

file copy 4



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:
194-0209
MassDEP File #
1362992
eDEP Transaction #
Lanesborough
City/Town

A. General Information

Please note:
this form has
been modified
with added
space to
accommodate
the Registry
of Deeds
Requirements

Important:
When filling
out forms on
the
computer,
use only the
tab key to
move your
cursor - do
not use the
return key.

1. From: Lanesborough
Conservation Commission
2. This issuance is for (check one):
a. ☒ Order of Conditions b. ☐ Amended Order of Conditions

3. To: Applicant:
- Lee Haugue
a. First Name b. Last Name
- Harbormaster, Town of Lanesborough
c. Organization
- PO Box 1492
d. Mailing Address
- Lanesborough MA 01237
e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

☒ Commonwealth of Massachusetts
a. First Name b. Last Name

Commonwealth of Massachusetts
c. Organization

d. Mailing Address

e. City/Town f. State g. Zip Code

5. Project Location:

Portoosuc Lake Lanesborough/Pittsfield
a. Street Address b. City/Town

c. Assessor's Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known: 42d494m522s 73d249m435s
d. Latitude e. Longitude



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A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Northern Berkshire
a. County 1318 b. Certificate Number (if registered land) 238
c. Book 3/6/23 d. Page 3/8/23
7. Dates: April 13, 2022 a. Date Notice of Intent Filed 3/6/23 b. Date Public Hearing Closed 3/8/23 c. Date of Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
Notice of Intent Pontoosuc Lake Aquatic Management Program
a. Plan Title SOLitude Lake Management b. Prepared By Dominic Meringolo
c. Signed and Stamped by 1/31/23 (via email)
d. Final Revision Date WPA Form 3: Notice of Intent (3/17/22); See attached Documents e. Scale as noted
Reviewed and Special Order of Conditions g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of 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 (the 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. ☐ Groundwater Supply h. ☐ Storm Damage Prevention i. ☐ Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

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.



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B. Findings (cont.)

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 the 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 Act's interests, 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 310 CMR 10.02(1)(a) a. linear feet

Inland Resource Area Impacts: Check all that apply below. (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	<u>21,780,000</u> a. square feet	<u>21,780,000</u> b. square feet	<u>0</u> c. square feet	<u>0</u> d. square feet
	<u> </u> e. c/y dredged	<u> </u> f. c/y dredged		
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



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B. Findings (cont.)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	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	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. ☐ Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. ☐ Coastal Beaches	a. square feet	b. square feet	c. ^{cu yd} nourishment	d. ^{cu yd} nourishment
14. ☐ Coastal Dunes	a. square feet	b. square feet	c. ^{cu yd} nourishment	d. ^{cu yd} nourishment
15. ☐ Coastal Banks	a. linear feet	b. linear feet		
16. ☐ Rocky Intertidal Shores	a. square feet	b. square feet		
17. ☐ Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. ☐ Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. ☐ Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. ☐ Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. ☐ Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. ☐ Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



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B. Findings (cont.)

* #23. 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 (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. ☐ Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

24. ☐ Stream Crossing(s):

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 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.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
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. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on _____ unless extended in writing by the Department.
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.



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C. General Conditions Under Massachusetts Wetlands Protection Act

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 194-0209 "
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 MassDEP.
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.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

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 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.
19. The work associated with this Order (the "Project")
 - (1) ☐ is subject to the Massachusetts Stormwater Standards
 - (2) ☒ is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the 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 Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 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;



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

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 18(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 Pollution 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 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation 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.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- 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 (if you need more space for additional conditions, please attach a text document):

See Attached Special Conditions Pontoosuc Lake Aquatic Management Program, DEP File No. 194-0209

20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



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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 finds (check one that applies):

- a. ☐ that the proposed work 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 of Conditions is issued.

- b. ☐ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

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 (if you need more space for additional conditions, attach a text document):



**Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands**

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E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

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.

3/8/23
1. Date of Issuance

4
2. Number of Signers

Signature _____
Signature _____
Signature _____
Signature _____

3/6/23 JOE TRYBUS
Printed Name

LINDA BELANGER
Printed Name

Courtney J. DiCicco 3/6/23
Printed Name

Maggie Jennings 3/6/2023
Printed Name

Signature _____

Printed Name _____

Signature _____

Printed Name _____

Signature _____

Printed Name _____

Signature _____

Printed Name _____

☒ by hand delivery on

☐ by certified mail, return receipt requested, on

3/8/23
Date

Date



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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.



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G. Recording Information

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

Lanesborough

Conservation Commission

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

To:

Lanesborough

Conservation Commission

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

Pontoosuc

Project Location

194-0209

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



**Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands**

**Request for Departmental Action Fee
Transmittal Form**

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

DEP File Number: _____

Provided by DEP _____

A. Request Information

1. Location of Project

a. Street Address _____

b. City/Town, Zip _____

c. Check number _____

d. Fee amount _____

2. Person or party making request (if appropriate, name the citizen group's representative):

Name _____

Mailing Address _____

City/Town _____

State _____

Zip Code _____

Phone Number _____

Fax Number (if applicable) _____

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name _____

Mailing Address _____

City/Town _____

State _____

Zip Code _____

Phone Number _____

Fax Number (if applicable) _____

4. DEP File Number:

B. Instructions

1. When the Departmental action request is for (check one):

- ☐ Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- ☐ Superseding Determination of Applicability – Fee: \$120
- ☐ Superseding Order of Resource Area Delineation – Fee: \$120

Important:
When filling
out forms on
the computer,
use only the
tab key to
move your
cursor - do
not use the
return key.





Massachusetts Department of Environmental Protection
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DEP File Number:

Request for Departmental Action Fee Transmittal Form

Provided by DEP

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

B. Instructions (cont.)

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
Box 4062
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <https://www.mass.gov/service-details/massdep-regional-offices-by-community>).
4. 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.

**Lanesborough Conservation Commission
Special Conditions
Pontoosuc Lake Aquatic Management Program**

DEP File#: 194-0209

Address: Pontoosuc Lake

Applicant: Town of Lanesborough/Harbormaster

Documents Reviewed:

- WPA Form 3: Notice of Intent Application, Pontoosuc Lake Aquatic Management Program, dated April 2022, prepared for the Town of Lanesborough
- Northeast Aquatic Research Pontoosuc Lake 2022 Aquatic Plant Survey Report prepared for the City of Pittsfield ConCom, dated December 2022
- Herbicide Weed Control in Pontoosuc Lake document dated February 2023 prepared and submitted by Lee Hauge, Harbormaster
- Pontoosuc Lake NOI-Additional Clarifications and Answers to Questions- Submitted on February 13, 2023, by D. Meringolo, Solitude
- Vegetation Management of Pontoosuc Lake NOI: Lanesborough File Number 194-0209, Pittsfield File Number 263-1188 dated February 2, 2023, submitted by Andrew Madden, MA Division of Fisheries and Wildlife
- Letter submitted by Andrew Madden, MA Division of Fisheries and Wildlife, Mass DEP File Number 263-1188, Mass DEP File Number 236-986 dated June 2, 2022
- Pontoosuc Lake Weed Control: History through 2020 submitted by L. Hauge, Harbormaster
- Pontoosuc Macrophyte Survey September 2020 submitted by L. Hauge, Harbormaster
- Pontoosuc Year End Report 2021 submitted by Solitude Lake Management

Reference Documents:

- Guidance for Aquatic Plant Management in Lakes and Ponds as it Relates to the Wetlands Protection Act; Department of Environmental Protection Bureau of Resource Protection Wetlands/Waterways Program, April 2004
- Reward Landscape Herbicide: Review of the Aquatic Toxicology and Fate of Reward Herbicide
- Reward Tech Bulletin
- Diquat Chemical Fact Sheet, Wisconsin Department of Natural Resources, January 2018
- ProellaCOR Herbicide Product Summary and Use Restrictions
www.mass.gov/herbicides-for-aquatic-vegetation-management
- *Current Knowledge of Drawdown Relevant to Projects in Massachusetts* by Ken Wagner, Ph.D., CLM, Water Resource Services with funding from Lake Onoto Preservation Association and Friends of Pontoosuc Lake, June 2020

- *Current Knowledge of Herbicides Relevant to Projects in Massachusetts* by Ken Wagner, Ph.D., CLM, Water Resource Services with funding from Lake Onota Preservation Association and Friends of Pontoosuc Lake, June 2020
- *Cyanobacteria: A Planktonic Supervillain* by Brea Arvidsen, Solitude Lake Management, 4/28/18
- *Ecological Restoration Projects*, DEP Wetlands and Waterways Program brochure
- *Generic Environmental Impact Report*, EOEA, 2004
- *Practical Guide to Lake Management in Massachusetts*, EOEA, 2004

Conditions:

1. No work shall take place until all administrative appeal periods from the Order have elapsed, or if an appeal has been filed, until all proceedings before the Department have been completed.
2. All work will 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 and any commitment made by the Applicant, owner or their representatives at the public hearing(s) or in writing.
3. This Order will apply to any successor in interest or successor in control.
4. The work approved by this Order of Conditions applies only to the areas shown on the approved plans. Any work beyond the scope of the project presented and approved by the Conservation Commission will require new and separate permitting.
5. Any changes to the approved project shall be submitted to the Conservation Commission within 48 hours for a determination of whether the proposed changes are so significant that a new or amended Notice of Intent is required. No work may proceed until the Commission has issued a determination in writing.
6. The Conservation Commission shall have the right to inspect for compliance with this Order and to document through photographs, videos, or other visual method.
7. The Conservation Commission reserves the right to impose additional conditions on portions of the project to mitigate any unforeseen impacts.
8. Failure to comply with this Order shall be deemed cause to revoke this Order of Conditions and issue a Cease and Desist to stop all work until the applicant comes into compliance with this Order.
 - a. Under the adopted Consultant Rule, the applicant is responsible for all cost associated with having the Commission's consultant review the compliance plan and monitor restoration activities until the site/work is in compliance with the Wetlands Protection Act.
9. The Order of Conditions must be recorded at the Registry of Deeds *prior* to the start of work. The Conservation Commission requires that the Order of Conditions be recorded at the Registry of Deeds and notice filed with the Commission no later than two weeks from the date of this Order.
10. Prior to commencing work, the Applicant, or their representative, shall notify the Commission in writing that all conditions of this Order are understood.
11. The Applicant is responsible for obtaining any other necessary permits and approvals from other local, state, or federal agencies.

12. Issuing this permit does not grant any property rights or authorize trespass in order to complete the requested work. It is the Applicant's responsibility to obtain permission to access lands that he/she does not own or legally control to carry out the actions described in this Order.
13. The Order of Conditions is to be included in all site-work related contracts and subcontracts dealing with the work proposed and shall supersede other contract requirements. The General Contractor shall display a copy of this Order on site at all times while activities regulated by this Order are being performed.
14. Prior to the start of work, the applicant will provide the Conservation Commission with written notification of the contact information for the Point of Contact for the Town, Contractor and Environmental Monitor, including name, address, phone number and email.
 - a. Work may not begin until the Commission has received the contact information and received confirmation that the scope of work is clearly understood.
15. The Applicant is responsible for educating all on site staff and ensuring work is completed in accordance with the plan of record. A written statement documenting that staff training has been completed must be submitted on or before May 1st of each year.
16. There is to be no discharge or spillage of fuel, oil, or other pollutants into the regulated area. Any washing or maintenance of vehicles is to take place off site in a specified area outside the buffer zone to any regulated resource area to prevent contamination by hazardous materials. Any material resulting from equipment maintenance shall be properly disposed of off site and not in any resource area or their associated buffer zone.
 - a. The Applicant and any subcontractors are required to follow all boat wash requirements to prevent the spread of invasive species into Pontoosuc Lake. The Applicant is required to submit the written procedure for ensuring all equipment is maintained and cleaned in accordance with the MWRA/DCR Aquatic Invasive Species Decontamination Protocol and any applicable local and state regulations.
17. The Conservation Commission will be notified within 60 calendar days of the completion of the project to allow for inspection for compliance. A written request for Certificate of Compliance must include a signed statement that the work has been completed in accordance with the Order of Conditions and an itemized list of any deviations or changes from the approved project.
 - a. If the Conservation Commission determines that any deviation from the approved plans were not previously authorized in writing or by amendment of the Order of Condition, it may advertise a public hearing to consider whether the changes are significant and whether it will issue a Certificate of Compliance or require the unauthorized changes to be corrected.
 - b. When issued, the Certificate of Compliance must be recorded at the Registry of Deeds and a confirmation of recording be sent to the Conservation Commission.

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18. Any issues or concerns that arise over the course of the project are to be addressed within 24 hours of notification to the Applicant.
 19. In the event there is a failure to follow the Order of Conditions, the Applicant is responsible for any and all replication or restoration activities necessary to return the resource area to pre-existing conditions.
 20. In the event the Applicant would like to request an Extension of the Order of Conditions, the Commission reserves the right to require a third-party review of lake conditions.

Conditions specific to work under DEP File Number 194-0209, Pontoosuc Lake Aquatic Plant Management Program:

Third Party Review

21. The plans for herbicide treatment of Pontoosuc Lake must be approved annually by the Lanesborough Conservation Commission. No work may proceed without approval by the Commission. A third-party reviewer will be contracted to serve as the Environmental Monitor responsible for reviewing the plant surveys and the each of the proposed treatment plans. The third-party Environmental Monitor will make recommendations to the Conservation Commission on whether to approve, deny or amend the proposed treatment plan. The Environmental Monitor is responsible for:
 - a. Participating and reviewing plant and lake survey data.
 - b. Reviewing proposed treatment areas and making recommendations to the Commission based on the proposed plans.
 - c. Reporting any violations or issues that arise during the project within 24 hours including the plan to address the violation and bring the project back into compliance.
 - d. Appearing at meetings and/or site visits with the Conservation Commission during review of the treatment plans.
 - e. Submitting or obtain any additional information requested by the Commission necessary to establish compliance.
22. A Consultant experienced in collecting and analyzing fish count data will be retained to prepare an annual report for the Conservation Commission and appear at the Commission meeting to present their findings and lake management recommendations.

Pre-Application Requirements of herbicides and algaecides:

23. Any individual who plans to use aquatic herbicides in Massachusetts must be in possession of the appropriate pesticide credential issued by the Department of Agricultural Resources.
24. Chemicals used for treatments must be currently approved for use in the state by the Pesticide Bureau.
25. The applicant or his/her designee shall obtain a valid BRP WM04 Permit for the application of aquatic herbicides and/or algaecides for designated target species as named in the NOI. A copy of the BRP WM04 Permit must be submitted to the

Conservation Commission prior to initiating any treatment of aquatic vegetation permitted by this Order.

26. All application of herbicides approved for use by this order shall be applied by an applicator licensed (in the aquatic weed category) by the Massachusetts Department of Agricultural Resources (DAR), Pesticide Bureau. Application must follow all product label directions.

Herbicides Use

27. The Commission strongly recommends the minimal use of herbicides. Herbicide use is restricted to the minimum application rate necessary to manage and control invasive plant species and promote native vegetation.
- a. The Commission supports the use of data driven decision making regarding the application of herbicides in Pontoosuc Lake. The Commission is in favor of application rates being less than expected or to be withheld if not necessary based on the assessment of the area.
28. The Lanesborough Conservation Commission's approval to apply herbicide for aquatic weed control in Pontoosuc Lake is limited to the schedule submitted & approved, with two seasonal treatments expected to occur beginning on or about June 1, and a second treatment beginning on or about August 1, of each year of this Order of Conditions.
- f. Diquat (REWARD), florypyrauxifen-benzyl (ProcellaCOR), endothall (Aquathol-K), and copper-based algaecides (under any trade names) are the only active ingredient chemicals to be used. No substitution may be made without the applicant making a formal request to the Lanesborough and Pittsfield Conservation Commissions.
 - g. Herbicides will not be mixed or applied at the same time. At no time will two herbicides be used in conjunction with each other. Each treatment will specify which herbicide to be used, in what application rate and in which areas.
 - h. Copper based algaecides will be used for the control of potentially harmful cyanobacteria blooms. Based on algae monitoring data, a treatment with copper sulfate would be triggered when cyanobacteria cell counts reach 30,000 cells/ml during the recreational season.
 - i. Prior to any treatment the Applicant is required to submit a proposed treatment plan to be reviewed and approved by the Conservation Commission. The treatment plan may be approved by the Chair, or their designee, and ratified at the next scheduled meeting of the Commission. The plan must specify:
 - 1. Sampling data collected.
 - 2. Proposed treatment plan.
 - 3. Communication with Pittsfield Conservation Commission regarding the cyanobacteria levels and copy of the written approval issued by the Pittsfield Conservation Commission.
 - ii. If the treatment plan is approved, up to half of the lake would be treated at an application rate of <0.1PPM.

- iii. The Applicant is required to follow the same posting and public notification requirements for other lake treatments (See Conditions #46 and #47).
 - i. Applications of herbicides have the potential to result in fish kills due to low dissolved oxygen when there are high water temperatures, high plant biomass to be controlled, shallow nutrient-rich water, high percentage of the lake to be treated or closed, non-flowing system. Under these conditions, avoidance or limited application of herbicides is recommended. The proposed treatment plan must contain an explanation of how treatment will be conducted in a way to avoid and/or minimize fish kills.
29. No herbicides will be applied within non-disturbance zones as shown on the approved maps.
- a. A 5' "safe zone" will be maintained along the entire shoreline measured from the Mean Average Low Water Line horizontally into the lake. No direct in-lake management will be conducted in this 5' area.
 - b. Herbicide spot treatment requires a 100' setback from non-treatment zones.
 - c. Per revisions made to the NOI on 4/21/22 by Harbormaster L. Hauge: *The Lanesborough Village Fire and Water District owns a parcel of land on which they plan to develop a municipal well is near the lake above the Bull Hill Road causeway. Even though the water source for the well (a deep underground aquifer) is well protected by over 400 feet of impenetrable material, application of herbicide to the lake in that area would probably make permitting the well difficult if not impossible. Therefore, application of herbicide is prohibited in the Town Brook area (the lake area north of the Bull Hill Road causeway). This area is described in the NOI as a 5-acre area northeast of the main body of Pontoosuc Lake.*
30. Herbicide use is restricted to the areas shown on the documents approved by the Commission. Application outside of the approved areas is strictly prohibited.
31. The application of herbicides are to be done in accordance with the manufacturer's specifications, all applicable state and federal laws, and the standards established by the Massachusetts Pesticide Board.
32. Use of herbicide limits as listed in the Notice of Intent not to exceed the GEIR, GEIR companion guidance or applications rates as shown on the label. Per the Notice of Intent, herbicides would be applied at or below suggested doses according to the product label based on plant types and densities.
- a. The herbicide will be mixed on a mixing tank on board the boat and evenly injected into the treatment area. The use of herbicides must be conducted by a certified applicator, in accordance with the directions on the label and per the precautions listed on the SDS.
 - b. A copy of the applicator's Massachusetts Applicator License will be submitted to the Conservation Commission prior to the start of work.
33. In the event of a spill or accidental release, the Conservation Commission must be notified in writing at www.lanesboroughconservation@gmail.com and by

contacting the Lanesborough Town Hall (413-442-1167) within 24 hours with detailed information regarding the extent of the release and the actions taken to address the release/spill. The Commission reserves the right to issue additional conditions on the work, including the requirement to address any negative impacts to areas under the jurisdiction of the Wetlands Protection Act.

34. 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. Fish kills must be reported to the Conservation Commission in writing at www.lanesboroughconservation@gmail.com and by contacting the Lanesborough Town Hall (413-442-1167) within 24 hours with detailed information regarding the extent of the event, and the actions taken to address the situation. The Commission reserves the right to issue additional conditions on the work, including the requirement to address any negative impacts to areas under the jurisdiction of the Wetlands Protection Act.
35. The Applicant can continue hand pulling to address infestation of Water Chestnut. All plant material removed from the lake must be properly discarded outside of all regulated areas and their associated buffer zones.
 - j. Hand pulling of milfoil is allowed under this Order. All plant material removed from the lake must be properly discarded outside of all regulated areas and their associated buffer zones.

Wildlife Habitat:

36. Prior to any work, the boundary of significant wildlife habitat will be delineated and mapped. The boundary of significant habitat will serve as the limit of work line. No herbicide treatments are allowed beyond the limit of work line.
37. A "safe zone" or set back of 50' will surround the significant habitat areas as shown on the approved documents. 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.
38. As part of the post management survey cited in the NOI narrative, a qualified lake and/or wildlife biologist will conduct a habitat analysis & wildlife study at pre-determined sites to ensure that the application of the approved herbicides has resulted in no species loss or habitat alteration.
39. The applicant make a strong effort to provide for a 20% vegetative coverage of littoral zones areas that do not exceed 15' in depth, measured from the normal stable pool surface water elevation. If this cannot be achieved, the Applicant will provide the Commission with a rationale and explanation of the efforts made to comply with this condition.

Fisheries

40. The Applicant is required to provide annual fish count data to the Commission as part of the monitoring process. The Applicant will contract with a third party experienced in collecting and analyzing fish count data to prepare a report for the Conservation Commission and appear at the Commission meeting to present their findings.
 - a. It is recommended that the Town collaborate with the Department of Fish and Wildlife to share information and discuss recommendations for lake management to support habitat protection for fish and wildlife around the lake.

Prior to the start of work:

41. Areas of target species for control, safety zones and their associated setbacks must be identified and indicated on a map of appropriate scale.
42. The plans for herbicide treatment of Pontoosuc Lake must be approved annually by the Lanesborough Conservation Commission. No work may proceed without approval by the Commission. Prior to the start of work the Applicant must minimally submit:
 - a. Updated plant survey map
 - b. Updated map of treatment areas including non-disturbance areas, safety zones and setback requirements.
 - c. Herbicide to be used and application rate. If the Applicant is proposing to apply more herbicide than the previous year the plan must include a detailed rationale for the need, how the area will be assessed and what additional monitoring will be conducted.
 - d. Most recent fish count data with description of how the data was collected.
43. Prior to the second herbicide treatment the Applicant must provide the anticipated treatment plan in writing to the Commission for review and approval. No work may proceed without approval by the Commission. Prior to the start of work the Applicant must minimally submit:
 - a. Updated plant survey map and narrative
 - b. Updated map of treatment areas including non-disturbance areas, safety zones and setback requirements.
 - c. Herbicide to be used and application rate. If the Applicant is proposing to apply more herbicide than the previous year the plan must include a detailed rationale for the need, how the area will be assessed and what additional monitoring will be conducted.
 - d. Fish count data with description of how the data was collected.
44. All treatment areas are to be clearly marked in the field. The Applicant is responsible for ensuring that herbicide application is restricted to the areas approved by the Commission and that on site staff have been properly trained.
45. There is to be no discharge or spillage of fuel, oil, or other pollutants into the regulated area. Any washing or maintenance of vehicles is to take place off site in a specified area outside the buffer zone to any regulated resource area to prevent contamination by hazardous materials. Any material resulting from equipment

maintenance shall be properly disposed of off-site and not in any resource area or their associated buffer zone.

- a. The Applicant and any subcontractors are required to follow all boat wash requirements to prevent the spread of invasive species into Pontoosuc Lake. The Applicant is required to submit the written procedure for ensuring all equipment is maintained and cleaned in accordance with the MWRA/DCR Aquatic Invasive Species Decontamination Protocol and any applicable local and state regulations.

Posting Requirements

46. Public notice of herbicide treatments are to be posted in the Berkshire Eagle, on the Town of Lanesborough website, Town bulletin boards and at all public beach/access areas a minimum of 48 hours before application.
 - k. The posting must include the date of application, type of herbicide to be used, any restrictions on water use and include a link and/or QR code directing the public to the Safety Data Sheet for the product.
 - i. Water use limitations may include but are not limited to 1-day restrictions on fishing, swimming, and boating (except for monitoring by boat) and 10-day restriction on irrigation and livestock watering.
 - l. The posting must also include current contact information for the Applicant and Board of Health representative.
47. Shoreline signs must be posted 7-10 days prior to the first application advising the public and abutters that Diquat, fluroxypyr-benzyl, endothall, and/or copper-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 along with a link and/or QR Code to the Safety Data Sheet.
48. Permanent signposts are to be installed to provide a consistent place for the public to access information regarding lake treatment and/or cyanobacteria outbreaks.
 - a. All postings must be checked daily and postings replaced as needed.
 - b. Posters/notifications are to be removed and properly disposed of when no longer needed.

During Treatment Applications:

49. Application of the herbicide must be conducted in accordance with the Orders of Conditions issued by Lanesborough and Pittsfield Conservation Commissions, any permitting issued by DEP, the Division of Watershed Management, and any other applicable local, state, or federal guidelines
50. All work must be completed in accordance with the plan of record and the Order of Conditions issued by the Commission. Failure to follow the plan of record and/or Order of Conditions will result in a Cease and Desist Order. Work will not proceed until all corrective actions are complete.
51. Lake treatment shall only occur when water temperatures are between 55 degrees Fahrenheit and 85 degrees Fahrenheit.
52. Treatment will only be conducted in approved areas.

53. 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. All equipment shall be inspected regularly for leaks. Any leaking hydraulic lines, cylinders or any other components shall be fixed immediately.

- a. 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, the issuing authority shall be immediately notified, and 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 algacides shall take place outside the jurisdiction of the Department.

Monitoring:

54. Macrophyte surveys are to be conducted as outlined in the Notice of Intent and supplemental Appendix B information submitted for review by the Commission. Results of those surveys are to be submitted to the Commission no later than 60 days after any herbicide treatment.

- a. Pre and post treatment surveys will be conducted to determine the extent of the aquatic growth before the treatment and the success of the management program following treatment.
 - i. Pre-treatment survey information will be collected in the fall of the previous year.
 - ii. Post-treatment monitoring of aquatic plants is to be done within 45 days of the application. Data on the aquatic plant composition, distribution of native and non-native species with the lake, and any population changes are to be collected and submitted to the Commission no later than 60 days from treatment date.

55. The Applicant will submit written post treatment reports to the Conservation Commission. Monitoring reports may be submitted electronically by emailing lanesboroughconservation@gmail.com.

Sequence of Activities

56. Per the Notice of Intent submitted, the Applicant will conduct the following activities:

- a. Macrophyte survey (mid-late May) to assess Curly Leaf Pondweed and determine treatment recommendation.
- b. First treatment (June)
- c. Mid-season survey (July) to assess first treatment and plan second treatment (August)
- d. Late survey (mid-September) to assess the plant community post-treatment.

57. The Commission recommends the following sequence and timeline for annual treatment of Pontoosuc Lake. Please note that the Commission meets the first Monday of the month. It is the Applicant's responsibility to provide the required documentation the Commission in a timely manner. Failure to submit documents

in time for the monthly meeting may delay activities until the Commission can review the documents and issue their decision.

- a. May: Submission of treatment plan for first herbicide treatment to the Commission
 - b. June: With Commission approval, first treatment.
 - c. July: Submission of monitoring report for first treatment and treatment plan for second application to the Commission.
 - d. August: With Commission approval, second treatment
 - e. September: Submission of monitoring report for second treatment.
58. The Applicant is responsible for providing any additional information requested by the Commission regarding the treatment process, staff training, monitoring reports, levels and types of herbicides used, and/or environmental impact. Failure to provide additional documentation may result in delay in treatment activities until the information has been provided to and reviewed by the Commission.

Additional Recommendations

59. The Commission recommends the Applicant continue to explore actions to promote and protect the overall health of the lake including but not limited to expanded collaboration with the Division of Fish and Wildlife to assess fish and wildlife habitat and watershed protection activities, conducting a watershed assessment in collaboration with community stakeholders and explore coordination of permitting across communities and stakeholders for all lake management activities.