



CITY OF PITTSFIELD

PITTSFIELD CONSERVATION COMMISSION, CITY HALL, 70 ALLEN STREET, PITTSFIELD, MASSACHUSETTS 01201
413-499-9359

March 23, 2023

Lee Hauge
Town of Lanesborough
PO Box 1492
Lanesborough, MA 01237

RE: Order of Conditions, DEP File #263-1188, Pontoosuc Lake herbicide treatment

Dear Mr. Hauge:

Enclosed please find the Order of Conditions for the above referenced DEP file number. Please take a moment to review the entire General and any attached Special Conditions on your permit. It is important to note that there is a ten-business day period from the date of issuance, during which time, this permit may be appealed by either the applicant, any person aggrieved by the Order, any abutter, any ten residents, or the Massachusetts Department of Environmental Protection. *No work may begin on the project until this appeal period has expired.* In addition, *the original Order of Conditions (with original signatures) must be recorded in the Berkshire Middle District Registry of Deeds before any work is started.* A copy of the recording (stamped by the registry) must be submitted to Conservation Commission office.

This permit is valid for a period of three years from the date issued. A Certificate of Compliance must be requested from the Commission in writing upon completion of work. If work has not been completed within the three-year period that this permit is valid, a Request for Extension must be submitted to the Commission in writing at least 30 days prior to the expiration date of this permit.

All correspondence regarding this permit shall reference the above DEP File number and shall be copied to the Massachusetts Department of Environmental Protection at 436 Dwight Street, 4th floor, Springfield, MA 01103. If you should have any questions please do not hesitate to contact the Conservation Commission office at (413) 499-9359.

Thank you,
Robert Van Der Kar

Cc: Jim McGrath, City of Pittsfield

Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 5 - Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

MassDEP File #:263-1188

eDEP Transaction #:1530091

City/Town:PITTSFIELD

A. General Information

1. Conservation Commission	PITTSFIELD		
2. Issuance	a. ☒ OOC	b. ☐ Amended OOC	
3. Applicant Details			
a. First Name	LEE	b. Last Name	HAUGE
c. Organization	TOWN OF LANESBOROUGH		
d. Mailing Address	PO BOX 1492		
e. City/Town	LANESBOROUGH	f. State	MA
		g. Zip Code	01237
4. Property Owner			
a. First Name	b. Last Name		
c. Organization	COMMONWEALTH OF MASSACHUSETTS (GREAT POND)		
d. Mailing Address			
e. City/Town	f. State	g. Zip Code	
5. Project Location			
a. Street Address	PONTOOSUC LAKE		
b. City/Town	PITTSFIELD	c. Zip Code	01201
d. Assessors	WATERBODY		
Map/Plat#	e. Parcel/Lot#		
f. Latitude	42.49452N	g. Longitude	73.24943W
6. Property recorded at the Registry of Deed for:			
a. County	b. Certificate	c. Book	d. Page
MIDDLE BERKSHIRE			
7. Dates			
a. Date NOI Filed : 4/12/2022	b. Date Public Hearing Closed: 3/9/2023	c. Date Of Issuance: 3/20/2023	
8. Final Approved Plans and Other Documents			
a. Plan Title:	b. Plan Prepared by:	c. Plan Signed/Stamped by:	d. Revised Final Date: e. Scale:
NOTICE OF INTENT APPLICATION PONTOOSUC LAKE AQUATIC MANAGEMENT PROGRAM (INCLUDES WPA FORM 3 APPENDIX A: ECOLOGICAL RESTORATION LIMITED PROJECT CHECKLIST)	SOLITUDE LAKE MANAGEMENT	DOMINIC MERINGOLO	1/31/2023 N/A

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APPENDIX B:

PONTOOSUC

LAKE HERBICIDE

PROGRAM 2022

NOI - DETAILED
DESCRIPTION OF

LEE HAUGE

N/A

May 2022

N/A

2021 PROCESS,
RESULTS, PLANS
AND ANSWERS
TO QUESTIONS

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act

Following the review of the the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act.

Check all that apply:

- | | | |
|---|--|---|
| a. ☒ Public Water Supply | b. ☒ Land Containing Shellfish | c. ☒ Prevention of Pollution |
| d. ☒ Private Water Supply | e. ☒ Fisheries | f. ☒ Protection of Wildlife Habitat |
| g. ☒ Ground Water Supply | h. ☒ Storm Damage Prevention | i. ☒ Flood Control |

2. Commission hereby finds the project, as proposed, is:

Approved subject to:

- a. ☒ The following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

- b. ☐ The proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ The information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

3. ☐ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310CMR10.02(1)(a).

a. linear feet

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Inland Resource Area Impacts:(For Approvals Only):

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. ☐ Bank	<u> </u> a. linear feet	<u> </u> b. linear feet	<u> </u> c. linear feet	<u> </u> d. linear feet
5. ☐ Bordering Vegetated Wetland	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
6. ☒ Land under Waterbodies and Waterways	21780000 <u> </u> a. square feet 0 <u> </u> e. c/y dredged	21780000 <u> </u> b. square feet <u> </u> f. c/y dredged	21780000 <u> </u> c. square feet	21780000 <u> </u> d. square feet
7. ☐ Bordering Land Subject to Flooding	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. square feet	<u> </u> d. square feet
Cubic Feet Flood Storage	<u> </u> e. cubic feet	<u> </u> f. cubic feet	<u> </u> g. cubic feet	<u> </u> h. cubic feet
8. ☐ Isolated Land Subject to Flooding	<u> </u> a. square feet	<u> </u> b. square feet		
Cubic Feet Flood Storage	<u> </u> c. cubic feet	<u> </u> d. cubic feet	<u> </u> e. cubic feet	<u> </u> f. cubic feet
9. ☐ Riverfront Area	<u> </u> a. total sq. feet	<u> </u> b. total sq. feet		
Sq ft within 100 ft	<u> </u> c. square feet	<u> </u> d. square feet	<u> </u> e. square feet	<u> </u> f. square feet
Sq ft between 100-200 ft	<u> </u> g. square feet	<u> </u> h. square feet	<u> </u> i. square feet	<u> </u> j. square feet

Coastal Resource Area Impacts:

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. ☐ Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. ☐ Land Under the Ocean	<u> </u> a. square feet	<u> </u> b. square feet		
	<u> </u> c. c/y dredged	<u> </u> d. c/y dredged		
12. ☐ Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. ☐ Coastal Beaches	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. c/y nourishment	<u> </u> d. c/y nourishment
14. ☐ Coastal Dunes	<u> </u> a. square feet	<u> </u> b. square feet	<u> </u> c. c/y nourishment	<u> </u> d. c/y nourishment
15. ☐ Coastal Banks				

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16. ☐ Rocky Intertidal Shores	a. linear feet	b. linear feet		
17. ☐ Salt Marshes	a. square feet	b. square feet		
18. ☐ Land Under Salt Ponds	a. square feet	b. square feet	c. square feet	d. square feet
19. ☐ Land Containing Shellfish	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
20. ☐ Fish Runs	a. square feet	b. square feet	c. square feet	d. square feet
	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	c. c/y dredged	d. c/y dredged		
21. ☐ Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		

22.

☐ Restoration/Enhancement (For Approvals Only)

If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c & d or B.17.c & d above, please entered the additional amount here.

a. square feet of BVW

b. square feet of Salt Marsh

23.

☐ Streams Crossing(s)

If the project involves Stream Crossings, please enter the number of new stream crossings/number of replacement stream crossings.

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five

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years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.

5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not exceed the issuance date of the original Final Order of Conditions.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work..
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

" Massachusetts Department of Environmental Protection"

[or "MassDEP"]

File Number : "263-1188"

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before Mass DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that

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occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. The work associated with this Order(the "Project") is (1) ☐ is not (2) ☒ subject to the Massachusetts Stormwater Standards. If the work is subject to Stormwater Standards, then the project is subject to the following conditions;
- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Construction General Permit as required by Stormwater Standard 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
 - b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that: *i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures; *ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized; *iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10; *iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition; *v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
 - c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.* the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.* the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
 - d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollutant Discharge Elimination System Multi-Sector General Permit.
 - e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation

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of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.
- g) The responsible party shall:
 - 1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 - 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 - 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions:

ACKNOWLEDGEMENT OF PEER REVIEW PER ITS AUTHORITY UNDER M.G.L. CH. 44. SECTION 53G, THE PITTSFIELD CONSERVATION COMMISSION RETAINED THE SERVICES OF NORTHEAST AQUATIC RESEARCH, LLC. (NEAR) TO PERFORM A PEER REVIEW EVALUATION OF THE AQUATIC PLANT COMPOSITION WITHIN PONTOOSUC LAKE IN ITS ENTIRETY (THE CITY OF PITTSFIELD AND TOWN OF LANESBOROUGH). DATA COLLECTED (JUNE 28, 2022) WAS USED BY NEAR TO PREPARE A WHITE PAPER DOCUMENT ENTITLED, "PONTOOSUC LAKE 2022 AQUATIC PLANT SURVEY REPORT". PREPARED FOR THE CITY OF PITTSFIELD CONCOM?, DATED DECEMBER 2022. THIS REPORT WAS USED BY THE COMMISSION TO EVALUATE ASPECTS OF THE PROJECT THAT INCLUDED, BUT NOT LIMITED TO, REGULATORY COMPLIANCE WITH 310 CMR 10.53 (4), THE CORRECTNESS OF THE ACCOMPANYING APPENDIX A OF WPA FORM 3, THE DEGREE TO WHICH THE PROPOSED WORK WOULD RESTORE OR OTHERWISE IMPROVE THE NATURAL CAPACITY OF THE REGULATED WETLAND RESOURCE AREA(S), AND TO DETERMINE THE MAGNITUDE OF THE PROJECT TO FURTHER PROTECT THE INTEREST IDENTIFIED IN M.G.L. C. 131, SECTION 40. SPECIAL CONDITIONS:

SC#20. EXCEPT AS NOTED IN THIS ORDER, ALL WORK SHALL BE DONE IN ACCORDANCE WITH ALL APPROVED PLANS AND INFORMATION ON FILE WITH THE CONSERVATION COMMISSION, ALL SPECIAL CONDITIONS AND SUPPORTING DOCUMENTATION SUBMITTED TO THE COMMISSION AS REVISED IN THIS ORDER OR AT THE PUBLIC HEARING, AND ANY COMMITMENTS MADE BY THE

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APPLICANT, OWNER, OR THEIR REPRESENTATIVES AT THE PUBLIC HEARING OR IN WRITING.

SC#21. IT IS THE RESPONSIBILITY OF THE APPLICANT/OWNER TO PROCURE ALL OTHER APPLICABLE FEDERAL, STATE, AND LOCAL PERMITS AND APPROVALS ASSOCIATED WITH THIS PROJECT.

SC#22. ALL CORRESPONDENCE TO THE COMMISSION ON THIS PROJECT SHALL REFERENCE THE DEP FILE NUMBER AND BE COPIED TO THE WESTERN REGIONAL OFFICE OF MA DEP.

SC#23. THIS ORDER SHALL BE MADE PART OF ANY CONTRACT DOCUMENTS FOR THE PROJECT AND SHALL BE FURNISHED TO ALL CONTRACTORS AND SUB-CONTRACTORS. THIS ORDER SHALL APPLY TO, AND BE BINDING UPON; THE APPLICANT/OWNER, THEIR EMPLOYEES, VENDORS, CONTRACTORS, SUB-CONTRACTORS, AND ALL SUCCESSORS AND ASSIGNS IN INTEREST AND CONTROL OF THE PROPERTY.

SC#24. ANY CHANGES, ADDITIONS, OR OMISSIONS IN THE APPROVED PROJECT SHALL BE SUBMITTED IN WRITING TO THE COMMISSION FOR PRIOR APPROVAL AND DETERMINATION OF WHETHER AN AMENDMENT OR NEW NOTICE OF INTENT IS REQUIRED. A COPY OF SUCH REQUEST SHALL BE SENT TO THE WESTERN REGIONAL OFFICE OF MA DEP.

SC#25. WHEN APPLICABLE, EROSION CONTROLS SHALL BE INSTALLED IN ACCORDANCE WITH THE APPROVED PLANS. AN ADEQUATE STOCKPILE OF EROSION CONTROL MATERIALS SHALL BE ON SITE AT ALL TIMES FOR EMERGENCY OR ROUTINE REPLACEMENT AND REPAIR.

SC#26. WHEN APPLICABLE, THE COMMISSION OFFICE SHALL BE NOTIFIED AT LEAST TWO (2) BUSINESS DAYS PRIOR TO COMMENCEMENT OF WORK TO INSPECT EROSION CONTROLS. (499-9359).

SC#27. IN THE EVENT EROSION CONTROLS ARE INSTALLED, THE APPLICANT/OWNER SHALL HOLD A PRE-CONSTRUCTION MEETING WITH ALL THE INDIVIDUALS RESPONSIBLE FOR WORK AT THE PROJECT SITE.

SC#28. THE WORK SITE SHALL BE LEFT IN STABLE CONDITION AT THE CLOSE OF EACH DAY. EROSION CONTROLS SHALL BE INSPECTED AT THAT TIME AND AFTER EACH STORM EVENT AND MAINTAINED, REPLACED, AND/OR REINFORCED IF NECESSARY. ACCUMULATED SEDIMENTS SHALL BE REMOVED WHENEVER THEY BUILD UP TO SIX INCHES IN DEPTH BEHIND THE EROSION CONTROL BARRIERS.

SC#29. ADDITIONAL EROSION CONTROL MEASURES DEEMED NECESSARY BY THE COMMISSION OR CONSERVATION AGENT SHALL BE INSTITUTED BY THE APPLICANT.

SC#30. WORK MUST BE PERFORMED ONLY IN THE ABSENCE OF SIGNIFICANT PRECIPITATION. IN THE EVENT OF SIGNIFICANT EROSION CONTROL FAILURE ON SITE, THE CONSERVATION COMMISSION SHALL BE NOTIFIED IMMEDIATELY TO INSPECT THE SITE AND APPROVE A MITIGATION PLAN.

SC#31. THE USE OF HERBICIDES APPROVED BY THIS ORDER SHALL BE APPLIED BY APPLIED BY AN

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APPLICATOR LICENSED (IN THE AQUATIC WEED CATEGORY) BY THE MASSACHUSETTS DEPARTMENT OF AGRICULTURAL RESOURCES (DAR), PESTICIDE BUREAU. ONLY HERBICIDES AUTHORIZED BY THE DAR, PESTICIDE BUREAU AND THOSE IDENTIFIED IN THE NOTICE OF INTENT APPLICATION ARE TO BE USED. APPLICATIONS SHALL FOLLOW ALL PRODUCT LABEL INSTRUCTIONS AND RECOMMENDATIONS.

SC#32. IT IS THE PERMIT HOLDER AND LICENSED APPLICATORS (CONTRACTOR) RESPONSIBILITY TO OBTAIN A VALID BRP WM04 PERMIT FOR THE APPLICATION OF AQUATIC HERBICIDES AND/OR ALGAECIDES FOR THE DESIGNATED TARGET SPECIES IDENTIFIED IN THE NOTICE OF INTENT APPLICATION. A COPY OF SUCH BRP WM04 SHALL BE SUBMITTED TO THE CONSERVATION COMMISSION PRIOR TO INITIATING ANY TREATMENT OF AQUATIC VEGETATION PERMITTED BY THIS ORDER.

SC#33. FOLLOWING THE APPROVAL OF THE PITTSFIELD CONSERVATION COMMISSION, OR ITS AGENT, IT IS THE RESPONSIBILITY OF THE PERMIT HOLDER TO RETAIN THE SERVICES OF A PROFESSIONAL LIMNOLOGIST, OR APPROVED EQUAL HAVING EXPERTISE IN; LAKE ECOLOGY, LIMNOLOGY, AND/OR AQUATIC VEGETATION IDENTIFICATION AND MANAGEMENT (HEREAFTER KNOWN AS LIMNOLOGIST), TO PERFORM A PRETREATMENT SURVEY OF THE AQUATIC VEGETATION WITHIN PONTOOSUC LAKE. SUCH SURVEY SHALL BE PERFORMED ALONGSIDE THE LICENSED HERBICIDE APPLICATOR, AND AT MINIMUM, INCLUDE ALL OBSERVABLE VASCULAR AND NON-VASCULAR (ALGAE) PLANT SPECIES IDENTIFICATION AND THEIR APPROXIMATE PERCENT COVER.

SC#34. PRIOR TO EACH PHASE OF TREATMENT WITH HERBICIDES AND/OR ALGAECIDE, THE APPROVED LIMNOLOGIST IS TO PREPARE A PLAN SHOWING: TREATMENT AREA LOCATIONS, THE IDENTIFICATION OF VEGETATION IN THE TREATMENT AREAS (TO SPECIES LEVEL OF TAXONOMY), THE SIZE OF THE TREATMENT AREA, TYPE OF HERBICIDE, THE HERBICIDE/ALGAECIDE APPLICATION RATES, NATIVE PLANT SPECIES AND PERCENT COVER IN/OR NEAR THE TREATMENT LOCATIONS, ANY SIGNIFICANT WILDLIFE OR FISHERIES HABITATS, AND OTHER INFORMATION USEFUL TO APPROPRIATE LAKE MANAGEMENT. EACH PLAN IS TO BE PREPARED WITH THE PRIMARY PURPOSE OF IMPROVING LAKE ECOLOGY WITH THE OBJECTIVE OF NATIVE PLANT POPULATION RECOVERY AND MUST PROVIDE SPECIFIC MANAGEMENT GOALS FOR THE VEGETATIVE COMMUNITY DURING THAT GROWING SEASON. THIS PLAN IS TO BE PROVIDED TO THE PITTSFIELD CONSERVATION COMMISSION, OR ITS AGENT, SEVEN DAYS PRIOR TO TREATMENT.

SC#35. ANY COMPONENT OF MANAGEMENT THAT INVOLVES VEGETATION TREATMENT AND/OR REMOVAL FOR THE SOLE PURPOSE OF NAVIGATION AND/OR WATERCRAFT RECREATION IS NOT AUTHORIZED UNDER THIS ORDER AND WILL REQUIRE THE FILING OF A SEPARATE NOTICE OF INTENT APPLICATION.

SC#36. ALGAECIDES ARE TO BE USED ONLY AT TIMES WHEN HARMFUL ALGAL BLOOMS (HAB?S) ARE EITHER IMMINENT OR IN EFFECT. ALGACIDAL TREATMENT OF CYANOBACTERIA AND MICROCYSTINS CAN BE MADE WHEN CYANOBACTERIA CELL COUNTS ARE EXPECTED TO EXCEED 70,000 CELLS PER MILLILITER (CELLS/ML) OR IF THE MICROCYSTINS LEVELS ARE AT, OR EXCEED, 14 PARTS PER BILLION (PPB). THESE THRESHOLDS CAN BE LOWERED, OR WAIVED, AT THE DISCRETION OF THE LIMNOLOGIST, OR IF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH OR THE CITY OF PITTSFIELD DEPARTMENT OF HEALTH REQUIRES AN EARLIER TREATMENT DUE TO PUBLIC HEALTH AND SAFETY CONCERNS.

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WPA Form 5 - Order of Conditions

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SC#37. SIGNS POSTED PRIOR TO THE FIRST APPLICATION ADVISING THE PUBLIC AND ABUTTERS THAT DIQUAT, FLORPYRAUXIFEN-BENZYL, ENDOTHALL, AND/OR COPPER OR PEROXIDE-BASED ALGAECIDES (UNDER ANY TRADE NAMES) WILL BE IN USE BEGINNING ON (DATE TO BE SPECIFIED) AND WILL BE PRESENT IN THE WATER SUPPLY UNTIL (DATE TO BE SPECIFIED). A CONTACT TELEPHONE NUMBER MUST BE PROVIDED ON SIGNAGE.

SC#38. WATER USE LIMITATIONS WILL BE ADVERTISED VIA AT LEAST ONE LOCAL MEDIA SOURCE ONE WEEK PRIOR TO APPLICATION. DAY OF HERBICIDE AND/OR ALGICIDE TREATMENT REQUIREMENTS:

SC#39. REFUELING, SERVICING AND REPAIR OF MOTORIZED WATERCRAFT AND SERVICE VEHICLES ASSOCIATED WITH THE LAKE SURVEYS AND TREATMENTS SHALL TAKE PLACE AT LEAST 100 FEET FROM BOUNDARY OF THE RESOURCE AREA. EQUIPMENT OPERATORS SHALL BE PREPARED TO IMMEDIATELY RESPOND TO, AND CONTAIN, ACCIDENTAL RELEASE OF FUEL, MOTOR OIL, OR AQUATIC HERBICIDES. IF AN ACCIDENTAL RELEASE OF FUEL, MOTOR OIL, LUBRICATING OILS, ETC. OCCURS, MASS DEP'S EMERGENCY RESPONSE AND THE PITTSFIELD CONSERVATION OFFICE SHALL BE IMMEDIATELY NOTIFIED. ALL CONTAMINATED AREAS SHALL BE TREATED ACCORDING TO GUIDELINES ESTABLISHED BY THE DEP'S BUREAU OF WASTE SITE CLEANUP (BWSC). STAGING AND LONG-TERM STORAGE OF AQUATIC HERBICIDES AND/OR ALGAECIDES SHALL TAKE PLACE OUTSIDE JURISDICTIONAL WETLAND RESOURCE AREAS.

SC#40. LAKE TREATMENT SHALL OCCUR WHEN WATER TEMPERATURES ARE BETWEEN 55 DEGREES FAHRENHEIT AND 85 DEGREES FAHRENHEIT. WIND SPEEDS AT THE TIME OF APPLICATION ARE TO BE WITHIN THE RECOMMENDED LIMITS IDENTIFIED ON THE PRODUCT LABEL.

SC#41. THE NAVIGATION AREAS WHEN HERBICIDES TREATMENTS AREAS BE APPLIED ARE TO BE RECORDED AND DOCUMENTED USING GLOBAL POSITIONING SYSTEMS (GPS) EQUIPMENT AND ASSOCIATED SOFTWARE. THIS INFORMATION IS TO BE PROVIDED IN THE YEAR-END REPORT DESCRIBED IN THE FOLLOWING SC #44.

SC#42. THE COMMISSION'S APPROVAL TO APPLY HERBICIDES FOR AQUATIC WEED CONTROL IN PONTOOSUC LAKE IS LIMITED TO THE SCHEDULE SUBMITTED AS PART OF THAT YEAR'S MANAGEMENT PLAN(S) DERIVED FROM THE PRETREATMENT SURVEY(S). DIQUAT, FLORPYRAUXIFEN-BENZYL, ENDOTHALL, AND COPPER AND PEROXIDE BASED ALGAECIDES (UNDER ANY TRADE NAMES) ARE THE ONLY ACTIVE INGREDIENT CHEMICALS TO BE USED. NO SUBSTITUTION OR MODIFICATION TO THE AGREED UPON TREATMENT PLAN MAY BE MADE ON THE DAYS OF TREATMENT, UNLESS OTHERWISE DIRECTED TO DO SO BY THE LIMNOLOGIST.

SC#43. TO THE EXTENT PRACTICABLE, DURING ANY OPERATION FOR INVASIVE VEGETATIVE SPECIES MANAGEMENT, THE FOLLOWING WILDLIFE HABITAT CHARACTERISTICS SHOULD BE AVOIDED: A. ANY ROCK OUTCROPPING WHICH PROJECTS ABOVE THE ELEVATION OF THE MALWL, WHICH MAY SERVE AS A BASKING SITE, ROOST, PERCH OR "HAUL OUT" FOR INDIGENOUS, VERTEBRATE WILDLIFE. B. TRUNKS, ROOT SYSTEMS, STUMPS AND LIMBS, WHICH PROJECT ABOVE THE MALWL THAT CAN SERVE AS A CAVITY NEST, ROOKERY, BASKING SITE, PERCH, OR "HAUL OUT" FOR INDIGENOUS VERTEBRATE WILDLIFE THE FOLLOWING CONDITIONS PERTAIN TO THE POST-APPLICATION, MONITORING AND REPORTING OF HERBICIDAL AND/OR ALGACIDAL TREATMENTS:

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SC #44. A POST TREATMENT VEGETATION SURVEY IS TO BE PERFORMED BY THE LICENSED APPLICATOR AND THE APPROVED LIMNOLOGIST THAT GATHERS ALL DATA USEFUL IN COMPARING THE SUCCESSES AND/OF FAILURES OF THAT YEARS TREATMENT TO THE TREATMENT PLAN DEVELOPED FOR THAT YEARS MANAGEMENT PLAN. SUCH INFORMATION IS TO BE USED TO GENERATE A YEAR-END REPORT BY THE LIMNOLOGIST (OR THE LICENSED APPLICATOR FOLLOWED BY APPROVAL OF THE LIMNOLOGIST) THAT SHALL INCLUDE A LITTORAL ZONE VEGETATION INVENTORY, SUMMARY OF TREATMENT METHODS USED FOR THAT YEAR (HERBICIDE TYPE, APPLICATION EQUIPMENT, APPLICATION RATE), SUMMARY OF HERBICIDE EFFECTIVENESS, SUCCESSES AND FAILURES OF TREATMENTS WHEN COMPARED TO GOALS OUTLINED IN PRE-TREATMENT MANAGEMENT PLAN, AND APPROXIMATE PERCENT COVERAGE OF SPECIES AT THE TIME OF POST TREATMENT SURVEY, AND ANY RECOMMENDATIONS THAT WOULD IMPROVE THE QUALITY OF AQUATIC FAUNA AND FLORA, AND SURFACE WATER QUALITY. THIS DOCUMENT WILL BE USED BY THE CONSERVATION COMMISSION TO EVALUATE COMPLIANCE WITH THIS ORDER. SC #45. ALL POST TREATMENT REPORTING SHALL BE SUBMITTED TO THE COMMISSION NO LATER THAN OCTOBER 31ST OF EACH YEAR. SC #46. IN THE EVENT OF ANY FISH KILL WITHIN PONTOOSUC LAKE THE APPLICANT AND LICENSED APPLICATOR SHALL IMMEDIATELY CONTACT THE DEPARTMENT'S EMERGENCY RESPONSE SECTION AT (888) 304-1133; THE MASSACHUSETTS DIVISION OF FISHERIES AND WILDLIFE DALTON OFFICE AT (413) 684-1646 DURING NORMAL WORKING HOURS; OR THE BOSTON 24-HOUR RESPONSE LINE AT 1-800-632-8075. SC\$#47. THE COMMISSION RESERVES THE RIGHT TO IMPOSE ADDITIONAL CONDITIONS ON PORTIONS OF THIS PROJECT THAT MITIGATE ANY NOTABLE ECOLOGICAL DECLINE (INCLUDING TO SIGNIFICANT AQUATIC HABITATS) RESULTING FROM THE PONTOOSUC LAKE TREATMENTS.

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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☐ Yes ☒ No

2. The Conservation Commission hereby (check one that applies):

a. ☐ DENIES the proposed work which cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

1. Municipal Ordinance or Bylaw _____

2. Citation _____

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order or Conditions is issued. Which are necessary to comply with a municipal ordinance or bylaw:

b. ☐ APPROVES the proposed work, subject to the following additional conditions.

1. Municipal Ordinance or Bylaw _____

2. Citation _____

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows:

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E. Signatures

This Order is valid for three years from the date of issuance, unless otherwise specified pursuant to General Condition #4. If this is an Amended Order of Conditions, the Amended Order expires on the same date as the original Order of Conditions.

3/20/2023

1. Date of Original Order

Please indicate the number of members who will sign this form. This Order must be signed by a majority of the Conservation Commission.

6

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures: See Attached Signature Page Elizabeth Calebaugh

James Conant

Jonathan Lothrop

Thomas Sakshaug

Nicole Hall

Franz Forster

☐ by hand delivery on

☐ by certified mail, return receipt requested, on

Date

Date 3 / 2 2 / 2 0 2 3

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

G. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land

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subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

PITTSFIELD

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

PITTSFIELD

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

PONTOOSUC LAKE

Project Location

263-1188

MassDEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

Rev. 4/1/2010

Electronic Signature Page

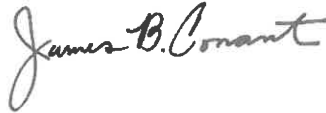
File Number: 263-1188

Dated: March 20, 2023

This order is signed electronically in accordance with MGL Ch 110G, as well as pursuant to the board's electronic signature authorization vote recorded on July 14, 2021 in Book 6968, Page 158 in the Berkshire Middle District Registry of Deeds.

Signatures:

James Conant



Thomas Sakshaug



Franz Forster



Elizabeth Calebaugh



Stephanie Storie

Jonathan Lothrop



Nicole Hall





Massachusetts Department of Environmental Protection

eDEP Transaction Copy

Here is the file you requested for your records.

To retain a copy of this file you must save and/or print.

Username: **CONSERVATIONAGENT**

Transaction ID: **1530091**

Document: **WPA Form 5 - OOC**

Size of File: **148.96K**

Status of Transaction: **In Process**

Date and Time Created: **3/21/2023:2:31:05 PM**

Note: This file only includes forms that were part of your transaction as of the date and time indicated above. If you need a more current copy of your transaction, return to eDEP and select to "Download a Copy" from the Current Submittals page.