

The Commonwealth of Massachusetts



Waterways License Number **DRAFT**

Whereas, Pontoosuc Lake Properties, LLC

Of -- Hinsdale --, in the County of -- Berkshire -- and Commonwealth aforesaid, has applied to the Massachusetts Department of Environmental Protection for license to construct and maintain a Marina (as defined at 310 CMR 9.02 of the Massachusetts Public Waterfront Act Regulations) which will also meet the definition of a Public Recreational Boating Facility (as defined at 310 CMR 9.02) -- including an existing concrete retaining wall, landings, a gangway/ramp, piers, finger piers, float(s), a mooring ball, and appurtenances; and establish a “zone of reconfiguration” as described at 310 CMR 9.39(1)(b)

And has submitted plans of same; and whereas due notice of said application and of the time and place fixed for a hearing thereon has been given, as required by law, to the -- Mayor -- of the -- City -- of -- Pittsfield --;

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby authorizes and licenses said

Pontoosuc Lake Properties, LLC, subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which may be in force applicable thereto, to construct and maintain a Marina which will also meet the definition of a Public Recreational Boating Facility – including an existing concrete retaining wall, landings, a gangway/ramp, piers, finger piers, float(s), a mooring ball, and appurtenances; and establish a “zone of reconfiguration” as described at 310 CMR 9.39(1)(b)--

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In and over the waters of – Pontoosuc Lake -- at 22 Waubeek Road -- in the -- City of Pittsfield -
- and in accordance with the locations shown and details indicated on the accompanying
MassDEP License Plan Number **DRAFT** (3 sheets).

SPECIAL WATERWAYS LICENSE CONDITIONS

Term of License

1. This License will expire thirty (30) years from the date of issuance.

Authorized Use of Structure(s) at Facility

2. The structures hereby authorized shall be limited to the following uses: commercial and non-commercial access to navigable waterways to provide a Public Recreational Boating Facility (hereinafter “the Facility”) as defined at 310 CMR 9.02 of the Massachusetts Public Waterfront Act Regulations.

Provision of Free Public Lateral Access

3. In accordance with any license condition, easement, or other public right of lateral passage that exists on the subject property below the High Water Mark (as defined at 310 CMR 9.02), the Licensee shall allow the public in the exercise of such rights to pass freely over the landward portion of the structures within such area, as shown on the site plan(s) approved for this License. The exercise by the public of free on-foot passage in accordance with this condition shall be considered a permitted use to which the limited liability provisions of GL c. 21, § 17c shall apply. Nothing in this condition shall be construed as preventing the Licensee from excluding the public from portions of said structure(s) or property not intended for near-shore lateral passage.
4. In accordance with Special Condition #3, above, the Licensee shall place and maintain in good repair two (2) public passage signs, one (1) on both the easterly and westerly sides of the public lateral access stairways authorized and required herein. Said signs shall be posted immediately upon completion of construction and installation of the Facility; shall be constructed of durable, weatherproof materials; and shall conform to the template previously provided to the Licensee. The Licensee shall also place and maintain in good repair one (1) Waterways License Number sign or stencil on the lakeward end of the northernmost licensed finger piers. This sign or stencil shall be posted immediately upon completion of construction and installation of the Facility; and shall be constructed of or consist of durable, weatherproof materials. The sign or stencil shall be a minimum of four (4) inches high by 24 inches long and shall read in one inch high letters “MassDEP MGL Ch. 91 License # **XXXXXX**”. The Licensee is not authorized to modify the form, size, wording, or format of this signage without the express written approval of the Department.

Protection of Water-Related Public Rights

5. The Licensee shall allow the public in the exercise of the rights of **navigation, fishing, fowling**, and the natural derivatives thereof; and all other lawful activities, including but not limited to swimming, strolling, and other recreational activities; to pass freely around all Facility structures located below the High Water Mark (as defined at 310 CMR 9.02). Such rights also include the right to conduct any activity which entails the movement of a

boat, vessel, float, or other watercraft; the right to conduct any activity involving the transport or the loading/unloading of persons or objects to or from any such watercraft; and the natural derivatives thereof.

6. The Licensee shall allow the public in the exercise of the rights of **free passage over and through the water and on-foot passage** by walking upon the substrate, to pass freely around all Facility structures located below the High Water Mark (as defined at 310 CMR 9.02). Such rights include the right to float on, swim in, or otherwise move freely within the water column **and** to walk upon the bottom substrate. Nothing in this condition shall be construed as preventing the Licensee from excluding the public from structure(s) or property located upland of the High Water Mark.

Conditions Governing Use of Licensed Facility by Watercraft

7. Watercraft (vessels, ships, boats, barges, lighters, jet skis, canoes, kayaks, and the like) shall be moored within the Facility such that they do not become grounded through water level fluctuation.
8. No watercraft moored at the Facility shall exceed a length of 24 feet (overall).
9. Berthing at the Facility authorized herein shall be limited, at any one time, to 10 or fewer motorized watercraft.
10. No watercraft moored at the Facility authorized herein may block or unduly impede navigation within the waterway or the safe use of any other legally authorized Facility or structure.
11. Motorized watercraft (vessels, ships, boats, barges, lighters, jet skis, and the like) shall not be operated at the Facility or near the shore such that scouring of the substrate of the waterway (such as but not limited to “propeller wash”) results.

Operation of Licensed Facility

12. The Licensee shall maintain the piers over a sufficient depth of water to allow practical docking, access, and egress, and shall utilize the Reconfiguration Zone Special Conditions(s) to maintain sufficient depth to eliminate grounding of moored vessels, when necessary.
13. The Facility shall allow the use of the structures therein for the emergency loading/unloading of persons or objects from watercraft and/or persons in distress.
14. The Facility shall be made available to municipal, Commonwealth, and federal agencies upon request for emergency access to Pontoosuc Lake for the purpose of search and rescue, fire-fighting, law enforcement, and other public safety duties, provided the Licensee is notified upon each use, or an agreement is reached between the owners and the agency(ies) governing said use.
15. The Licensee shall install and maintain in working order the “private aids to navigation” (PATON) shown on the site plans, including but not limited to warning lights and high visibility daymarks upon the furthest dimensions of the Facility.
16. Any mooring buoys otherwise authorized by this License shall comply with Title 33 United States Code, Chapter I, Part 62, Subpart B, Section 62.35, in that they shall be globe-shaped and shall be white in base color, and have a blue horizontal band.

17. When removed, all seasonal structures or components shall be stored landward of the High Water Mark (as defined at 310 CMR 9.02) and outside of any jurisdictional Resource Areas listed at 310 CMR 10.02(1) of the Massachusetts Wetlands Protection Act Regulations. Said storage shall be in conformance with any applicable municipal, Commonwealth, or federal requirements.
18. Dredging of the substrate of the waterway is not authorized herein; if shoaling occurs at some point in the future, any proposed dredging must first be approved via application to the Department's Western Regional Office, and any applicable local, Commonwealth, and federal agencies with regulatory authority over the waterway.
19. Every year during the term of this License (as specified at Special Condition #1) and on July 15th of each such year (unless a modified date is requested by the Licensee and approved by the Department prior to this date), the Licensee shall submit a brief written statement of compliance, asserting and/or documenting compliance with each of the General and Special Conditions within this License. All such documents shall be submitted electronically to David.Cameron@mass.gov (unless otherwise directed), and shall include photographs of a sufficient number to fully show the licensed Facility from at least four viewpoints (lakeward from the land, from an oblique angle on each side to the Facility, and looking landward from a vessel [or if not practicable, from the furthest lakeward part of the Facility]).

Conditions Applicable to Marinas

20. The licensed Facility shall make all of its slips and moorings available for transient day use, including any otherwise legal use by shuttle boats carrying passengers from other points on Pontoosuc Lake, and shall not lease or rent any slip or mooring at the Facility without first seeking and obtaining an Amended Standard Waterways License from the Department, and in accordance with 310 CMR 9.24. Any such Amended Standard Waterways License would allow only one (1) slip to be converted to lease or rental use.
21. Provision shall be made by the Licensee to accommodate at least short-term day-use landings and moorings upon the licensed Facility structures of two (2) non-motorized watercraft (canoes, kayaks, rowboats, etc.). At least two (2) slips shall be designated to accommodate such watercraft, as shown on the site plans.
22. At least one (1) refuse receptacle shall be positioned at the shoreward end of the gangway landing, and the Licensee shall properly empty and maintain this receptacle. Discharge of refuse from this receptacle to Pontoosuc Lake, whether intentional or through negligence, may constitute a violation of this License.
23. Signage shall be erected and maintained at the shoreward entrance of the gangway indicating the availability of restrooms to persons or parties docking at the Facility, free of charges, and not dependent upon patronage at the shoreward commercial enterprise. This signage shall also provide clear directions to the restrooms.

Conditions Applicable to the Reconfiguration Zone

24. In accordance with 310 CMR 9.39(1)(b), the Licensee may, upon written approval by the Department without further licensing action, reconfigure the docking facilities authorized

in this License and within the Zone of Reconfiguration described in the Final License Plans provided that:

- a. The Licensee submits to the Department a written request and plan for reconfiguration which does not extend beyond the delineated Zone of Reconfiguration shown in the Final License Plans;
- b. The areal extent of all structures within the area bounded by the Reconfiguration Zone does not exceed 1,145 square feet;
- c. The licensee submits to the Department a statement affirming that the material submitted to the Department under 310 CMR 9.39(1)(b)1. has, at the time of such submittal, also been sent to the Harbormaster of the City of Pittsfield, and that said Harbormaster is informed that any objections to the proposed reconfiguration plan must be registered with the Department within 30 days of the Harbormaster's receipt of submittal;
- d. All other applicable federal, Commonwealth, and municipal permits, licenses, and approvals have been obtained, if any. An Order of Conditions under 310 CMR 10.00 is expressly not required, as the Final (Superseding) Order of Conditions for Wetlands File Number 263-1123, issued by the Department on November 10, 2020, properly conditions the Reconfiguration Zone.

Administrative Conditions

25. In accordance with 310 CMR 9.31(1)(i), this commercial Public Recreational Boating Facility shall not deny access to its services and facilities to any person in a discriminatory manner, as determined in accordance with the constitution of the Commonwealth of Massachusetts, of the United States of America, or with any statute, regulation, or executive order governing the prevention of discrimination.
26. By written request of the Licensee for an amendment, the Department may grant a renewal for a term not to exceed that authorized in the original License.
27. All work authorized herein shall be completed within five (5) years of the date of issuance of this License. Said construction period may be extended by the Department for one or more one-year periods without public notice, provided the Licensee submits to the Department, no more than thirty (30) calendar days prior to the expiration of said construction period, a written request to extend the period; and provides an adequate justification for said extension.
28. The Licensee shall, within sixty (60) calendar days of the completion of construction, request in writing that the Department issue a Certificate of Compliance in accordance with 310 CMR 9.19. The request shall be accompanied by an affidavit by a registered professional engineer licensed to do business in the Commonwealth that the project was completed in accordance with this License.
29. Nothing in this License shall be construed as to impair the legal rights of any person.
30. This License shall be void unless same and the accompanying plan(s) are recorded within sixty (60) calendar days from the date hereof, in the Berkshire Middle Registry of Deeds.
31. Noncompliance with any General or Special Condition(s) of this License or with 310 CMR 9.00 may result in the Department issuing an Enforcement Order and a civil administrative penalty per the Department's authority at 310 CMR 9.08(4) and MGL c. 21A, § 16.

32. Should this License become legally voided in accordance with 310 CMR 9.26(2)(b), the Licensee shall remove all structures and/or fill authorized herein per 310 CMR 9.27(1).
33. Per the Department's authority at 310 CMR 9.19(1), the Department may conduct a site inspection at any time to determine compliance, prior or subsequent to issuing a Certificate of Compliance.

Please see page **7** for additional "Standard Waterways License Conditions" applicable to this License. A duplicate of said plan, number **DRAFT** is on file in the Western Regional Office of the Department; and an original of said plan(s) accompanies this License, and is referred to as a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform to all terms and conditions stated herein.
2. This License is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.
3. Any proposed substantial change in use or any proposed substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void, per 310 CMR 9.26(2)(b).
4. Per 310 CMR 9.26(1)(a) and/or (b), and MGL c. 91, § 15, this License may be revoked by the Department for noncompliance with the terms and conditions set forth herein. This License may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them reasonable opportunity to correct this noncompliance.
5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying License plans.
6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
7. This License is granted subject to all applicable federal, Commonwealth, county, and municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Massachusetts Wetlands Protection Act, GL Chapter 131, Section 40, if applicable.
8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the MassDEP.
9. This License authorizes structure(s) and/or fill on:
 a Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying lakeward of the high water mark for any lawful purpose.

No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this License.

10. Unless otherwise expressly provided by this License, the Licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

Nothing in this License shall be so construed as to impair the legal rights of any person. This License shall be void unless the same and the accompanying plan(s) are recorded within sixty (60) calendar days from the date hereof, in the Middle Registry of Deeds for the County of Berkshire.

IN WITNESS WHEREAS, said Massachusetts Department of Environmental Protection have hereunto set their hands this X day of May in the year two thousand twenty-one.

X

David Cameron, Chief, Division of Wetlands and Waterways
Western Region
Massachusetts Department of Environmental Protection

THE COMMONWEALTH OF MASSACHUSETTS