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5 December 2025

Jennifer Raitt, Executive Director  
Northern Middlesex Council of Governments  
672 Suffolk Street, Suite 100  
Lowell, Mass. 01854

RE: Billerica Historic Districts Commission Request for Review:  
Appeal of Denial of Application of the Talbot Mills Dam Removal/  
Concord River Ecological Restoration Project

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Dear Ms. Raitt:

This memo responds to your request for a review of the Billerica Historic Districts Commission's denial of an application for removal of the Talbot Mills Dam (a.k.a the Billerica Falls Dam) on the Concord River in Billerica, Mass.

My purview consists of providing an opinion on whether the denial of the application was justified based on local historic district laws and regulations and on the substance of this case from an historic preservation point of view. I have made no assessment of the hydrological, ecological, engineering, permitting, or procedural aspects of the case, including the determination of substantial hardship.

In my opinion, the decision of the Billerica Historic Districts Commission (BHDC) to deny the application for the Talbot Mills Dam Removal is supported by evidence and is consistent with the regulatory authority of the BHDC. The review proceedings appear generally to be appropriate and consistent with the procedures and recommendations outlined by MGL Chapter 40C, the By-Law to Establish the Billerica Historic Districts Commission, and the Review Standards of the BHDC. The BHDC's denial of the application, however, appears to lack case-specific written justification for the decision, which may be required by case law. I recommend that the NMCOG remand the case to the BHDC with a request for a supplemental statement of the Commission's reasons for the denial. Attached is a detailed review of my findings related to this appeal.

Sincerely,



Wendy Frontiero

## **REVIEW OF THE BILLERICA HISTORIC DISTRICTS COMMISSION ACTION TO DENY AN APPLICATION FOR REMOVAL OF THE TALBOT MILLS DAM**

Wendy Frontiero, *Architect and Historic Preservation Consultant*  
On Behalf of the Northern Middlesex Council of Governments  
5 December 2025

The following sources were consulted during this review process:

- National Park Service; U.S. Dept of the Interior. *National Register Bulletin 16A; How to Complete the National Register Registration Form,*” 1991.
- Massachusetts Historical Commission. *Historic Properties Survey Manual; Guidelines for the Identification of Historic and Archaeological Resources in Massachusetts,* 1992; revised 1995.
- National Register (NR) nomination for Middlesex Canal Historic and Archaeological District, (NRDIS 2009).
- National Register nomination for the Billerica Mills Historic District (NR 1983)
- MGL Chapter 40C, Historic Districts, 1960.
- *Ranne P. Warner vs. Lexington Historic Districts Commission,* 64 Mass. App. Ct. 78, October 19, 2004 – July 22, 2005.
- Billerica Historic Districts Study Committee Study Final Report, 1990.
- Town of Billerica, By-Law to Establish Billerica Historic Districts Commission
- Billerica Historic Districts Commission. Review Standards of the Billerica Historic Districts Commission.
- Alec Ingraham. “A Short History of The Milldam at North Billerica 1653-1995.”
- CRT Development Realty. Application for Historic Districts Commission Review, 2024.
- Public Archaeology Laboratory (PAL). *Historic and Archaeological Reconnaissance Survey Report,* 2016.
- Public Archaeology Laboratory, *Redacted Technical Memorandum; Concord River Restoration/Talbot Mills Dam Removal Project,* 2023.
- Letter from the National Oceanic and Atmospheric Administration (NOAA) to Massachusetts Historical Commission (MHC), 18 December 2023, and letter from MHC to NOAA, 8 January 2024.
- Billerica Historic Districts Commission. Meeting minutes, January – June 2025.
- CRT Development Realty. Supplemental Information package, May 2025
- Town of Billerica, John Richard Hucksam (Town Counsel), to Katherine Maglieri, Dept. of Planning and Community Development. “Talbot Dam Response,” 4 June 2025 (e-mail communication).
- Billerica Historic Districts Commission. Denial of the Application for Certificate of Hardship; Talbot Mills Dam Removal, June 2025.
- CRT Development Realty. Appeal of the Talbot Mills Dam Removal Project, July 2025
- Site visit to the dam, mill pond, and adjacent areas on 10 September 2025, accompanied by Jill Griffiths, Gomez and Sullivan Engineers; Susie Bresney, Mass. Division of Ecological Restoration (part of the Mass. Department of Fish and Game); and Matt Brown and Heather Conkerton, OARS 3 Rivers.

## **Site Information and Historic Context**

The property consists of the Talbot Mills Dam, which is identified in the Massachusetts Historical Commission's MACRIS database under the historic name of the Middlesex Canal Dam and Locks, part of MHC's inventory form BIL.900 (1994). In the National Register nomination for the Middlesex Canal Historic and Archaeological District (NR 2009), the dam is identified as Bi-53 and MHC #HA-9, Lock Chamber and Dam. The dam is also situated within the boundaries of the Billerica Mills National Register Historic District (NR 1983) and the Billerica Mills Local Historic District (1992).

Prior to European settlement, Native Americans were attracted to this area by natural falls near the present location of the dam and by a fordway not far to the south. The fordway was one of the few places in the Concord/Merrimack River system that could be crossed on foot or on horseback. Potential Native American sites in the vicinity have been reported but have not been precisely identified or systematically tested.

Constructed in 1828, the Talbot Mills Dam is a prominent component of the Billerica Mills local and National Register districts and of the Middlesex Canal Historic and Archaeological District. The first mill dam was built in this location, above a natural falls, ca. 1708-1710; it supplied power to several small mills and an iron works. A new, wood dam was built in 1798 for the Middlesex Canal Corporation; it was replaced by the present stone dam in 1828. The mill pond created by the Middlesex Canal Dam (a.k.a. Summit Pond) was the primary source of water for the canal, flowing away from the dam in both directions. Other significant and extant engineering features related to the dam include the Floating Towpath Peninsula (1811; Bi-55) at the south side of the millpond (the floating towpath itself is described as "one of the most distinct elements of the canal in Billerica"<sup>1</sup>); the Floating Towpath Anchor Stone (ca. 1802; Bi-54) on the west side of the pond; and the Lock Chamber on the west side of the dam (ca. 1828; Bi-53). Although the original canal extended 27 miles, between Lowell and Chelmsford, "the forces of urbanization have removed most vestiges of the original canal structure," and only about ten miles of "the canal in its eroded form" is visible.<sup>2</sup>

Waterpower created by the three successive dams at this location powered numerous mills, including grist mills, sawmills, a fulling mill, and a forge beginning in the 18<sup>th</sup> century, and the extant Faulkner and Talbot textile mills in the 19<sup>th</sup> century. This series of mills was operated by both private individuals and the canal company. Although the Middlesex Canal ceased operations in 1852, the Faulkner and Talbot mills flourished throughout the 19<sup>th</sup> and into the early 20<sup>th</sup> centuries, producing a small yet prosperous manufacturing center with associated residential and civic structures. Historically, this area was the site of Billerica's most intense industrial development; it remains a dense and relatively well-preserved factory village.

## **Site Significance**

Per the National Register nomination for the Middlesex Canal Historic and Archaeological District, any surviving Native American archaeological resources in the district would be significant in understanding the activities of pre-European settlements in northeastern Massachusetts. Known archaeological resources in the project area have been redacted from

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<sup>1</sup> Middlesex Canal Historic and Archaeological District National Register nomination, 2009: 8-13.

<sup>2</sup> Middlesex Canal historic and Archaeological District National Register nomination, 2009: 7-1.

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public view. PAL has recommended an archaeological walkover/reconnaissance survey of any high sensitivity areas in the project area, archaeological monitoring, and avoidance and protection of sensitive archaeological strata.

The report prepared by the Billerica Historic District Study Committee in 1990 states that the Billerica Mills Local Historic District is notable for its early connection with the construction of the Middlesex Canal in the early 19<sup>th</sup> century and for its thriving textile mills in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. The full range of residential, industrial, institutional, and recreational resources in the village of North Billerica is extraordinary. The dam, mill pond, and towpath spit are mapped within the local historic district boundaries, and the narrative of the district's significance comments on the attractiveness of the area's natural surroundings and the presence of "fine views both of mill buildings and natural landscape up and down the Concord River from the two bridges [at Faulkner Street and Pollard Street] that roughly define the district."<sup>3</sup>

Public Archaeology Laboratory (PAL), in its *Historic and Archaeological Reconnaissance Survey Report* (2016), observed that

"Although the dam supported the operations of multiple historic-period industrial operations at the falls, including the extant Faulkner and Talbot mills, it is mapped within, but not specifically identified as a contributing resource to, the Billerica Mills Historic District (MHC Nos. BIL.O, BIL.E), which was listed in the National Register in 1983. Given the dam's direct relationship to the mills' historical operations, it should be considered a contributing resource to this historic district. The structure retains integrity, although the removal of the historic-period fishway and spillway gates are alterations from its period appearance and function (Fitch et al. 1983; Hale 1972; MHC and Middlesex Canal Association 2009)."<sup>4</sup>

The Middlesex Canal National Register listing states that the district meets National Register criteria A (association with historic events), C (distinctive design or construction characteristics), and D (potential for yielding archaeological information) at the local and state levels. Nationally, it was a model for New York's Erie Canal and other subsequent canal systems. The Lock Chamber and Dam, Mill Pond, Floating Towpath Peninsula, and Floating Towpath Anchor Stone are specifically called out in the narrative of this nomination as distinctive features of the canal system. The Talbot Mills dam and mill pond are contributing resources within an area that has been determined significant specifically because of its associations with the industrial history of North Billerica and with the Middlesex Canal, not for its pre-colonial history or environmental qualities.

### **Billerica Historic Districts Commission Review Process**

The purpose of the BHDC is "the preservation and protection of the distinctive characteristics of buildings and places significant in the history and architectural heritage of the Town of Billerica, through the maintenance and improvement of settings for such buildings and places."<sup>5</sup> The Talbot Mills Dam stands within the boundaries delineated in the final study report that

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<sup>3</sup> Billerica Historic District Study Committee report, 1990, Sec. II.1: n.p.

<sup>4</sup> Public Archaeology Laboratory, *Redacted Technical Report*, 2016: 57.

<sup>5</sup> Town of Billerica, By-Law to Establish Billerica Historic District Commission.

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established the district, and the dam and its associated mill pond undeniably contribute to the setting of the Billerica Mills Historic District. The By-Law covers both buildings and structures, the latter of which is defined as a “combination of materials other than a building, **including but not limited to** a sign, fence, wall, terrace, walk or driveway.”<sup>6</sup> (emphasis added) MGL Ch. 40C defines a structure almost identically, as “a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.”<sup>7</sup> The BHDC’s Review Standards allow for a Certificate of Hardship when denial of an application “will result in substantial hardship, whether financial or otherwise, to the applicant, **and** [emphasis added]” when “granting the application will not involve substantial detriment to the public welfare or substantial derogation from the intent and purpose of the Historic Districts By-Law.”<sup>8</sup>

CRT Development Realty submitted an Application for Historic Districts Commission Review in December 2024. The Application documented the project background, existing conditions (including cultural resources), the proposed removal of the dam, potential resource impacts and benefits, and an alternatives analysis. The project proponent made a presentation to the BHDC at its January 2025 meeting. Discussion as well as public comments and questions were received at the district commission’s meetings in January, April, May, and June 2025. Over the course of the four meetings at which comments were heard, a total of 28 public comments were recorded in the meeting minutes. The great majority of the commission’s and the public’s comments at these hearings related to the historic significance of the dam. In my reading of the meeting minutes, no supplemental documentation on the significance of the dam or mill pond was presented by outside parties at these public hearings, to elaborate on the contents of PAL’s multiple studies, the National Register nominations, or the historic district study committee’s final report relating to this property. One assumes that members of the BHDC are familiar with these foundational documents by experience on the commission.

In May 2025, CRT Development Realty submitted a package of Supplemental Information to its application. This supplement focused on the applicability of the local by-law and of MGL Chapter 40C to dams and on the demonstration of hardship in relation to retaining and maintaining the dam (including its present structural condition, expected upgrades, and liabilities of ownership). At the BHDC chair’s request, Billerica’s town counsel reviewed the Supplemental Information, the By-Law establishing Billerica’s local historic districts, and the state enabling legislation, MGL Ch. 40C. Town counsel concluded that “The dam is a ‘structure’ as that word is defined in the By-Law,” and that it is subject to the statutory authority of the BHDC.<sup>9</sup>

At its June 2025 meeting, the BHDC denied CRT Development’s application on the grounds that the dam is an historically significant feature, removal of which would adversely affect the character of the historic district and “would not be in the best interest of the Town.”<sup>10</sup> The official certificate of the denial of the Application for Certificate of Hardship states that the

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<sup>6</sup> Ibid.

<sup>7</sup> MGL Ch. 40C, section 5.

<sup>8</sup> Review Standards of the Billerica Historic Districts Commission, Sec. 6.0 Certificates of Hardship.”

<sup>9</sup> E-mail from Hucksam to Malgieri, Answer No. 2, Jun 4, 2025.

<sup>10</sup> BHDC Meeting Minutes of June 4, 2025, p. 4.

“Commission found that loss of the dam would not be in the public’s best interest as the dam has local and national historical significance and should be protected and preserved.”

In July 2025, CRT Development Realty submitted an appeal of the historic district’s commission’s decision. The appeal centers on ecological benefits of removing the dam, an opinion that dams are not subject to regulation by historic district commissions, the lack of “exterior architectural features” of a dam, and on the claim that “the Decision fails to provide any specific factual findings[,] instead paraphrasing the regulatory language and providing generalized conclusions.”<sup>11</sup>

On December 1, 2025, NMCOG held a public hearing to discuss the appeal. The appellant presented arguments, the historic districts commission delivered a detailed opinion, this consultant made preliminary observations, and more than a dozen comments were made by members of the public (including members of the Middlesex Canal Commission and the Boston Society of Civil Engineers Section). As of the date of the public hearing, nine written comments were submitted to NMCOG. The great majority of public comments (both written and oral) related to environmental benefits of removing the dam.

### **Findings**

The Talbot Mills Dam and its associated mill pond epitomize the development of the village of North Billerica, represent a critical feature of the Middlesex Canal, and are an iconic visual feature of the local and national historic districts of which they are a part. The dam retains integrity of location, setting, feeling, association, design, workmanship, and materials, and is an important contributing resource to all three designated historic districts of which it is a part. The dam and associated mill pond together represent a cultural landscape that is foundational to both the manufacturing heritage and transportation achievements of North Billerica.

The town’s by-law defines “structures” as including **but not limited to**, walls, fences, terraces, walks, driveways, and signs. A dam meets the common definitions of “structure” as a wall constructed for the purpose of enclosure, in this case a barrier for storing water. The National Register of Historic Places states that “The term ‘structure’ is used to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter.”<sup>12</sup>

The National Register program identifies dams as one of many examples of structures—including bridges, tunnels, fire towers, canals, silos, windmills, grain elevators, boats and ships, railroad locomotives and cars, bandstands and gazebos, roadways, and earthworks—that may qualify for National Register recognition. Similarly, the Massachusetts Historical Commission includes dams as one of the many types of structures they consider as historic resources to be documented and protected. The Talbot Mills dam is listed as a structure in both the National Register nomination for the Middlesex Canal Historic and Archaeological District and the Inventory of Historic and Archaeological Assets of the Commonwealth.

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<sup>11</sup> DTM Law, P.C., “Appeal of Denial of Application for Historic District Commission Review of the Talbot Mills Dam /Removal,” 2 July 2025, p. 4.

<sup>12</sup> U.S. Department of the Interior, National Park Service. *National Register Bulletin 16A; How to Complete the National Register Registration Form*, 1991, p. 15.

The fact that dams do not have a conventional “interior” and the claim that they are therefore not subject to review of exterior features by the BHDC are not pertinent. The BHDC’s by-law defines “exterior architectural feature” as “such portion of a building or structure as is open to view from a public street, public way, public park, or public body of water.”<sup>13</sup> Structures’ lack of an “interior” does not disqualify them from having architectural standing or significance or from review of alterations or demolition. Other structures explicitly enumerated in the district by-law—signs, fences, terraces, walks, and driveways—also lack an “interior.” Like buildings, structures represent deliberate choices of design, setting, materials, workmanship, and association, which together determine historic character and significance.

Dams and other infrastructure are routinely reviewed for their impacts on historic resources by agencies such as the Massachusetts Historical Commission, under (1) the Massachusetts Environmental Policy Act (MEPA) Regulations 301 CMR 11.00, under the authority of MGL Ch. 30, sections 61 through 62L and (2) by 950 CMR 71.00 (Protection of properties included in the State Register of Historic Places), under the authority of MGL Ch. 9, sections 26-27C as amended by St. 1988, Ch. 254. Although state or federal agencies are exempt from local land use regulations on properties that they **own**, private property owners are subject to local regulations on their property.

According to Billerica’s HDC By-Law, awarding of a certificate of hardship depends on two concurrent conditions: that a standard of financial or other hardship is met **and** that granting the application will not detract from the character of the historic district. The application for a certificate of hardship must meet **both** conditions in order to be approved.

The preponderance of documentation supports the BHDC’s decision. The Talbot Mills Dam and mill pond were the basis for the existence of the mills that define the Billerica Mill District, and they provided the source of water that made the Middlesex Canal work. The views of the mills from across the millpond are literally central to the character of this historic district. Removal of the dam and the mill pond would therefore adversely affect the character of the historic and cultural landscape of the three historic districts (one local and two national) of which the Talbot Mills Dam is a part.

Ecological arguments for, and possible recreational benefits of, removing the dam are outside the jurisdiction of the Historic Districts Commission. Per the commission’s by-law, its purview is limited to “the history and architectural heritage of the Town of Billerica”—not environmental, recreational, or economic benefits, nor any of many other considerations that might fall within the broad category of public welfare.

The BHDC’s enabling by-law requires that disapproval of an application for a certificate of appropriateness “shall state the reasons for such determination.”<sup>14</sup> MGL Ch. 40C has similar, general language. The official decision of the BHDC to deny the proponent’s application is minimal in its justifications for denying removal of the Talbot Mills Dam. It states simply that the “Commission found that loss of the dam would not be in the public’s best interest as the dam

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<sup>13</sup> BHDC By-Law to Establish Billerica Historic Districts Commission,” p. 1.

<sup>14</sup> By-Law to Establish Billerica Historic District Commission, p. 6.

has local and national historical significance and should be protected and preserved”<sup>15</sup> – the general principle of local historic district laws (both MGL 40C and Billerica’s by-law.)

Case law in the form of *Warner vs. Lexington*, 2004-2005, has elaborated on requirements for denial statements, noting that “Historic district decisions affirmed **by this court** [emphasis added] have clearly explained the project’s impact on enumerated statutory factors such as historic character or neighborhood context.”<sup>16</sup> Samples of appropriate language are provided in *Warner vs. Lexington*. Comparable text is not found in the denial of the Talbot Mills dam proposal. Not being a lawyer, however, I am not qualified to assess whether or how the *Warner vs. Lexington* decision applies to Billerica, as Billerica and Lexington have different HDC by-laws.

According to Billerica’s by-law, approval of an application for appropriateness is **required** to state the reasons for such a determination and **may** make recommendations for changes to the proposal that might make the application acceptable to the commission. As mitigation, if removal of the dam were approved, CRT Development has offered to retain one of the granite masonry abutments and a short segment of a granite masonry spillway. The project proponent has also offered to undertake archaeological recordation and removal of the 1790s dam thought to be submerged upstream of the current dam, and to record and remove any other artifacts that might be uncovered within the project area. Appropriate mitigation efforts would be further negotiated through the federal Section 106 process, which involves the National Oceanic and Atmospheric Administration (NOAA) as the lead federal agency in the proposed dam removal project, the Massachusetts Historical Commission, CRT Development, and other stakeholders, including the Town of Billerica.

Other possible mitigation efforts might also be studied and considered. For example, strategic plantings occupying the footprint of the mill pond basin, and-or the demarcation of the pond boundaries through landscape elements such as boardwalks, landscape walls, or artistic elements, could significantly convey a physical sense of the millpond. Interpretive devices could also be creatively and meaningfully employed to preserve a strong visual reminder of the dam and pond. The Section 106 process of the National Historic Preservation Act of 1966 would be an appropriate forum to devise a comprehensive plan for avoiding, minimizing, or mitigating adverse effects to these historic resources.

In summary, it is my opinion that the BHDC’s denial of an application to demolish the Talbot Mills dam is warranted under the relevant laws and regulations, although, under *Warner vs. Lexington*, it may be lacking in its description of the specific factors that determined its decision. I recommend that the NMCOC remand the case back to the Billerica Historic Districts Commission so that the commission can provide a supplemental statement enumerating the specific relevant factors for its disapproval, per the *Warner vs. Lexington* decision. The BHDC might also be encouraged to collaborate with the project proponent (on its own or as part of the federal Section 106 process) to explore creative mitigation that might retain a meaningful sense of the mill pond if the dam were removed.

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<sup>15</sup> .Application for Certificate of Hardship; Talbot Mills Dam Removal, vote and findings

<sup>16</sup> Ranne P. Warner vs. Lexington Historic Districts Commission, p. 84.

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