 2 and April 9, 2012 meetings, CORD finds the following:

We find that the proposed project is within CORD's authority to approve pursuant to RSA 162-C:6 and that the proposed project meets the requirements of RSA 162-C:6.

We further find that the specific project details appropriately balance the goals of conservation and recreation given the size of the project, Lake Sunapee and its environment, the lot characteristics, previous disturbances, impact on aesthetics and the natural environment, as well as the many low-impact design features including, but not limited to, pervious pavement, storm water best management practices, downcast lighting and the use of natural vegetation.

Therefore, we approve the project as proposed by Fish & Game, provided there are no material changes to the project as submitted. Any future material changes must be resubmitted and approved by CORD.

² Three current CORD members or designees were not present at the July 14, 2011 meeting but reviewed the meeting minutes and the materials from that meeting.