

July 11, 2024

Mr. Robert Van Der Kar
Pittsfield Conservation Commission
City Hall – 70 Allen Street
Pittsfield, MA 01201

RE: Notice of Intent
ITAM Lodge
22 Waubeek Road
Pittsfield, MA

Dear Mr. Van Der Kar,

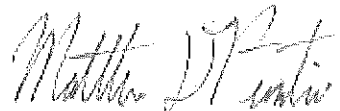
Enclosed for your review please find two (2) copies of a Notice of Intent Application prepared for Pontoosuc Lake Properties, LLC for the property located at 22 Waubeek Road in Pittsfield, MA (Map G16, Block 1, Lot 17). This property is more commonly known as the Proprietor's Lodge. As required, a copy of this application has been sent to the Massachusetts Department of Environmental Protection (MADEP), Western Region.

This Notice of Intent pertains to construction of *new docks only*. A similar Notice of Intent was submitted for the identical dock layout back in 2019. That Notice was denied by the Conservation Commission. Subsequently, the Applicant appealed that decision to Mass DEP, who ultimately issued a Superseding Order of Conditions. That Order has since expired.

This application includes documents that were requested by DEP as part of the appeal process but weren't included in the 2019 Notice of Intent.

If you should have any questions or concerns, or require additional information, please don't hesitate to contact the office.

Sincerely,
SK DESIGN GROUP, INC.



Matthew D. Puntin, P.E.
Project Manager

Enclosures

Cc: Restorations, Inc.
ITAM Lodge
MADEP, File

G:\ASK DESIGN GROUP\2017\170169 Restorations-ITAM-Engr for Dvlpt\Documents\Word\NOI dock (2024)\01 NOI Cover Letter.docx

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22 Waubeek Road
Pittsfield, Massachusetts

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- ❖ Narrative
- ❖ Certified List of Abutters
- ❖ Abutter Notification
- ❖ Copy of Certificates of Mailing

Figures

1. USGS Locus Map
2. NHESP GIS Map of Estimated Habitats of Rare Wildlife and Vernal Pools
3. FEMA Floodplain Map
4. City of Pittsfield Assessor's Map

Attachments

- A. Underwater Assessment Report (dated July 19, 2019)
- B. Copy of Superseding Order of Conditions (issued June 14, 2019) including Findings and Special Conditions
- C. Copy of letter to DEP regarding additional information pertaining to appeal (dated July 22, 2019)
- D. Plan to Accompany Notice of Intent Application prepared for Pontoosuc Lake Properties, LLC, 22 Waubeek Road, Pittsfield, Massachusetts, Dated May 1, 2019 (revision date August 27, 2020)

WPA Form 3
Notice of Intent Form



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 3 - Notice of Intent

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

Provided by MassDEP:
MassDEP File #:
eDEP Transaction #:1754851
City/Town:PITTSFIELD

A. General Information

1. Project Location:

a. Street Address	22 WAUBEEK RD.	c. Zip Code	01201
b. City/Town	PITTSFIELD	e. Longitude	73.25478W
d. Latitude	42.48893N	g. Parcel/Lot #	BLOCK 1, LOT 17
f. Map/Plat #	MAP G16		

2. Applicant:

Individual Organization

a. First Name		b. Last Name	
c. Organization	PONTOOSUC LAKE PROPERTIES LLC		
d. Mailing Address	151 SOUTH ST.		
e. City/Town	HINSDALE	f. State	MA
g. Zip Code	01235	j. Email	RESTORATIONS1970@AOL.COM
h. Phone Number	413-446-1423	i. Fax	

3. Property Owner:

more than one owner

a. First Name		b. Last Name	
c. Organization	PONTOOSUC LAKE PROPERTIES LLC		
d. Mailing Address	151 SOUTH ST.		
e. City/Town	HINSDALE	f. State	MA
g. Zip Code	01235	j. Email	RESTORATIONS1970@AOL.COM
h. Phone Number	413-446-1423	i. Fax	

4. Representative:

a. First Name	ROBERT	b. Last Name	FOURNIER
c. Organization	SK DESIGN GROUP, INC.		
d. Mailing Address	2 FEDERICO DR.		
e. City/Town	PITTSFIELD	f. State	MA
g. Zip Code	01201	j. Email	RFOURNIER@SK-DG.COM
h. Phone Number	413-443-3537	i. Fax	413-445-5376

5. Total WPA Fee Paid (Automatically inserted from NOI Wetland Fee Transmittal Form):

a. Total Fee Paid	600.00	b. State Fee Paid	287.50	c. City/Town Fee Paid	312.50
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6. General Project Description:

INSTALLATION OF SEASONAL PRIVATE RECREATIONAL BOATING FACILITY IN PONTOOSUC LAKE

7a. Project Type:

- | | |
|---|--|
| 1. <input type="checkbox"/> Single Family Home | 2. <input type="checkbox"/> Residential Subdivision |
| 3. <input type="checkbox"/> Limited Project Driveway Crossing | 4. <input checked="" type="checkbox"/> Commercial/Industrial |
| 5. <input checked="" type="checkbox"/> Dock/Pier | 6. <input type="checkbox"/> Utilities |
| 7. <input type="checkbox"/> Coastal Engineering Structure | 8. <input type="checkbox"/> Agriculture (eg., cranberries, forestry) |
| 9. <input type="checkbox"/> Transportation | 10. <input type="checkbox"/> Other |

7b. Is any portion of the proposed activity eligible to be treated as a limited project subject to 310 CMR 10.24 (coastal) or 310 CMR 10.53 (inland)?



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1. Yes No If yes, describe which limited project applies to this project:
2. Limited Project

8. Property recorded at the Registry of Deeds for:

a. County:	b. Certificate:	c. Book:	d. Page:
MIDDLE BERKSHIRE		6136	75

B. Buffer Zone & Resource Area Impacts (temporary & permanent)

1. Buffer Zone & Resource Area Impacts (temporary & permanent):

This is a Buffer Zone only project - Check if the project is located only in the Buffer Zone of a Bordering Vegetated Wetland, Inland Bank, or Coastal Resource Area.

2. Inland Resource Areas: (See 310 CMR 10.54 - 10.58, if not applicable, go to Section B.3. Coastal Resource Areas)

Resource Area	Size of Proposed Alteration	Proposed Replacement (if any)
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a. <input checked="" type="checkbox"/> Bank	24 1. linear feet	0 2. linear feet
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b. <input type="checkbox"/> Bordering Vegetated Wetland	1. square feet	2. square feet
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c. <input checked="" type="checkbox"/> Land under Waterbodies and Waterways	22 1. Square feet	0 2. square feet
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	0 3. cubic yards dredged	
--	-----------------------------	--

d. <input type="checkbox"/> Bordering Land Subject to Flooding	1. square feet	2. square feet
--	----------------	----------------

	3. cubic feet of flood storage lost	4. cubic feet replaced
--	-------------------------------------	------------------------

e. <input type="checkbox"/> Isolated Land Subject to Flooding	1. square feet	
---	----------------	--

	2. cubic feet of flood storage lost	3. cubic feet replaced
--	-------------------------------------	------------------------

f. <input type="checkbox"/> Riverfront Area	1. Name of Waterway (if any)	
---	------------------------------	--

2. Width of Riverfront Area (check one)
- 25 ft. - Designated Densely Developed Areas only
 100 ft. - New agricultural projects only
 200 ft. - All other projects

3. Total area of Riverfront Area on the site of the proposed project _____ square feet

4. Proposed Alteration of the Riverfront Area:

- a. total square feet b. square feet within 100 ft. c. square feet between 100 ft. and 200 ft.

5. Has an alternatives analysis been done and is it attached to this NOI? Yes No



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a. number of new stream crossings

b. number of replacement stream crossings

C. Other Applicable Standards and Requirements

Streamlined Massachusetts Endangered Species Act/Wetlands Protection Act Review

1. Is any portion of the proposed project located in **Estimated Habitat of Rare Wildlife** as indicated on the most recent Estimated Habitat Map of State-Listed Rare Wetland Wildlife published by the Natural Heritage of Endangered Species program (NHESP)?

a. Yes No

If yes, include proof of mailing or hand delivery of NOI to:

Natural Heritage and Endangered Species
Program
Division of Fisheries and Wildlife
1 Rabbit Hill Road
Westborough, MA 01581

b. Date of map:FROM MAP VIEWER

If yes, the project is also subject to Massachusetts Endangered Species Act (MESA) review (321 CMR 10.18)....

c. Submit Supplemental Information for Endangered Species Review * (Check boxes as they apply)

1. Percentage/acreage of property to be altered:

(a) within Wetland Resource Area

percentage/acreage

(b) outside Resource Area

percentage/acreage

2. Assessor's Map or right-of-way plan of site

3. Project plans for entire project site, including wetland resource areas and areas outside of wetland jurisdiction, showing existing and proposed conditions, existing and proposed tree/vegetation clearing line, and clearly demarcated limits of work **

a. Project description (including description of impacts outside of wetland resource area & buffer zone)

b. Photographs representative of the site

c. MESA filing fee (fee information available at: <http://www.mass.gov/eea/agencies/dfg/dfw/natural-heritage/regulatory-review/mass-endangered-species-act-mesa/mesa-fee-schedule.html>)

Make check payable to "Natural Heritage & Endangered Species Fund" and mail to NHESP at above address

Projects altering 10 or more acres of land, also submit:

d. Vegetation cover type map of site

e. Project plans showing Priority & Estimated Habitat boundaries

d. OR Check One of the following

1. Project is exempt from MESA review. Attach applicant letter indicating which MESA exemption applies. (See 321 CMR 10.14, <http://www.mass.gov/eea/agencies/dfg/dfw/laws-regulations/cmr/321-cmr-1000-massachusetts-endangered-species-act.html#10.14>; the NOI must still be sent to NHESP if the project is within estimated habitat pursuant to 310 CMR 10.37 and 10.59.)

2. Separate MESA review ongoing.

a. NHESP Tracking Number

b. Date submitted to NHESP

3. Separate MESA review completed.

Include copy of NHESP "no Take" determination or valid Conservation & Management Permit with approved plan.



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* Some projects not in Estimated Habitat may be located in Priority Habitat, and require NHESP review...

- 2. For coastal projects only, is any portion of the proposed project located below the mean high waterline or in a fish run?
 - a. Not applicable - project is in inland resource area only

b. Yes No

If yes, include proof of mailing or hand delivery of NOI to either:

South Shore - Cohasset to Rhode Island, and the Cape & Islands:

North Shore - Hull to New Hampshire:

Division of Marine Fisheries -
Southeast Marine Fisheries Station
Attn: Environmental Reviewer
836 S. Rodney French Blvd
New Bedford, MA 02744

Division of Marine Fisheries -
North Shore Office
Attn: Environmental Reviewer
30 Emerson Avenue
Gloucester, MA 01930

If yes, it may require a Chapter 91 license. For coastal towns in the Northeast Region, please contact MassDEP's Boston Office. For coastal towns in the Southeast Region, please contact MassDEP's Southeast Regional office.

- 3. Is any portion of the proposed project within an Area of Critical Environmental Concern (ACEC)?

a. Yes No

If yes, provide name of ACEC (see instructions to WPA Form 3 or DEP Website for ACEC locations). **Note:** electronic filers click on Website.

b. ACEC Name

- 4. Is any portion of the proposed project within an area designated as an Outstanding Resource Water (ORW) as designated in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00?

a. Yes No

- 5. Is any portion of the site subject to a Wetlands Restriction Order under the Inland Wetlands Restriction Act (M.G.L.c. 131, § 40A) or the Coastal Wetlands Restriction Act (M.G.L.c. 130, § 105)?

a. Yes No

- 6. Is this project subject to provisions of the MassDEP Stormwater Management Standards?

a. Yes, Attach a copy of the Stormwater Report as required by the Stormwater Management Standards per 310 CMR 10.05(6)(k)-(q) and check if:

1. Applying for Low Impact Development (LID) site design credits (as described in Stormwater Management Handbook Vol.2, Chapter 3)

2. A portion of the site constitutes redevelopment

3. Proprietary BMPs are included in the Stormwater Management System

b. No, Explain why the project is exempt:

1. Single Family Home

2. Emergency Road Repair

3. Small Residential Subdivision (less than or equal to 4 single-family houses or less than or equal to 4 units in multi-family



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housing project) with no discharge to Critical Areas.

D. Additional Information

Applicants must include the following with this Notice of Intent (NOI). See instructions for details.

Online Users: Attach the document transaction number (provided on your receipt page) for any of the following information you submit to the Department by regular mail delivery.

- 1. USGS or other map of the area (along with a narrative description, if necessary) containing sufficient information for the Conservation Commission and the Department to locate the site. (Electronic filers may omit this item.)
- 2. Plans identifying the location of proposed activities (including activities proposed to serve as a Bordering Vegetated Wetland [BVW] replication area or other mitigating measure) relative to the boundaries of each affected resource area.
- 3. Identify the method for BVW and other resource area boundary delineations (MassDEP BVW Field Data Form(s)).
- 4. List the titles and dates for all plans and other materials submitted with this NOI.

a. Plan Title: **b. Plan Prepared By:** **c. Plan Signed/Stamped By:** **d. Revised Final Date:** **e. Scale:**

PLAN TO				
ACCOMPANY	SK DESIGN GROUP,	MATTHEW PUNTIN	AUGUST 27,2020	AS NOTED
NOTICE OF INTENT	INC.			
APPLICATION				

- 5. If there is more than one property owner, please attach a list of these property owners not listed on this form.
- 6. Attach proof of mailing for Natural Heritage and Endangered Species Program, if needed.
- 7. Attach proof of mailing for Massachusetts Division of Marine Fisheries, if needed.
- 8. Attach NOI Wetland Fee Transmittal Form.
- 9. Attach Stormwater Report, if needed.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
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E. Fees

1. Fee Exempt: No filing fee shall be assessed for projects of any city, town, county, or district of the Commonwealth, federally recognized Indian tribe housing authority, municipal housing authority, or the Massachusetts Bay Transportation Authority.

Applicants must submit the following information (in addition to pages 1 and 2 of the NOI Wetland Fee Transmittal Form) to confirm fee payment:

2. Municipal Check Number	5601	3. Check date	7/5/24
4. State Check Number	5603	5. Check date	7/5/24
6. Payer name on check: First Name	LHAC HOSPITALITY MASS., INC.		
7. Payer name on check: Last Name			

F. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Notice of Intent and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge. I understand that the Conservation Commission will place notification of this Notice in a local newspaper at the expense of the applicant in accordance with the wetlands regulations, 310 CMR 10.05(5)(a).

I further certify under penalties of perjury that all abutters were notified of this application, pursuant to the requirements of M.G.L. c. 131, § 40. Notice must be made by Certificate of Mailing or in writing by hand delivery or certified mail (return receipt requested) to all abutters within 100 feet of the property line of the project location.

1. Signature of Applicant		2. Date	7/5/24
3. Signature of Property Owner (if different)		4. Date	
5. Signature of Representative (if any)	D. Fournier (SK DESIGN GROUP, INC.)	6. Date	07.09.24

For Conservation Commission:

Two copies of the completed Notice of Intent (Form 3), including supporting plans and documents, two copies of the NOI Wetland Fee Transmittal Form, and the city/town fee payment, to the Conservation Commission by certified mail or hand delivery.

For MassDEP:

One copy of the completed Notice of Intent (Form 3), including supporting plans and documents, one copy of the NOI Wetland Fee Transmittal Form, and a copy of the state fee payment to the MassDEP Regional Office (see Instructions) by certified mail or hand delivery.

Other:

If the applicant has checked the "yes" box in Section C, Items 1-3, above, refer to that section and the Instructions for additional submittal requirements.

The original and copies must be sent simultaneously. Failure by the applicant to send copies in a timely manner may result in dismissal of the Notice of Intent.

WPA Form 3
Wetlands Transmittal Form and
Affidavit of Payment



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 3 - Notice of Wetland Fee Transmittal
Form
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 MassDEP File #:
 eDEP Transaction #: 1754851
 City/Town: PITTSFIELD

A. Applicant Information

1. Applicant:

a. First Name _____ b. Last Name _____
 c. Organization PONTOOSUC LAKE PROPERTIES LLC
 d. Mailing Address 151 SOUTH ST.
 e. City/Town HINSDALE f. State MA g. Zip Code 01235
 h. Phone Number 4134461423 i. Fax _____ j. Email RESTORATIONS1970@AOL.COM

2. Property Owner:(if different)

a. First Name _____ b. Last Name _____
 c. Organization PONTOOSUC LAKE PROPERTIES LLC
 d. Mailing Address 151 SOUTH ST.
 e. City/Town HINSDALE f. State MA g. Zip Code 01235
 h. Phone Number 4134461423 i. Fax _____ j. Email RESTORATIONS1970@AOL.COM

3. Project Location:

a. Street Address 22 WAUBEEK RD. b. City/Town PITTSFIELD

Are you exempted from Fee? (YOU HAVE SELECTED 'NO')

Note: Fee will be exempted if you are one of the following:

- City/Town/County/District
- Municipal Housing Authority
- Indian Tribe Housing Authority
- MBTA

State agencies are only exempt if the fee is less than \$100

B. Fees

Activity Type	Activity Number	Activity Fee	RF Multiplier	Sub Total
J.) ANY OTHER ACTIVITY NOT IN CATEGORY 1,3,4,5 OR 6;	1	500.00		500.00
A.) WORK ON DOCKS, PIERS, REVETMENTS, DIKES, ETC. (COASTAL OR INLAND).	25	4.00		100.00
		City/Town share of filing fee	State share of filing fee	Total Project Fee
		\$312.50	\$287.50	\$600.00

Narrative

NOTICE OF INTENT NARRATIVE

*Pontoosuc Lake Properties, LLC
22 Waubeek Road
Pittsfield, Massachusetts
(Map G16, Block 1, Lot 17)*

1.0 EXISTING CONDITIONS

The property is a developed commercial lot approximately 2.4 acres in size, which is located along the southern shore of Pontoosuc Lake. It is bordered by Waubeek Road, Saddle-Ball View, and Constitution Road. The northern portion of the property falls within the 100' buffer zone of the bank of Pontoosuc Lake and there is a 100-year floodplain associated with the lake. On the property there is a commercial building (the Proprietor's Lodge) with associated parking lot, lawn areas, and other amenities.

Resource areas were previously delineated and are currently valid under the Superseding Order of Conditions for MADEP File# 263-1091. A copy of that Order has been included herewith (see Attachment A).

2.0 PROJECT DESCRIPTION & SEQUENCE

The proposed project includes the installation of seasonal docks to create a 12-slip private recreational boating facility.

A 4-foot wide boardwalk on posts will be installed from the patio area to Pontoosuc Lake. A 76-foot long "T" section of dock will be installed on posts in the lake with 6 finger piers docks on posts. In total 12-slips are proposed, slips 1 and 2 will be for non-motorized vessels and slips 3-12 will be for motorized boats. The dock system will be seasonal therefore it will be removed and stacked on shore, outside of any resource areas, in the fall. The boardwalk is a permanent structure.

A single mooring is proposed approximately 60 feet from shore. This will be used to anchor a single boat in the water for the summer season. The mooring will be anchored to the lake bottom using concrete blocks (deadman).

A Chapter 91 General Dock License is required for the proposed project. An application was made in 2021. A License was issued by Mass DEP but was subsequently appealed.

3.0 BUFFER ZONE (310 CMR 10.02)

Buffer zone is associated with inland bank of Pontoosuc Lake. Buffer zone extends 100 feet inland from bank. A portion of the dock and boardwalk system is located in the buffer zone. This is elevated above existing grade. Also, all (4) trees to be removed are located in the buffer zone.

4.0 BANK (310 CMR 10.54)

Top of bank is associated with Pontoosuc Lake. This boundary is currently valid under the fore-mentioned Superseding Order of Conditions.

The proposed dock system will span from the existing concrete retaining wall (which will remain). For purposes of this application, approximately 24 ft. of "bank" will be impacted (length of retaining wall). Also, the retaining wall was inspected by an engineer and deemed safe.

5.0 BORDERING VEGETATED WETLAND (310 CMR 10.55)

No bordering vegetated wetlands were delineated as a part of this application.

6.0 LAND UNDER WATER BODIES AND WATERWAYS (310 CMR 10.56)

Land under water bodies and waterways is associated with Pontoosuc Lake. Land under waterbodies and waterways is the below the mean low water level. Pontoosuc Lake has a permit to drawdown the lake annually by 3 feet. The bank elevation is 1098.0, therefore the mean annual low flow level is 1095.0.

Disturbance to land under waterbodies and waterways is temporary. The docks will be installed in the spring and removed in the fall. The docks will be secured with posts driven into the lake bottom or in the deeper water elevations anchored to the bottom. These posts are typically 2" diameter and are set along the boardwalk section of the dock, totaling approximately 1 square foot of temporary impact. The floating docks will be anchored with concrete deadman approximately 12" square. There are approximately 20 deadman to be use, totaling 20 square feet of temporary impact. A proposed mooring will be located approximate 60 feet offshore. This morning will be seasonal and anchored to the lake bottom with a dead man, altering approximately 1 square foot of temporary impact. A project total of approximately 22 square feet of land under waterbodies is proposed to be temporarily altered as a part of this application. An Underwater Assessment Report was prepared for this application (see Attachment).

**7.0 LAND SUBJECT TO FLOODING (310 CMR 10.57)
BORDERING**

Bordering land subject to flooding is associated with Pontoosuc Lake. The lake is controlled by a dam outlet structure, therefore the floodplain boundary for the entire lake is at elevation 1101 per the FEMA floodplain maps. The docks are seasonal and most of them within BLSF are floating, therefore they will adjust with the rising floodwaters. No negative impacts to BLSF are proposed under this application.

ISOLATED

There is no known isolated land subject to flooding associated with the project site.

8.0 RIVERFRONT (310 CMR 10.58)

Riverfront Area is not associated with the subject lot.

9.0 ESTIMATED HABITATS OF RARE WILDLIFE (310 CMR 10.59)

Per the October 2017 Natural Heritage Online Mapping, the project site does not fall within a polygon established by the Natural Heritage and Endangered Species Program.

Certified List of Abutters, Abutter Notification
And Copy of Certificate of Mailings

LIST OF ABUTTERS

JULY 3, 2024

OWNER: PONTOOSUC LAKE PROPERTIES LLC

APPLICANT: PONTOOSUC LAKE PROPERTIES LLC

LOCATION: 22 WAUBEEK RD (G160001017)

LIST OF ABUTTERS: I CERTIFY THAT THE ATTACHED LIST CONTAINS THE NAMES AND ADDRESSES OF THE ABUTTERS AND THE OWNERS OF LAND NEXT TO AND ADJOINING THE LAND OF THE ABUTTERS TO THE PROPERTY COVERED BY THIS APPLICATION.

MEMBER – BOARD OF ASSESSORS

Emily A Schilling

Add Address Street	ID	Owner 1	Owner 2	Owner Address	Owner City	Owner Zip
41 WAUBEEK RD	G150020001	GINGRAS CHRISTOPHER L	GINGRAS NATALIE R	41 WAUBEEK RD	PITTSFIELD	MA 01201
65 WAUBEEK RD	G150023001	PENSIVY LINDA		65 WAUBEEK RD	PITTSFIELD	MA 01201
HONWEE RD	G150023002	PENSIVY ROBERT J JR		65 WAUBEEK RD	PITTSFIELD	MA 01201
47 WAUBEEK RD	G150023004	WELLS JOSHUA TIMOTHY	CARLOTTO CASSIDY R	47 WAUBEEK RD	PITTSFIELD	MA 01201
51 WAUBEEK RD	G150023005	ZUCCALO BRIAN J		51 WAUBEEK RD	PITTSFIELD	MA 01201
26 OVERLOOK RD	G150025006	HAZZARD KRISTINE MARY	HAZZARD LAWRENCE STEPHEN	11508 ROLLING LEAF LANE	GLEN ALLEN	VA 23059
WAUBEEK RD	G150025007	LEAVITT MAURICE J	LEAVITT DAVID J	12 CRANBERRY FARM RD	PLYMOUTH	MA 01202
126 WAUBEEK RD	G160001015	LEAVITT MAURICE J 1/2	LEAVITT DAVID 1/2	P O BOX 2153	PITTSFIELD	MA 01202
WAUBEEK RD	G160001016	PONTOOSUC LAKE PROPERTIES LLC		151 SOUTH ST	HINSDALE	MA 01235
18 WAUBEEK RD	G160001018	SANTOS-CHINA CASSEY LEE	SANTOS-CHINA CLAUDIA FONTESS	18 WAUBEEK RD	PITTSFIELD	MA 01201
20 WAUBEEK RD	G160001019	KELLETT JOHN C	KELLETT SANDRA AKA SANDRA C	160 MAHOPAC AVE	AMAWALK	NY 10501
16 WAUBEEK RD	G160001020	QUIGLEY MARK	QUIGLEY SUSAN	8 YALE ST	GARDEN CITY	NY 11530

**NOTIFICATION TO ABUTTERS UNDER THE
MASSACHUSETTS WETLANDS PROTECTION ACT**

In accordance with the second paragraph of Massachusetts General Laws Chapter 131, Section 40, you are hereby notified of the following:

The name of the applicant is Pontoosuc Lake Properties, LLC

The applicant has filed a Notice of Intent with the Pittsfield Conservation Commission seeking permission to remove, fill, dredge or alter an Area Subject to Protection under the Wetlands Protection Act (General Laws Chapter 131, Section 40).

The street address of the property where the activity is proposed is:
22 Waubeek Road and the City's Assessor's Map/Lot is: G16 1 17.
Map Block Lot

A brief description of the proposed work is the installation of a private recreational boating facility in Pontoosuc Lake.

Copies of the Notice of Intent may be examined at the Pittsfield Conservation Commission office, City Hall - 70 Allen Street, Pittsfield, MA., by appointment. For more information, please call the Commission office at 413-499-9359.

Copies of the Notice of Intent may be obtained from either (check one) the applicant ___ or the applicant's representative X, by calling this telephone number 413-443-3537 between the hours of 9:00 am and 4:00 pm, Monday through Friday. *NOTE: Provider may charge for the cost of reproduction.*

Information regarding the date, time and place of the public hearing regarding this application may be obtained from the Pittsfield Conservation Commission by calling 413-499-9359.

Notice of the public hearing, including its date, time and place will be published at least five (5) days in advance in the Berkshire Eagle under the legal notice section.

Notice of the public hearing, including its date, time and place will be posted in Town Hall at least forty-eight (48) hours in advance.

The date that this notification was sent to abutters is July 11, 2024
Month/Day/Year

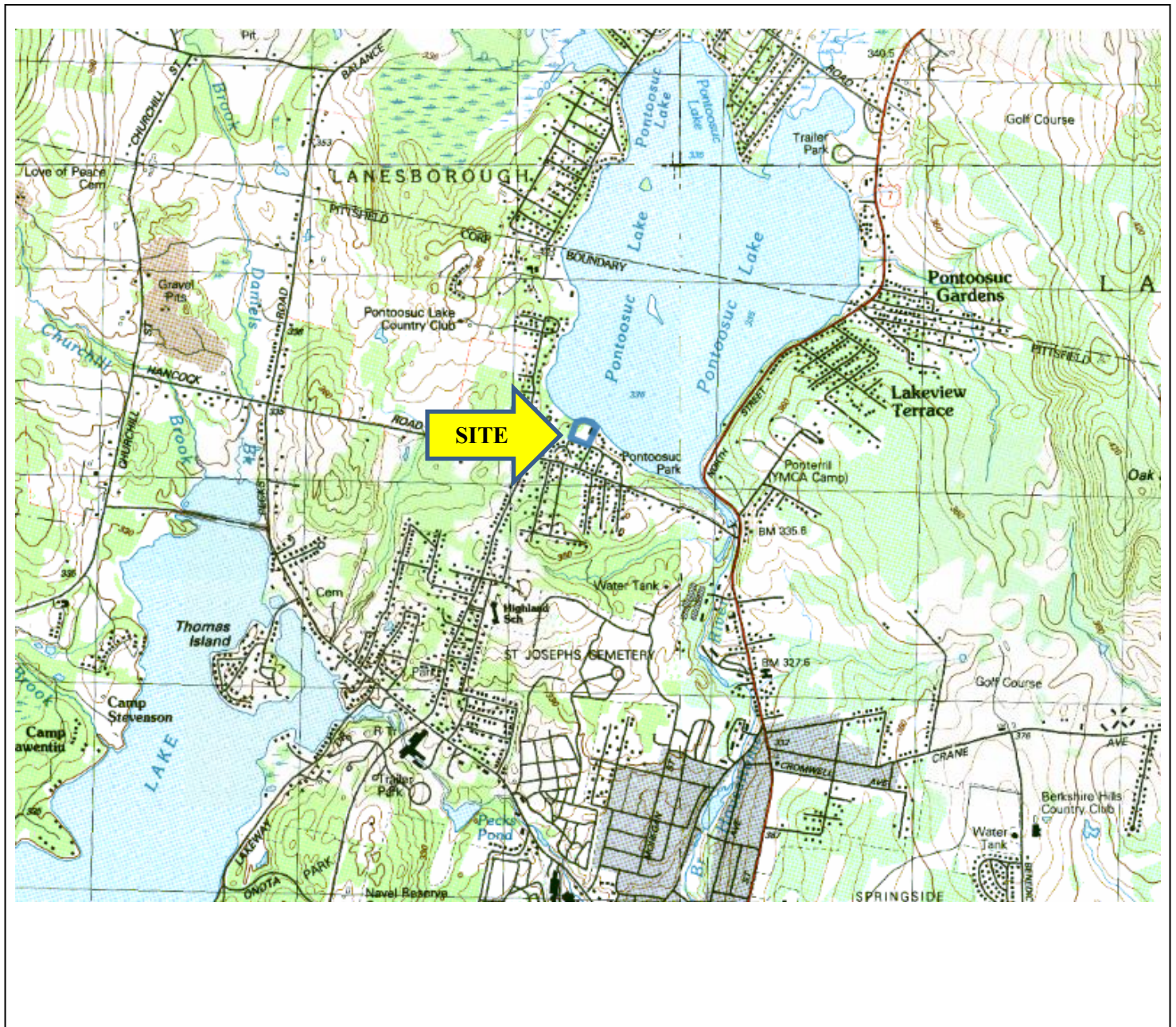
A completed copy of this form and a list of the abutters to whom it was sent shall be submitted by the applicant to the Pittsfield Conservation Commission with the Notice of Intent.

You may also contact the nearest Department of Environmental Protection Regional Office for more information about this application or the Wetlands Protection Act.

Western Region: 413-784-1100
Northeast Region: 617-935-2160

Central Region: 508-792-7650
Southeast Region: 508-946-2800

Figures



Source: U.S.G.S. Map / Pittsfield GIS

FIGURE #1

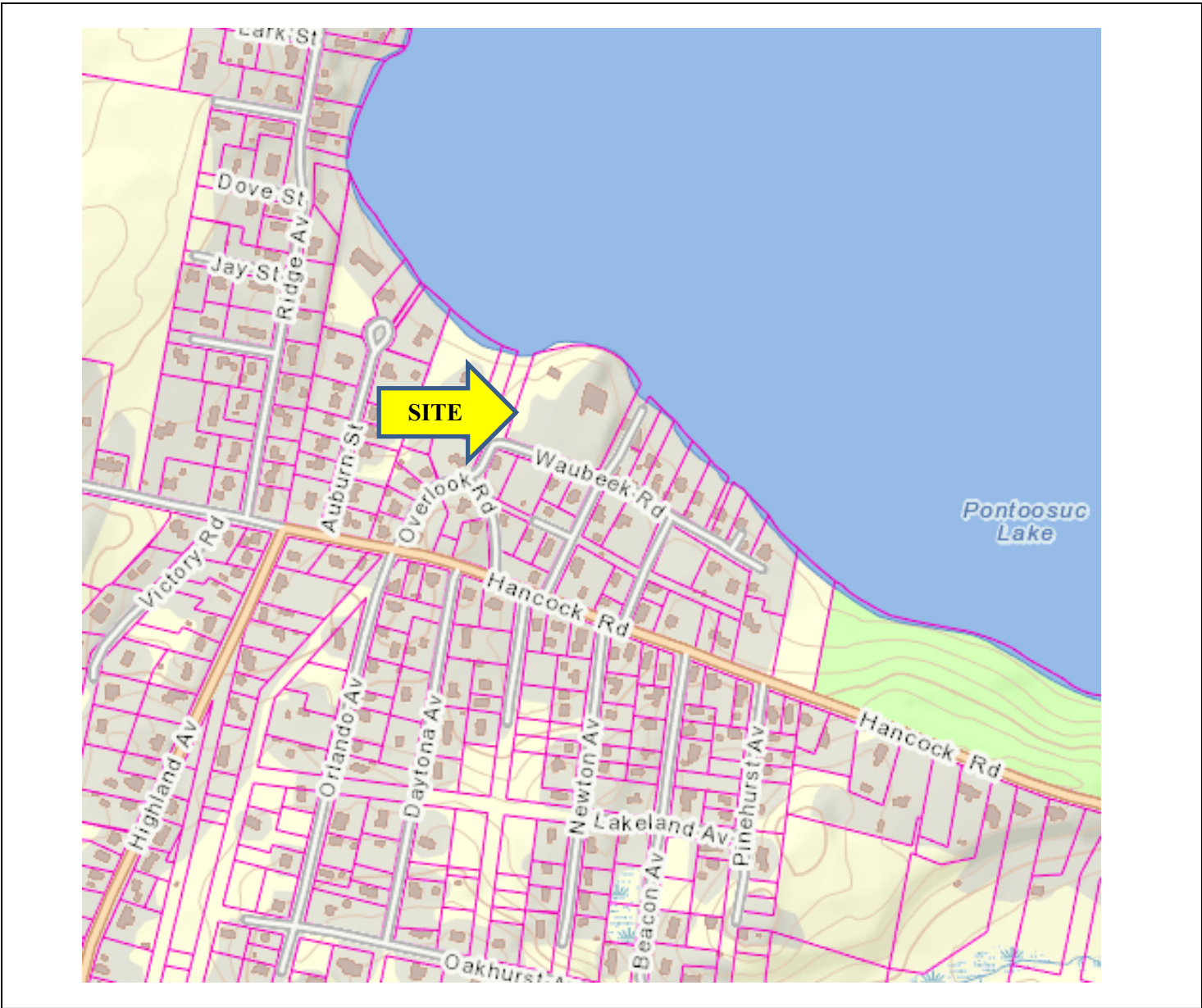
U.S.G.S. Map
 22 Waubeek Road
 Pittsfield, MA



DESIGN GROUP, INC.

CIVIL ENGINEERS - SURVEYORS - CONSULTANTS

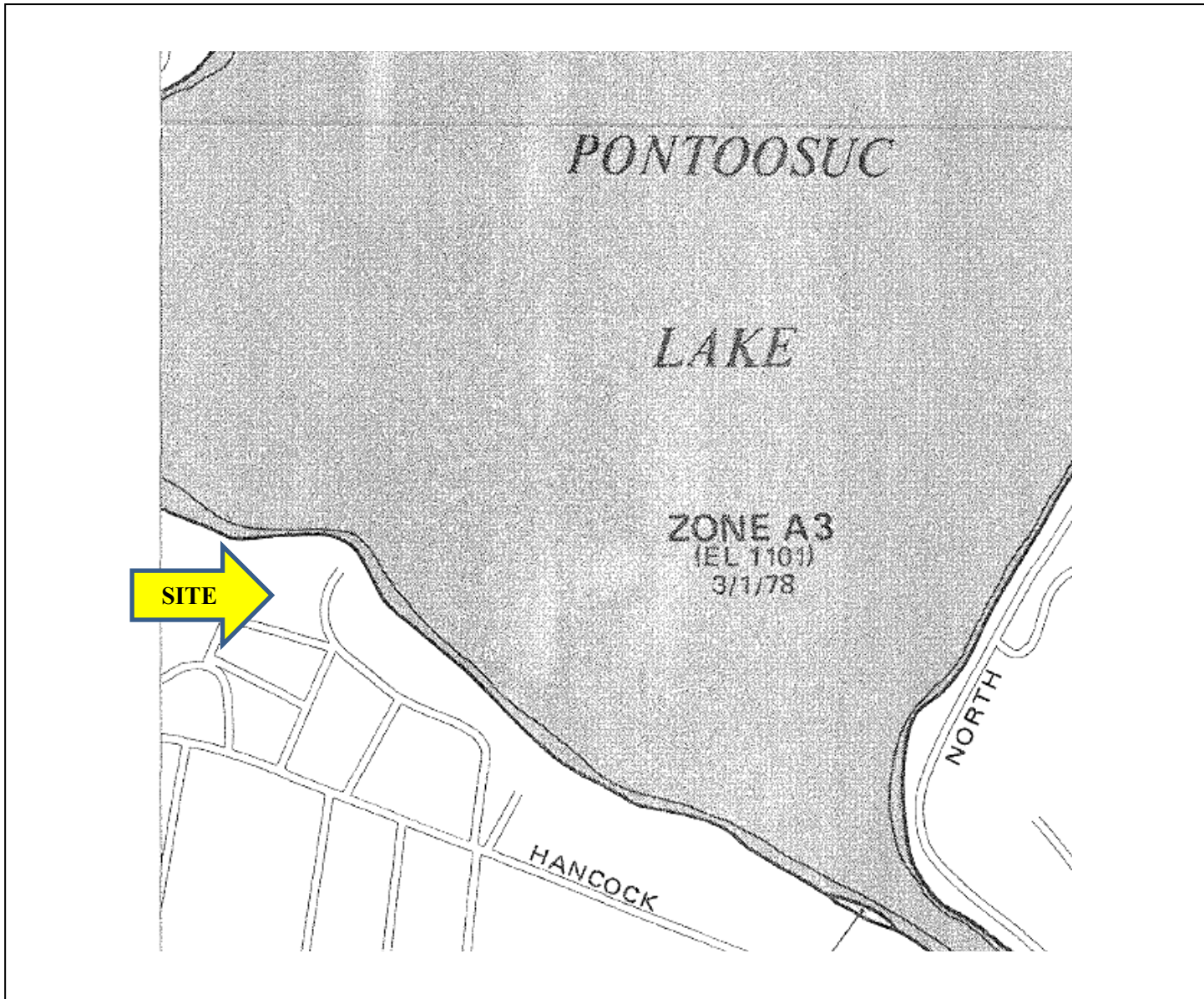
2 FEDERICO DR., PITTSFIELD, MA 01201 (413) 443-3537



Source: Mass Oliver Online GIS Mapping

FIGURE #2

N.H.E.S.P. Map
22 Waubeek Road
Pittsfield, MA



Source: FEMA Firm Online Mapping

FIGURE #3

FEMA Floodplain Map
22 Waubeek Road
Pittsfield, MA



Source: Pittsfield GIS

FIGURE #4

City of Pittsfield Assessor Map

22 Waubeek Road
Pittsfield, MA
(Map G16, Block 1, Lot 17)



DESIGN GROUP, INC.

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2 FEDERICO DR., PITTSFIELD, MA 01201 (413) 443-3537

Attachment A

Underwater Assessment Report (dated July 19, 2019)

Water Resource Services Inc.
144 Crane Hill Road
Wilbraham, MA 01095
kjwagner@charter.net
413-219-8071



July 19, 2019

Mr. Matt Puntin
SK Design
2 Federico Drive
Pittsfield, MA 01201

Dear Mr. Puntin

Attached please find my assessment of the portion of Pontoosuc Lake related to proposed docks for Proprietor's Lodge. Five transects were videotaped from the shore to the limit of proposed work and I also snorkeled the area to examine plants and substrate more closely. The shoreline was largely vegetated and rocky. The area <5 feet deep was mostly cobble, gravel and sand. There was a light coating of fine silt on the rocks in water deeper than about 3 feet. Between 5 and 10 feet the substrate transitioned from a mix of cobble, gravel and sand over most of that area to fine silt, largely organic muck sediment, at the outer limit of the proposed docks with a depth of 10 feet. There were few plants in the assessed area, all at low density. I saw many young-of-the-year smallmouth bass in water 1-3 feet deep among the cobble, but no other fish. One adult yellow perch was observed in association with a tree branch out of the assessed area. No mussels were observed anywhere near the proposed work area.

I understand that concerns have been expressed over the potential impact of docks on habitat in this area. There is minimal likelihood of any erosion or sediment alteration from the proposed dock installation and no expected alteration of conditions from use of those docks by boats. The shading induced by the docks will not appreciably affect plant density, which is very low now. The presence of a swim float with sliding board to the east of the proposed dock area forces powerboats around this area now but having pass-through boats at greater distance from the shoreline may be viewed as a benefit anyway. Paddleboards and kayaks will have to move further into the lake to pass through the area, but this presents no habitat issues.

Contact me with any questions.

Sincerely yours,

A handwritten signature in black ink that reads 'Kenneth J. Wagner'.

Kenneth J. Wagner, Ph.D., CLM
Water Resources Manager, WRS Inc.



Aquatic Survey of Pontoosuc Lake near Proprietor's Lodge, Pittsfield, MA

Observed Conditions

On Friday, July 19, 2019 from 10 AM to noon I surveyed the target area for dock installation in Pontoosuc Lake off the Proprietor's Lodge property. Five transects were established in the area where docks are proposed (Figure 1) and an underwater video system was used to capture video along each transect. Transects varied in length from 70 to 95 feet, each starting from shore and extending to water about 10 feet deep. Shoreline conditions (Figure 2) include an existing concrete wall and a rocky but vegetated shoreline. The raw video footage can be made available if anyone would like to inspect it. I made individual photos of the bottom at depths of 1, 3, 5, 7 and 9 feet and provide those (Figure 3) as still representation of conditions.

The substrate exhibits a gradient from shoreline to a depth of 10 feet that includes cobble and coarse gravel within about 30 feet of the shoreline in water <5 feet deep. There is some fine silt on the rocks in water deeper than about 3 feet. Gravel and sand dominate with some rocks (and manmade rubble like concrete and bricks) and a fine coating of silt on the surface of the rocks out to depths around 8 feet. Silt deposits become more prevalent beyond that point, with just an occasional rock beyond about 60 feet from shore in depths >8 feet to the maximum of 10 feet in the survey area. In water 10 feet deep the fine sediment was about 1 foot thick and underlain by sand and gravel. The slope is substantial but gradual, flattening out where the muck accumulation begins.

Plants in the surveyed zone were not dense. Cover was <15% on an areal basis (2 dimensions, looking down through the water column) and biovolume (the portion of the water column filled with plants) was <5%. Except for a few stands of pondweed and water celery extending about 2 feet off the lake bottom in this area, all growths were short or even prostrate on the sediment.

Plant species encountered included waterweed (*Elodea canadensis*), water celery (*Valisneria americana*), common naiad (*Najas flexilis*), leafy pondweed (*Potamogeton foliosus*), and water starwort (*Heteranthera dubia*). Also present were the macroalga muskgrass (*Chara vulgaris*) and filamentous green algae (Chlorophyta, *Spirogyra* sp.). None of these could be considered dominant or abundant. There was a depth zonation, with common naiad and muskgrass in the shallowest areas (<3 ft), and the other plants at greater depths, with the filamentous green algae found only at the deepest observation sites (>9 ft).

No mussel species were encountered in the survey area. No snail species were evident on plants or substrate in the survey area. Many small case-building caddisflies (Trichoptera) were found on the leafy pondweed. The only adult fish encountered was a single yellow perch (*Perca flavescens*) and it was under a bushy branch slightly outside the survey area. However, many young-of-the-year smallmouth bass (*Micropterus dolomieu*) were observed among the rocks in 1-3 feet of water within the survey area. Unidentified ducks were observed swimming along shore in the survey area.

Figure 1. Transects in vicinity of proposed docks.



Figure 2. West end (left) and main portion of (right) shoreline associated with proposed dock installation.



Figure 3. Habitat photographs at 1, 3, 5, 7 and 9 feet of water depth for the 5 transects shown in Figure 1.

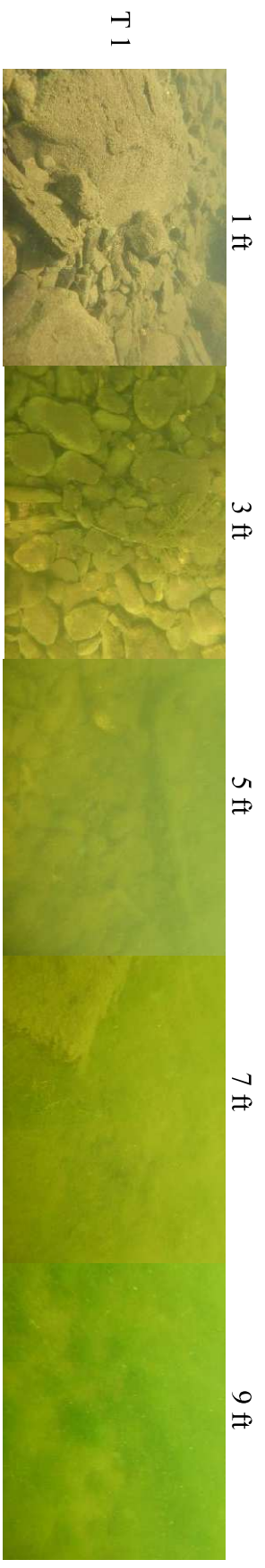
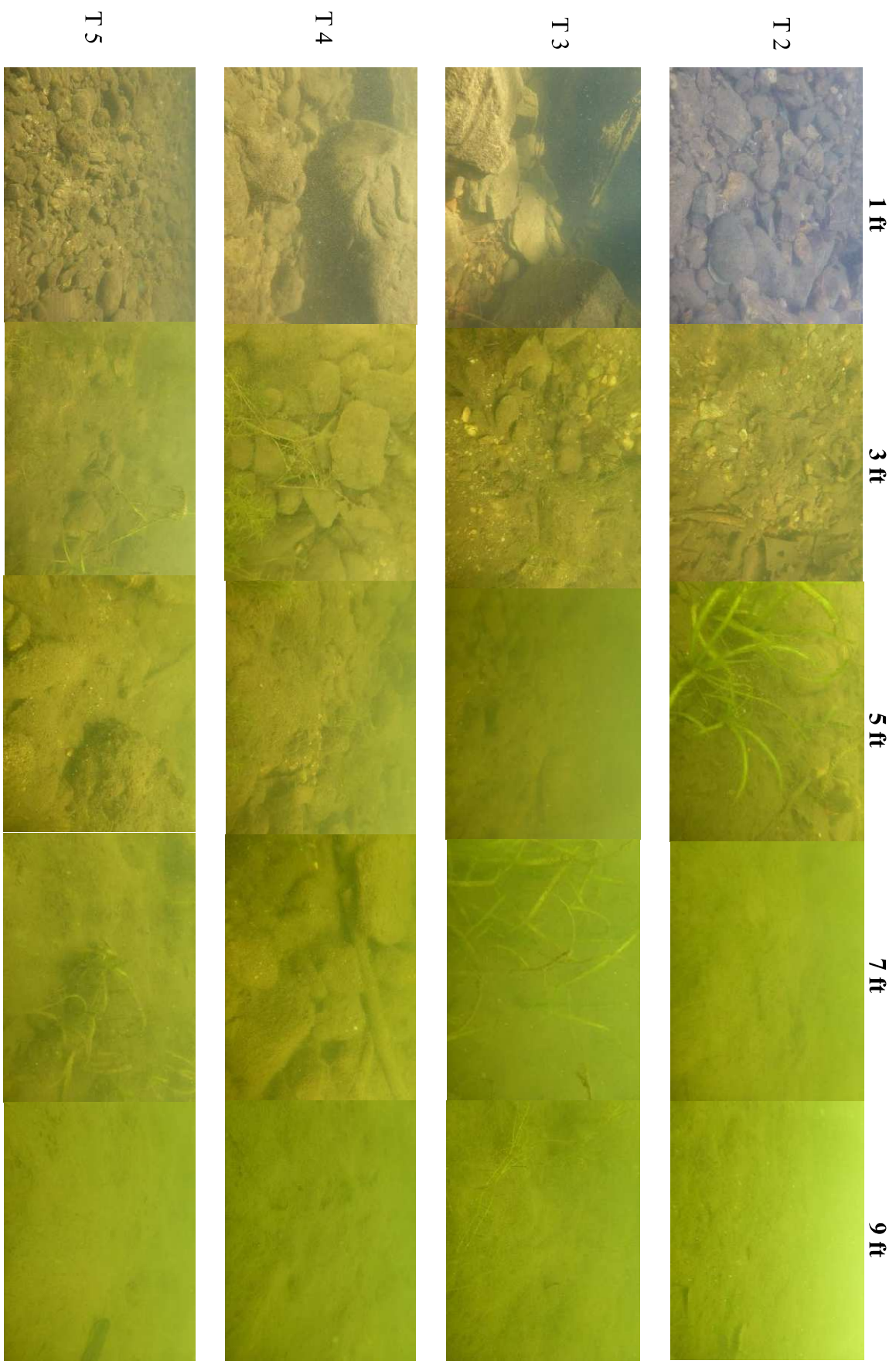


Figure 3. Habitat photographs (continued)



Interpretation of Findings

The thin silt accumulations at the middle depths in the survey area are likely related to resuspension by wind (and possibly by boats) of sediment deposits from slightly deeper water with settling in slightly shallower water. This is a common occurrence in lakes with a substrate distribution as observed in this section of Pontoosuc Lake.

Pontoosuc Lake is drawn down at least 3 feet each fall and left at that lower level until early spring. This practice tends to move finer sediments from near shore to further from shore, effectively coarsening the nearshore sediment. The lack of substantial accumulation of fine sediment within about 60 feet from shore and about 8 feet of water depth will limit plant colonization even without an annual drawdown. The thin silt deposits found on rocks in the survey area during summer can be expected to move offshore as a result of drawdown.

The diagnostic/feasibility study of Pontoosuc Lake in 1999 by ENSR Corporation noted low diversity of rooted aquatic plants and specifically noted the limited range of pondweed (*Potamogeton*) species which are common in most Berkshire County lakes. Eurasian watermilfoil (*Myriophyllum spicatum*) and curlyleaf pondweed (*Potamogeton crispus*) were dominant in Pontoosuc Lake in 1999 and considerable effort has been expended to control these two invasive species over the intervening years. Neither milfoil nor curlyleaf pondweed were found in the survey area associated with Proprietor's Lodge.

None of the plant species encountered are protected under state or federal law as rare, threatened or endangered species. No animal species with any federal or state protection were encountered. The Wetlands Protection Act affords protection for aquatic habitat for fish, wildlife and shellfish, but there is no indication of intense use of the survey area by any of these groups. The rocky to sandy substrate is suitable for fish spawning and young fish shelter, but only young-of-the-year smallmouth bass were observed in the survey area.

The placement of docks in the proposed alignment will cause some shading of the substrate and will encourage use by boats whose owners wish to dine or attend events at Proprietor's Lodge. The low density of rooted plants in the area does not suggest any significant change in plant community features as a result of dock placement. The nature of the sediment is not expected to result in any significant erosion or subsurface sediment redistribution as a consequence of boat use. The shoreline is strongly armored by a mix of natural rocks and human-derived protection such as concrete. The presence of the docks will result in slower speeds in this area and the routing of larger boats passing through the area to deeper water and greater distance from the shore. While there is no evidence of any significant shoreline erosion now, the effect of the docks on boat operation will reduce erosion potential further. Resuspension of fine sediment with deposition in shallower areas is not expected to increase.

Attachment B

Copy of Superseding Order of Conditions (issued June 14, 2019)
including Findings and Special Conditions



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

ISSUED ELECTRONICALLY

Eric Taylor, Manager
Pontoosuc Lake Properties LLC
151 South Street
Hinsdale, Massachusetts 01235
restorations1970@aol.com

November 10, 2020

RE: MassDEP Wetlands File #263-1123
Request for Superseding Order of Conditions
Pontoosuc Lake
22 Waubeek Road, Pittsfield

Dear Mr. Taylor:

In accordance with the provisions of the Massachusetts Wetlands Protection Act [the "Act"], MGL c. 131, § 40, and as a result of information sent to the Massachusetts Department of Environmental Protection (hereinafter the Department) prior to and on October 29, 2020 the Department hereby issues the attached Superseding Order of Conditions (SOC). This SOC approves the annual seasonal installation of a Marina (as defined at 310 CMR 9.02 of the Massachusetts Public Waterfront Act Regulations), including but not restricted to floating lateral and finger piers, an elevated and articulated gangway, removable lower and upper landings and staircase, mooring ball system, and pipe guides/pilings and anchors; all as depicted on the plan(s) of record (dated August 27, 2020) and supplemental information. The Department has determined that these activities will take place within the Department's jurisdiction (see "Findings" section of attached SOC). The Department finds that the jurisdictional Resource Areas (as defined at 310 CMR 10.04 Resource Area) depicted on the plan(s) of record are accurate (see "Findings" sections of attached SOC).

The Resource Areas specified above and within the SOC have been determined to be significant to the following statutory "interests" of the Act: public and private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and protection of fisheries and wildlife habitat.

The attached SOC conditions proposed work to adequately protect the "interests" of the Act. The reasons given here are sufficient to justify this decision. However, the Department reserves

the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

The Department urges the applicant and landowner to carefully read and comply with this document, including each of the General and Special Conditions therein, as this SOC confers legal obligations upon them and their contractors. Additionally, all contractors performing work subject to this SOC should be provided a copy and asked to read, understand, and comply with it.

If you have any questions or need additional information, please contact David Foulis at David.Foulis@mass.gov.

Sincerely,

/s/ David Cameron

David Cameron, PWS
Chief, Division of Wetlands and Waterways

W:/.../Pontoosuc Lake LLC 263-1123 SOC Letter.docx

Electronic Receipt Notification Requested

cc Pittsfield Conservation Commission
Robert Van Der Kar, Conservation Agent
rvanderkar@cityofpittsfield.org

Robert Pensivy (representing citizens group)
65 Waubeek Road
Pittsfield, MA 01201
rjpensivy@gmail.com

Dennis G. Egan Jr. (Permittee's Counsel)
Cohen Kinne Valicenti & Cook LLP
degan@cohenkinne.com

Matthew D. Puntin, P.E., Senior Engineer
SK Design Group, Inc.
mpuntin@sk-dg.com



Massachusetts Department of Environmental Protection
 Bureau of Water Resources – Division of Wetlands and Waterways

Provided by MassDEP:
263-1123
 MassDEP File #

Superseding Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

eDEP Transaction #
Pittsfield
 City/Town

A. General Information

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: Massachusetts Department of Environmental Protection (Department/MassDEP)

2. This issuance is for (check one):
 a. Superseding Order of Conditions
 b. Amended Superseding Order of Conditions

3. To: Applicant:

Eric Taylor
 a. First Name b. Last Name
Pontoosuc Lake Properties LLC
 c. Organization
151 South Street
 d. Mailing Address
Hinsdale MA 01235
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

 a. First Name b. Last Name

 c. Organization

 d. Mailing Address

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

5. Project Location:

22 Waubeek Road Pittsfield
 a. Street Address b. City/Town
Assessor's Map G16, Block 1 Lot 17
 c. Assessor's Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known: d m s d m s
 e. Latitude f. Longitude



Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Berkshire

a. County	b. Certificate Number (if registered land)
6136	75
c. Book	d. Page

7. Dates: May 6, 2019 June 6, 2019 June 14, 2019
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
"Plan... Notice of Intent... 22 Waubeek Road, Pittsfield, Massachusetts" (Sheets 1 to 3)

a. Plan Title	b. Prepared By	c. Signed and Stamped by
SK Design Group, Inc.	August 27, 2020	Matthew D. Puntin, RPE
d. Final Revision Date	e. Scale	
		various

f. Additional Plan or Document Title	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 supplemental information, the Department finds that the area(s) in which work is/are proposed is/are significant to the following interests of the Massachusetts Wetlands Protection Act (the Act). Check all that apply:

a. <input checked="" type="checkbox"/> Public Water Supply	b. <input type="checkbox"/> Land Containing Shellfish	c. <input checked="" type="checkbox"/> Prevention of Pollution
d. <input checked="" type="checkbox"/> Private Water Supply	e. <input checked="" type="checkbox"/> Fisheries	f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat
g. <input checked="" type="checkbox"/> Groundwater Supply	h. <input checked="" type="checkbox"/> Storm Damage Prevention	i. <input checked="" type="checkbox"/> Flood Control

2. The Department 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 Regulations at 310 CMR 10.00. The Department 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.



Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

B. Findings (cont.)

Denied because:

- b. the proposed work cannot be conditioned to meet the performance standards set forth in the Regulations at 310 CMR 10.00. 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 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 Resource Area specified in 310 CMR 10.02(1)(a) _____ a. linear feet

Inland Resource Area Alteration: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input checked="" type="checkbox"/> Bank	<u>0</u> a. linear feet	<u>24</u> b. linear feet	<u>0</u> c. linear feet	<u>0</u> d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
6. <input checked="" type="checkbox"/> Land Under Waterbodies and Waterways	<u>22</u> a. square feet <u>0</u> e. c/y dredged	<u>886</u> b. square feet <u>0</u> f. c/y dredged	<u>0</u> c. square feet	<u>0</u> d. square feet
7. <input type="checkbox"/> Bordering Land Subject to Flooding	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
Cubic Feet Flood Storage	_____ e. cubic feet	_____ f. cubic feet	_____ g. cubic feet	_____ h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	_____ a. square feet	_____ b. square feet		
Cubic Feet Flood Storage	_____ c. cubic feet	_____ d. cubic feet	_____ e. cubic feet	_____ f. cubic feet
9. <input type="checkbox"/> 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



Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

B. Findings (cont.)

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

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
14. <input type="checkbox"/> Coastal Dunes	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
15. <input type="checkbox"/> Coastal Banks	_____	_____		
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	_____	_____		
	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> 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. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	_____	_____		
	a. square feet	b. square feet		



Superseding Order of Conditions

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

B. Findings (cont.)

22. Restoration/Enhancement *:

* #22. If the project is for the purpose of restoring or enhancing a 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.

a. square feet of BVW _____

b. square feet of salt marsh _____

23. 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.
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 extend the issuance date of the original Final Order of Conditions and the Order will expire on n/a 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.
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.



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Division of Wetlands and Waterways

Provided by MassDEP:
263-1123
MassDEP File #

Superseding Order of Conditions

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

eDEP Transaction #
Pittsfield
City/Town

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

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 Department 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 263-1123 "
11. Where the Massachusetts 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 Department.
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 Department 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 Massachusetts 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 and/or Bank (Inland), the boundary of the each in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the boundary markers shall be maintained until a Certificate of Compliance has been issued by the Department.



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Division of Wetlands and Waterways

Provided by MassDEP:
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Superseding Order of Conditions

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City/Town

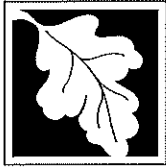
C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

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 Department, 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 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;
 - 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.



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Division of Wetlands and Waterways

Provided by MassDEP:
263-1123
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Superseding Order of Conditions

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eDEP Transaction #
Pittsfield
City/Town

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

- 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.
- 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.



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Division of Wetlands and Waterways

Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
263-1123
MassDEP File #

eDEP Transaction #
Pittsfield
City/Town

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

- 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.

Brief Project Description of Permitted Activities:

Construction of a annual seasonal commercial marina,
 including but not restricted to floating lateral and finger piers, an elevated and articulated
 gangway, removable lower and upper landings and staircase, mooring ball system, and
 pipe guides/pilings and anchors

Special Conditions (See the attached sheet(s) for additional conditions numbered 20 through 39).

D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Division of Wetlands and Waterways

Provided by MassDEP:
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Superseding Order of Conditions

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

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Pittsfield
City/Town

E. Signature and Issuance

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

Issued by the Massachusetts Department of Environmental Protection:

Isi David Cameron

David Cameron, PWS Chief, Division of Wetlands & Waterways

November 10, 2020

Date

This Order has been mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy has been sent via mail or e-mail to the appropriate local Conservation Commission, if not filing electronically, and the property owner, if different from applicant.

F. Appeals

Appeal Rights and Time Limits

The applicant, the landowner, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108.

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

Division of Wetlands and Waterways
Massachusetts Department of Environmental Protection
436 Dwight Street
Springfield MA 01103-1361



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Division of Wetlands and Waterways

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In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- (c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that lead to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;
- (f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- (g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- (i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Findings and Special Conditions

Findings:

- This Superseding Order of Conditions applies to and involves a parcel(s) of land referred to as Proprietor's Lodge, with a street address of 22 Waubeek Road, located within the City of Pittsfield, Berkshire County, Massachusetts, and additionally referred to as Assessor's Map G16, Block 1, Lot 17; and below the High Water Mark (as defined at 310 CMR 9.02 of the Massachusetts Public Waterfront Act regulations) of Pontoosuc Lake (Pond and Lake Inventory System Number 21083), a Great Pond (as defined at 310 CMR 9.02); and a Lake (as defined at 310 CMR 10.04) (hereinafter collectively the Project Locus as defined at 310 CMR 10.04);
- This Superseding Order of Conditions approves the annual seasonal installation of a Marina (as defined at 310 CMR 9.02) within Pontoosuc Lake, including but not restricted to floating lateral and finger piers, an elevated and articulated gangway, removable lower and upper landings and staircase, mooring ball system, and pipe guides/pilings and anchors; all as depicted on the plan(s) of record (dated August 27, 2020) and supplemental information;
- The full title of the plans of record herein approved is "Plan to Accompany Notice of Intent Prepared for Pontoosuc Lake Properties, LLC located at: 22 Waubeek Road, Pittsfield, Massachusetts", Sheets 1 through 3 of 3, prepared by SK Design, Inc., signed and stamped by Matthew D. Puntin, PE and dated August 27, 2020;
- The Department has reviewed and approved the boundary of the Project Site (as defined at 310 CMR 10.04) at the Project Locus, which in this case is coterminous with the "limit-of-work" and "Reconfiguration Zone" boundaries shown on the plan(s) of record.
- The Department had previously determined and fixed the Boundary (as defined at 310 CMR 10.04) of Resource Areas (as defined at 310 CMR 10.04) *within* or adjacent to the Project Site, or which cast boundaries into the Project Site, save for the boundary of Land Under Water Bodies and Waterways (see next bullet). It did so in the Final (Superseding) Order of Conditions for Wetlands File Number 263-1091, issued by the Department on June 8, 2018;
- The Mean Annual Low Water Level (MALWL) of the Land Under Water Bodies and Waterways ["LUWW", as defined at 310 CMR 10.56(2)] of Pontoosuc Lake is demarcated on the plan(s) of record and represents the boundary of LUWW per 310 CMR 10.56(2)(c).
- Proposed Alteration (as defined at 310 CMR 10.04) of Bank (Inland) will occur within no more than 24 linear feet associated with Pontoosuc Lake;
- Proposed Alteration of LUWW will occur within no more than 886 square feet associated with Pontoosuc Lake;
- The Department has determined that this project is **not** subject to the Department's Stormwater Management Regulations at 310 CMR 10.05(6)(k) through and including (q);
- The Department has determined that this project proposal complies with the General Performance Standards (as defined at 310 CMR 10.04) for Bank (Inland) at 310 CMR 10.54(4)(a)1., as most proposed work will only occur in the airspace above said Bank (Inland). That which doesn't will rest upon the substrate;
- The Department has determined that this project proposal complies with the General Performance Standards for Bank (Inland) at 310 CMR 10.54(4)(a)2. and LUWW at 310 CMR 10.56(4)(a)1., as this project proposes no fill (other than *de minimis* fill associated with narrow pipe guides/pilings, footings, and anchors);

Findings and Special Conditions

- The Department has determined that this project proposal complies with the General Performance Standards for Bank (Inland) at 310 CMR 10.54(4)(a)3. and LUWW at 310 CMR 10.56(4)(a)2., as conditioned in this Order, which requires that construction materials used in the docks and appurtenant features are composed of benign or inert substances, such as aluminum and stable UV-resistant marine plastics. Use of pressure-treated or creosote/tar-coated lumber is prohibited. Any foam material, or other loosely bound or otherwise frangible material, is required to be properly encapsulated by the manufacturer. If narrow-diameter metal pilings are to be driven into the bottom substrate, the temporary suspension of sediment at each drive point will be short-lived and of a *de minimis* nature;
- The Department has determined that this project proposal complies with the General Performance Standards for Bank (Inland) at 310 CMR 10.54(4)(a)4. and LUWW at 310 CMR 10.56(4)(a)3., as the near absence of a vascular aquatic bed composed of rooted indigenous hydrophytes within the Project Site eliminates any ecological concerns over loss or degradation of fish habitat from shading effects related to seasonal floating structures or the elevated gangway, upper landing, and staircase. Increases in shading over water columns is known to change piscivorous predatory and prey microhabitats and behaviors, but in the absence of aquatic bed habitat, these changes are not known to present any adverse impairment to fisheries. In fact, as evidenced in the “Habitat Assessment Memo” of July 19, 2019 submitted as a supplement to the Notice of Intent, the annual 3-foot drawdown which has historically occurred at Pontoosuc Lake has a much more direct effect upon the nearshore littoral habitat, through suspension and hydraulic removal of fine sediment from the exposed Bank (Inland), exposure of the substrate to frozen conditions, and to freeze-thaw cycles, and to redeposit of suspended sediment at deeper bathymetry. Few rooted, vascular aquatic bed species can grow in substrates devoid of fine sediment, and many are potentially susceptible to repeated or annual sediment suspension and transport;
- The Department has determined that this project proposal is not subject to the General Performance Standards (as defined at 310 CMR 10.04) for Bank (Inland) at 310 CMR 10.54(4)(a)5. and LUWW at 310 CMR 10.56(4)(a)4., as the surface areal extent of the Marina (as defined at 310 CMR 9.02) structures (floating lateral and finger piers, an elevated and articulated gangway, removable lower and upper landings and staircase, mooring ball system, and pipe guides/pilings and anchors) will occupy no more than 24 linear feet of Bank (Inland) and 886 square feet of LUWW. Neither of these figures exceeds or even approaches the trigger thresholds for a “wildlife habitat evaluation” at 310 CMR 10.54(4)(a)5. or 310 CMR 10.56(4)(a)4.;
- The Department has determined that the proposed project complies with the “Multiple Notice of Intent Filings for the Same or Similar Projects on the Same Property” policy (DWW Policy 88-3, revised March 1, 1995); as the work permitted herein takes place entirely below and lakeward of the upper boundary of Bank (Inland); whereas work permitted in the Final (Superseding) Order of Conditions for Wetlands File Number 263-1091 was restricted to the Buffer Zone (as defined at 310 CMR 10.04) (save compliance work under 310 CMR 9.00 detailed therein) landward of the upper boundary of Bank (Inland).

Superseding Order of Conditions for MassDEP Wetlands File Number 263-1123
Findings and Special Conditions

Special Conditions:

Administrative and Procedural Requirements

20. **These Special Conditions do not supersede or negate the requirements of the General Conditions above. All successors and assigns in interest or control of the property subject to this Superseding Order (hereinafter Order) and any contractor or other person performing work conditioned by this Order shall adhere to ALL applicable procedural and technical conditions in this Order.**
21. This Order is rendered null and void in the absence of a valid Standard or Extended Term Waterways License issued by the Department for the proposed marina under the Massachusetts Public Waterfront Act Regulations at 310 CMR 9.00. No work approved in this Order may proceed without a valid Standard or Extended Term Waterways License having been recorded against the subject property at 22 Waubeek Road.
22. This Order specifically prohibits any activity, as defined at 310 CMR 10.04, other than that specifically authorized by this Order, on a: Bank [310 CMR 10.54(2)] or within Land Under Water Bodies and Waterways [310 CMR 10.56(2)] or within Bordering Land Subject to Flooding [310 CMR 10.57(2)(a)] as delineated on the plan(s) of record and demarcated on the parcel in question, save for activities previously authorized in the Final (Superseding) Order of Conditions for Wetlands File Number 263-1091. Any proposed activity above and beyond that described in the Notice of Intent and supplemental information within jurisdictional Resource Areas and their Buffer Zones (as defined at 310 CMR 10.04) must be preceded by a negative Determination of Applicability or an Order of Conditions from the Pittsfield Conservation Commission, unless said activity is a “minor exempt activity” as defined at 310 CMR 10.58(6)(b) and 310 CMR 10.02(2)(b). Failure to abide by this Special Condition will result in potential enforcement action on the part of the Department, and possibly other regulatory agencies.
23. The contractor(s) employed to assemble and deploy the various components of the proposed marina, and conduct supporting motorized vehicle and vessel operation activities on the Project Site must be provided a copy of this Order prior to the commencement of any such activities. Said contractor(s) may be held responsible with the permittee and property owner for violations by the contractor and may be subject to penalties authorized by law and/or regulation for those violations.
24. The permittee shall arrange to procure and submit a good resolution electronic copy of the plans of record (as referenced above) at least ten (10) business days prior to the initiation of activities at the Project Site, and subject to the Department’s jurisdiction. Upon review and acceptance of these plans of record by the Department, the permittee will affix a prominent “Approved by MassDEP on Month, Date 2020” label upon each sheet, and shall electronically resubmit the plans to the Department. A copy shall be retained by the Department as a permanent record, and a copy shall be retained by the permittee and the general contractor (or equivalent) and made available on appropriately sized paper when requested.
25. Prior to the initiation of activities permitted by this Order, the permittee shall arrange for a videoconference to be held with the Department’s Western Region Wetlands Program. It shall be the responsibility of the permittee to propose a platform for this videoconference, and to ensure that their representative(s) (if any), as well as the general contractor, all appointed compliance monitors and environmental consultants required within this Order (if any), and all

Findings and Special Conditions

- other pertinent firms or persons, are in attendance. The permittee shall also ensure that all plans of record, contracts, and other pertinent documents are made available. No activities otherwise permitted by this Order may proceed until this videoconference has been held.
26. Should the plan(s) of record approved in this Order (or any sheet, detail, schematic, or collar note therein) prove not to accurately reflect site conditions, standard construction methodologies, or practical construction considerations sufficient enough to cause contractors not to be able to build according to said plan(s), the Department maintains the right to require an immediate cessation of work, in whole or in part. Should the Department, at its sole discretion, require such cessation, it shall do so in writing to the permittee, and such notice shall require adequate interim erosion and sedimentation controls and the submittal of proposed plan revisions that address the inadequacies. Activities shall not recommence until written approval to proceed has been issued by the Department.
 27. Refueling, servicing, and repair of motorized construction vehicles shall take place outside of all "Areas Subject to Protection Under MGL c. 131, § 40" and related Buffer Zones (as defined at 310 CMR 10.02). Equipment operators shall be prepared to immediately respond to accidental releases of fuel, motor oil, and other liquids through containment. There shall be located on-site absorbent materials for use in containing accidental spills. If any release of fuel, motor oil, lubricating oils, etc. occurs, the permittee and other responsible parties identified at Special Condition #20 and #23 of this Order, in addition to all obligations under GL c. 21E (Massachusetts Oil and Hazardous Material Release Prevention and Response Act) and the Massachusetts Contingency Plan (MCP), shall immediately notify the Department's Western Regional Office at 1-413-784-1100. Any response action or cleanup shall be conducted pursuant to GL c. 21E and the MCP.
 28. Upon completion of the project, the permittee shall submit with their request for a Certificate of Compliance, an affidavit prepared by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts, stating that the Project Site has been developed in accordance with the requirements of this Order and the referenced site plan(s).

Protection of Water Quality

29. Prior to commencement of any work on the Project Site, adequate erosion and sedimentation control measures shall be implemented as may be required, including any necessary controls not specifically referenced in the plan(s) of record.
30. No refuse, garbage, solid and yard waste or other debris shall be purposefully placed within the water column or upon the substrate of Pontoosuc Lake by any party conditioned by this Order. Accidental deposition of these and similar materials in the water column or upon the substrate of Pontoosuc Lake by any party conditioned by this Order shall be immediately retrieved or otherwise cleaned and removed from jurisdictional Resource Areas and properly disposed of according to all applicable federal, Commonwealth, and local laws, regulations, ordinances, and bylaws. This Special Condition is ongoing and does not end upon the receipt of a Certificate of Compliance.
31. Construction materials used in the docks and appurtenant features shall be composed of benign or inert substances, such as aluminum and stable UV-resistant marine plastics. Use of pressure-treated or creosote/tar-coated lumber is prohibited. Any foam material, or other loosely bound or otherwise frangible material, is required to be properly encapsulated by the manufacturer. If narrow-diameter metal guides/pilings are to be driven into the bottom

Findings and Special Conditions

substrate, the temporary suspension of sediment at each drive point shall be short-lived and of a *de minimis* nature.

Annual Installation and Removal of Marina and Appurtenances

32. Annual installation of the marina and appurtenances shall not begin before May 1 of any given year unless the permittee submits a written request to the Department and receives written approval at the sole discretion of the Department. This Special Condition is ongoing and does not end upon the receipt of a Certificate of Compliance.
33. Annual removal of the marina and appurtenances shall be completed by no later than October 31 of any given year unless the permittee submits a written request to the Department and receives written approval at the sole discretion of the Department. This Special Condition is ongoing and does not end upon the receipt of a Certificate of Compliance.

Final Component Descriptions and Installation and Removal Methodologies

34. Prior to the initial assembly and deployment of the marina components, the permittee shall submit written confirmation to the Department that all such components comport with the specific dimensions shown on the plans of record.
35. Prior to the initial assembly and deployment of the marina components, the permittee shall submit manufacturers' product and materials descriptions and illustrations to the Department.
36. Prior to the initial assembly and deployment of the marina components, the permittee shall submit a written description to the Department of the technique, methods, and sequencing for the assembly and deployment of the marina and appurtenances.
37. The proposed mooring ball shall be equipped with an elastic rode to avoid line dragging upon the substrate. Prior to installation of the mooring ball the permittee shall submit product information to the Department, which shall minimally describe and portray an elastic rode.
38. At no point during seasonal deployment shall the floating or aerial components of the marina be allowed to ground upon the substrate of Resource Areas associated with Pontoosuc Lake. Should grounding be perceived by the permittee to be likely during low water elevations, vulnerable floating components shall be equipped with float stops of a design acceptable to the Department, or the marina shall be reconfigured to avoid grounding, in accordance with any Special Conditions of a Standard or Extended Term Waterways License to be sought and obtained by the permittee.

Expiration of this Superseding Order of Conditions

39. Upon conclusion of the third annual seasonal deployment of the herein approved marina, the permittee shall seek and obtain a Certificate of Compliance from the Department in accordance with 310 CMR 10.05(9). Upon receipt and recordation of this Certificate of Compliance, the permittee is not required to seek and obtain additional Orders of Conditions for annual seasonal deployment of the marina, provided that the permittee adheres to all of the General and Special Conditions of a Standard or Extended Term Waterways License (issued in accordance with 310 CMR 9.00) which is a prerequisite to proceeding under this Superseding Order.

Attachment C

Copy of letter to DEP regarding additional information pertaining to
appeal (dated July 22, 2019)

July 22, 2019

Mr. David Foulis, Environmental Analyst
Mass DEP
Western Region, Bureau of Water Resources
david.foulis@state.ma.us

RE: Response to DEP
DEP # 263-1123
Pontoosuc Lake Properties, LLC
22 Waubeek Road
Pittsfield, MA

Dear Mr. Foulis,

We are in receipt of your email dated July 8, 2019, requesting additional information, and offer the following responses in **bold**:

1. A digital copy of the plans of record denied in the OOC;
Attached is a digital copy of the latest plans, revised May 15, 2019.
2. A digital copy of the Request for Departmental Action;
Attached is a digital copy of the Request.
3. A statement as to whether or not a “point source (both closed and open channel)” of stormwater discharge exists or is proposed within the Buffer Zone (as defined at 310 CMR 10.04 Buffer Zone) to Bank (Inland) [as defined at 310 CMR 10.54(2)], in accordance with 310 CMR 10.05(6)(b);
There is no point source discharge of stormwater within the Buffer Zone. The previously issued Superseding Order approved the installation of a rooftop collection system which includes a drywell located within the Buffer Zone. The stormwater from the parking lot discharges into a underground system outside of the Buffer Zone, which connects in to the city stormwater system.
4. A survey of the substrate of Pontoosuc Lake below the upper boundary (as defined at 310 CMR 10.04 Boundary) of Bank (Inland), per 310 CMR 10.54(2)(c), and within that portion of both the Bank (Inland) and Land Under Water Bodies and Waterways [LUWW, as defined at 310 CMR 10.56(2)] within the proposed “Reconfiguration Zone” [per 310 CMR 9.39(1)(b)].
A survey was performed by Mr. Ken Wagner from Water Resource Services. His findings have been attached in a separate attachment.

5. A bulleted list of each "General Performance Standard" (as defined at 310 CMR 10.04) for Bank (Inland) and LUWW, with a description of applicability, and if applicable, credible evidence specific to the "Project Site" (as defined at 310 CMR 10.04) demonstrating compliance for each applicable standard.

Inland Bank:

The upper boundary of bank occurs at the mean annual high-water line and the lower boundary occurs at the mean annual low flow level. At Pontoosuc Lake the high water is at elevation 1098' and the lower water is at 1095', based on the typical three foot drawdown in the fall. Per 310 CMR 10.54 Bank, the General Performance Standard is as follows:

(4) General Performance Standard.

(a) Where the presumption set forth in 310 CMR 10.54(3) is not overcome, any proposed work on a Bank shall not impair the following:

1. the physical stability of the Bank;

The proposed temporary seasonal dock will be supported by the existing concrete retaining wall (bulkhead) which is estimated to have been installed in the 1930's as part of an original dock system. At this location the wall delineates the upper boundary of the bank. The lower boundary of the bank is located approximately 12' from the face of the wall. The proposed dock will span the bank, with the exception of the stairs and two posts. These items will not affect its stability.

2. the water carrying capacity of the existing channel within the Bank;

The bank is associated with a lake and is not associated with a channel and thus, this does not apply.

3. ground water and surface water quality;

The proposed temporary seasonal dock will temporarily disturb the surface water during the installation and removal process. This is estimated to take no more than a day for installation and a day for removal. The installation of the stairs and posts at the bank will not affect groundwater.

4. the capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;

At the location of the proposed dock, the upper boundary of the bank is defined by the existing concrete wall. It is assumed that the concrete wall provides no habitat capacity will not be altered and thus, this does not apply.

5. the capacity of the Bank to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 50 feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. In the case of a bank of a river or an intermittent stream, the impact shall be measured on each side of the stream or river. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures contained in 310 CMR 10.60.

The total length of bank at the property is approximately 393 feet. At the location of the dock there is an existing concrete wall which is approximately 25 feet long. This wall is believed to have been installed in the 1930's as part of an original dock system. The proposed temporary seasonal dock will span the bank with the exception of the stairs and two posts. This minimal disturbance at the concrete wall will minimal effect on the wildlife habitat.

6. work on a stream crossing shall be presumed to meet the performance standard
There are no stream crossings associated with this project and thus, this does not apply.

(b) Notwithstanding the provisions of 310 CMR 10.54(4)(a), structures may be permitted in or on a Bank when required to prevent flood damage to facilities, buildings and roads constructed prior to the effective date of 310 CMR 10.51 through 10.60 or constructed pursuant to a Notice of Intent filed prior to the effective date of 310 CMR 10.51 through 10.60 (April 1, 1983), including the renovation or reconstruction (but not substantial enlargement) of such facilities, buildings and roads, provided that the following requirements are met:

1. The proposed protective structure, renovation or reconstruction is designed and constructed using best practical measures so as to minimize adverse effects on the characteristics and functions of the resource area;

This project is not associated with the prevention of flood damage and thus, this does not apply.

2. The applicant demonstrates that there is no reasonable method of protecting, renovating or rebuilding the facility in question other than the one proposed.

This project does include rebuilding a facility, and thus this does not apply.

(c) Notwithstanding the provisions of 310 CMR 10.54(4)(a) or (b), no project may be permitted which will have any adverse effect on specified habitat sites of Rare Species, as identified by procedures established under 310 CMR 10.59.

This site is not located within a habitat of Rare Species as defined by MassWildlife's NHESP.

Land Under Water Bodies and Waterways (LUWW):

The LUWW occurs from the mean annual low flow line outwards. Per 310 CMR 10.56 LUWW, the General Performance Standard is as follows:

(4) General Performance Standards.

(a) Where the presumption set forth in 310 CMR 10.56(3) is not overcome, any proposed work within Land under Water Bodies and Waterways shall not impair the following:

1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;

The LUWW is associated with Pontoosuc Lake and is not associated with a channel and thus, this does not apply.

2. Ground and surface water quality;

The proposed temporary seasonal dock will temporarily disturb the lake bottom and surface water during the installation and removal process. This is estimated to take no more than a day for installation and a day for removal. The installation of the posts at the LUWW will not affect groundwater.

3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and

The LUWW disturbance is associated with the support of the temporary dock system. The dock will include posts and anchors (deadman) that will bear on the lake bottom. The total area is approximately 22 square feet, which is the accumulation of several posts and anchors spread out at different locations. The posts are typically 2" diameter and will either be driven into the lake bottom or may have a bearing pad at the bottom of one square foot. The anchors also will be approximately one square foot each.

4. The capacity of said land to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 5,000 square feet (whichever is less) of land in this resource area found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures established under 310 CMR 10.60.

The LUWW is associated with Pontoosuc Lake. The lake is approximately 480 acres in area and the dock reconfiguration zone is approximately 6500 square feet. The total LUWW disturbance is estimated at 22 s.f., which would be from the installation of the posts and anchors to secure the dock. The disturbance of 22 s.f. is 0.3% of the total reconfiguration zone, which is under the 10% or 5000 square feet threshold for a wildlife habitat evaluation. It is our opinion that this minimal disturbance will not impact the capacity of LUWW.

5. Work on a stream crossing shall be presumed to meet the performance standard ...

There are no stream crossings associated with this project and thus, this does not apply.

(b) Notwithstanding the provisions of 310 CMR 10.56(4)(a), the issuing authority may issue an Order in accordance with M.G.L. c. 131, § 40 to maintain or improve boat channels within Land under Water Bodies and Waterways when said work is designed and carried out using the best practical measures so as to minimize adverse effects such as the suspension or transport of pollutants, increases in turbidity, the smothering of bottom organisms, the accumulation of pollutants by organisms or the destruction of fisheries habitat or nutrient source areas.

This project does not include work on a boat channel and thus, this does not apply.

(c) Notwithstanding the provisions of 310 CMR 10.56(4)(a) or (b), no project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species, as identified by procedures established under 310 CMR 10.59.

This site is not located within a habitat of Rare Species as defined by MassWildlife's NHESP.

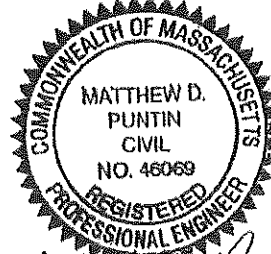
6. In regards to protection of fisheries (food, shelter, and breeding areas), please be advised that the MassDFW Fisheries Program has documented the following 16 reproducing (not stocked) species at Pontoosuc Lake. The life histories of each may be important in assessing protection of fisheries. Indigenous species are indicated in **blue highlight**. All others are nonindigenous species.

largemouth bass (*Micropterus salmoides*)
smallmouth bass (*Micropterus dolomieu*)
northern pike (*Esox lucius*)
chain pickerel (*Esox niger*)
common carp (*Cyprinus carpio*)
yellow perch (*Perca flavescens*)
white perch (*Morone americana*)
black crappie (*Pomoxis nigromaculatus*)
bluegill (*Lepomis macrochirus*)
pumpkinseed (*Lepomis gibbosus*)
rock bass (*Ambloplites rupestris*)
brown bullhead (*Ameiurus natalis*)
yellow bullhead (*Ameiurus nebulosus*)
white sucker (*Catostomus commersonii*)
common shiner (*Luxilus cornutus*) and
golden shiner (*Notemigonus crysoleucas*)

No response necessary.

If you should have any questions or concerns, or require additional information, please don't hesitate to contact the office.

Sincerely,
SK DESIGN GROUP, INC.



A handwritten signature in black ink that reads "Matthew D. Puntin".

Matthew D. Puntin, P.E.
Senior Engineer

Attachments: Digital copy of project plans
Digital copy of Request for Departmental Action
Survey of substrate prepared by Ken Wagner

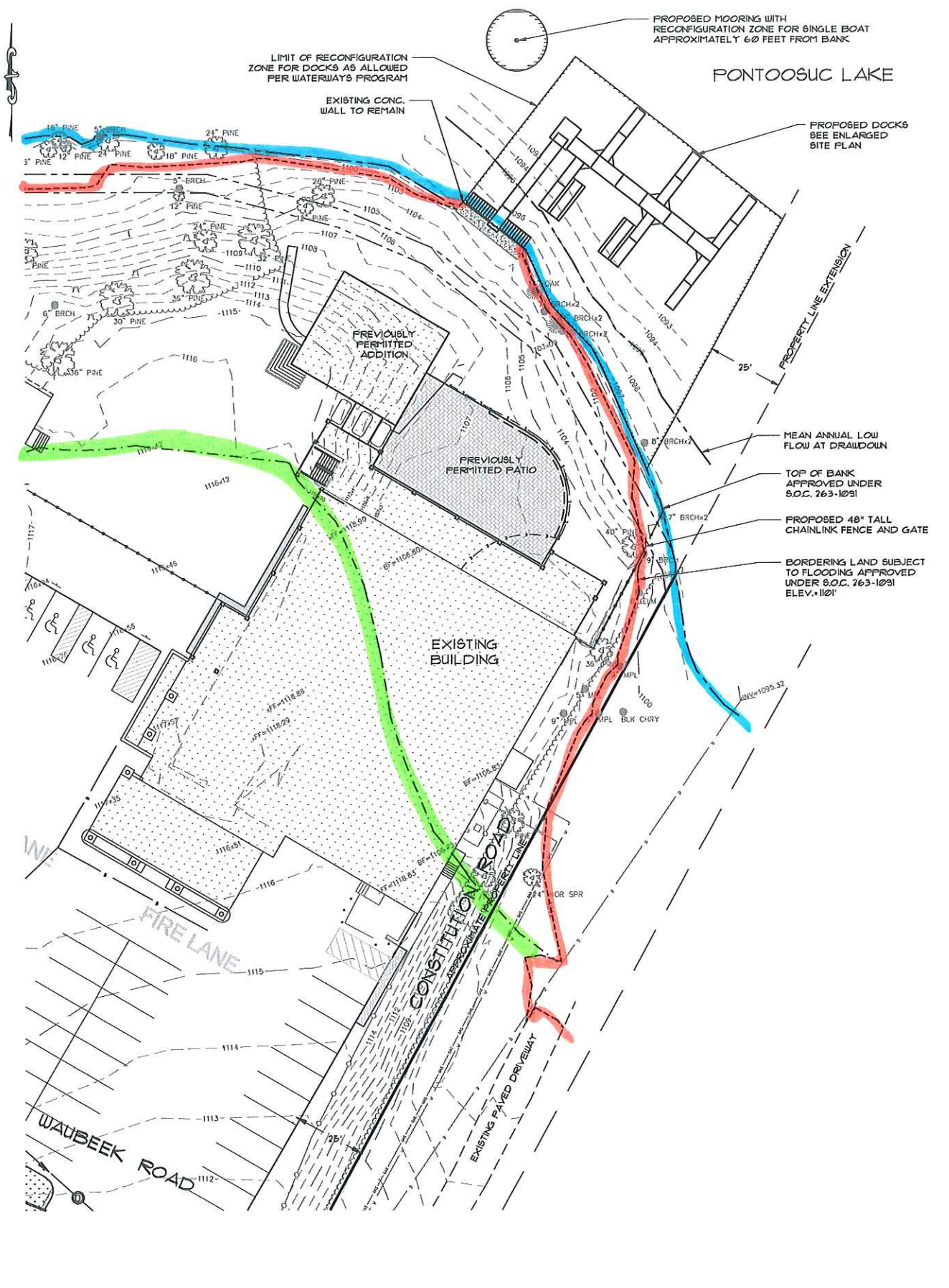
Cc: Restorations, Inc.
Attorney Dennis Eagen
Rob Van Der Kar - Pittsfield Conservation Commission
Robert Pensivy – Abutting Party
File

G:\SK DESIGN GROUP\2017\170169 Restorations-ITAM-Engr for Dvlpt\Documents\Word\NOI Dock\Appeal\Response to DEP (7-22-2019).docx

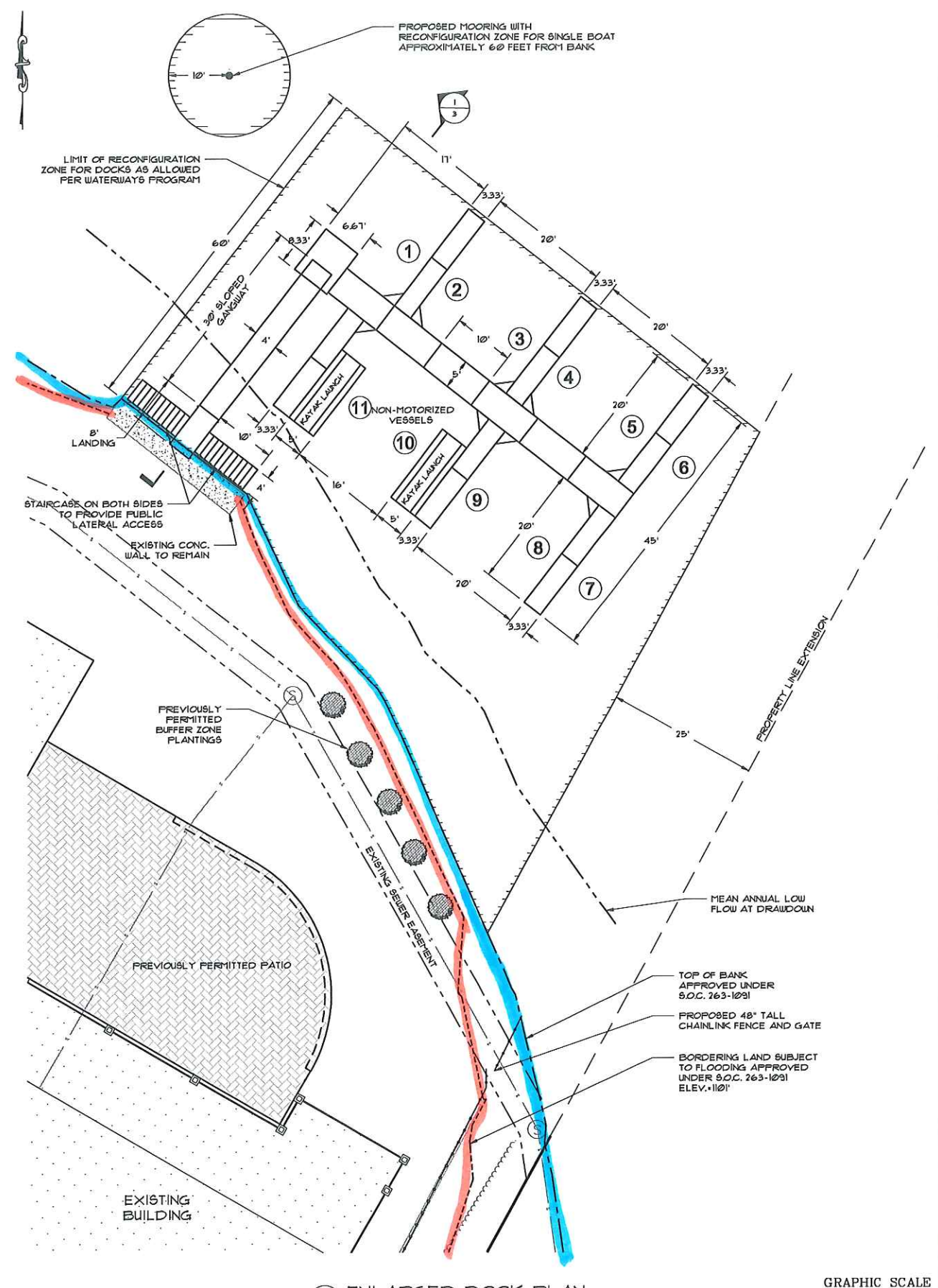
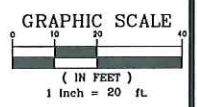
Attachment D

Plan to Accompany Notice of Intent Application prepared for Pontoosuc
Lake Properties, LLC, 22 Waubeek Road, Pittsfield, Massachusetts,
Dated May 1, 2019 (revision date August 27, 2020)

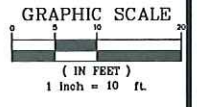
C:\SK DESIGN GROUP\AUT\AUT\Job\Restorations-14M-Exp for Dredging\Drawings\DWG\01010001.dwg (3-15-2019).dwg
 Plotted On: Wednesday, May 15, 2019 - 3:55pm
 User Name: mpanlin



① ENLARGED GRADING PLAN
1" = 20'



② ENLARGED DOCK PLAN
1" = 10'



PLAN TO ACCOMPANY NOTICE OF INTENT
 PREPARED FOR:
PONTOOSUC LAKE PROPERTIES, LLC
 LOCATED AT:
 22 WAUBEEK ROAD
 PITTSFIELD, MASSACHUSETTS

Design Group, Inc.
 Civil Engineers • Surveyors • Consultants
 27 WASHINGTON STREET, PITTSFIELD, MASSACHUSETTS 01201-1000

PLAN DESCRIPTION:
ENLARGED SITE PLANS

SK DESIGN GROUP PROJECT #:
17069

COMMONWEALTH OF MASSACHUSETTS
 REGISTERED PROFESSIONAL ENGINEER
 MATTHEW D. PANTIN, P.E.
 CIVIL
 NO. 40069
 LICENSE #16069
 PHONE: 413-443-3537

REVISIONS:	
MAY 9, 2019	
MAY 14, 2019	
MAY 15, 2019	
DRAWN BY: AMB	CHECKED BY: MDP
DATE: MAY 1, 2019	SHEET NO. 2
ISSUED FOR: PERMIT	OF 3
SCALE: AS NOTED	

