



2020 00968143

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**Massachusetts Department of Environmental Protection**

Bureau of Resource Protection - Wetlands

**WPA Form 5 - Order of Conditions**

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

Provided by MassDEP:

MassDEP File #:263-1152

eDEP Transaction #:1234989

City/Town:PITTSFIELD

**A. General Information**

- 1. Conservation Commission **PITTSFIELD**
- 2. Issuance a.  OOC b.  Amended OOC
- 3. Applicant Details
  - a. First Name **JAMES** b. Last Name **MCGRATH**
  - c. Organization **CITY OF PITTSFIELD DEPARTMENT OF COMMUNITY DEVELOPMENT**
  - d. Mailing Address **70 ALLEN STREET**
  - e. City/Town **PITTSFIELD** f. State **MA** g. Zip Code **01201**
- 4. Property Owner
  - a. First Name b. Last Name
  - c. Organization
  - d. Mailing Address
  - e. City/Town f. State g. Zip Code
- 5. Project Location
  - a. Street Address **ONOTA LAKE**
  - b. City/Town **PITTSFIELD** c. Zip Code **01201**
  - d. Assessors **WATERBODY** e. Parcel/Lot# **WATERBODY**
  - Map/Plat#
  - f. Latitude **42.46842N** g. Longitude **73.28273W**
- 6. Property recorded at the Registry of Deed for:
 

a. County	b. Certificate	c. Book	d. Page
MIDDLE BERKSHIRE		N/A - WATERBODY	N/A - WATERBODY
- 7. Dates
 

a. Date NOI Filed :	b. Date Public Hearing Closed:	c. Date Of Issuance:
9/24/2020	10/29/2020	10/30/2020
- 8. Final Approved Plans and Other Documents
 

a. Plan Title:	b. Plan Prepared by:	c. Plan Signed/Stamped by:	d. Revised Final Date:	e. Scale:
ONOTA LAKE DRAWDOWN PLANS: FIGURE 1 - PROJECT LOCUS	ESS GROUP	N/A	08/14/2020	1"=2,000'
ONOTA LAKE DRAWDOWN PLANS: FIGURE 2 - BATHYMETRY FIGURE 5 - DEEP DRAWDOWN ALTERNATIVE	ESS GROUP	N/A	09/11/2020	1"=1,250'

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ONOTALAKE  
 DRAWDOWN  
 PLANS: FIGURE 3 ESS GROUP N/A 08/31/2020 1"=1,300'  
 - WETLANDS  
 FIGURE 4 - NHESP  
 HABITATS

**B. Findings**

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

Check all that apply:

a. <input checked="" type="checkbox"/> Public Water Supply	b. <input checked="" 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"/> Ground Water Supply	h. <input checked="" type="checkbox"/> Storm Damage Prevention	i. <input checked="" type="checkbox"/> Flood Control

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

**Approved** subject to:

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

**Denied** because:

b.  The proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**

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

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

**Inland Resource Area Impacts:(For Approvals Only):**

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement

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4. <input type="checkbox"/> Bank	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	a. square feet	b. square feet	c. square feet	d. square feet
6. <input checked="" type="checkbox"/> Land under Waterbodies and Waterways	<u>28444680</u>	<u>28444680</u>	<u>28444680</u>	<u>28444680</u>
	a. square feet	b. square feet	c. square feet	d. square feet
	<u>0</u>	<u>0</u>		
	e. c/y dredged	f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	<u>                    </u>	<u>                    </u>		
	a. square feet	b. square feet		
Cubic Feet Flood Storage	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront Area	<u>                    </u>	<u>                    </u>		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	g. square feet	h. square feet	i. square feet	j. square feet

**Coastal Resource Area Impacts:**

Resource Area	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	<u>                    </u>	<u>                    </u>		
	a. square feet	b. square feet		
	<u>                    </u>	<u>                    </u>		
	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	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
14. <input type="checkbox"/> Coastal Dunes	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
15. <input type="checkbox"/> Coastal Banks	<u>                    </u>	<u>                    </u>		
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	<u>                    </u>	<u>                    </u>		
	a. square feet	b. square feet		

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

22.

Restoration/Enhancement (For Approvals Only)

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

\_\_\_\_\_

\_\_\_\_\_

23.

Streams Crossing(s)

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

\_\_\_\_\_

\_\_\_\_\_

a. number of new stream crossings

b. number of replacement stream crossings

**C. General Conditions Under Massachusetts Wetlands Protection Act**

**The following conditions are only applicable to Approved projects**

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

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

" Massachusetts Department of Environmental Protection"

[or 'MassDEP']

File Number : "263-1152"

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

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NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

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

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operation and maintenance must be submitted along with the legally binding agreement.

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

**Special Conditions:**

FINDINGS: FF#1. THE ACTIVITY, AS DEFINED AT 310 CMR 10.04 ACTIVITY, DESCRIBED WITHIN THE NOTICE OF INTENT, AS AMENDED AT PUBLIC HEARING, WILL OCCUR WITHIN THE FOLLOWING JURISDICTIONAL RESOURCE AREA: LAND UNDER WATER BODIES AND WATERWAYS (LUWW) [AS DEFINED AT 310 CMR 10.56(2)] ASSOCIATED WITH ONOTA LAKE, A LAKE AS DEFINED AT 310 CMR 10.04 (HEREINAFTER THE PROJECT SITE AS DEFINED AT 310 CMR 10.04). ALTERATION (AS DEFINED AT 310 CMR 10.04) OF LUWW WILL OCCUR WITHIN 653 ACRES +/- OF SAID RESOURCE AREA (AS DEFINED AT 310 CMR 10.04), INCLUDING 48.7 +/- ACRES THAT WILL BE DEWATERED, AS SHOWN ON THE PLAN(S) OF RECORD; FF#2. THE MEAN ANNUAL LOW WATER LEVEL (MALWL) OF ONOTA LAKE IS DEMARCATED ON THE PLAN(S) OF RECORD, AND REPRESENTS THE BOUNDARY OF LUWW PER 310 CMR 10.56(2)(C); FF#3. THE PITTSFIELD CONSERVATION COMMISSION HAS DETERMINED THAT: BANK (INLAND) [SEE 310 CMR 10.54(2)], BORDERING VEGETATED WETLAND [SEE 310 CMR 10.55(2)], AND BORDERING LAND SUBJECT TO FLOODING [SEE 310 CMR 10.57(2)(A)] OCCUR ADJACENT TO ONOTA LAKE, THE BOUNDARIES OF WHICH HAVE NOT BEEN DETERMINED BY THE PITTSFIELD CONSERVATION COMMISSION IN THIS ORDER; FF#4. THE PITTSFIELD CONSERVATION COMMISSION HAS DETERMINED THAT THE PROJECT, AS PROPOSED IN THE NOTICE OF INTENT AND SUPPLEMENTAL INFORMATION, MEETS THE GENERAL PERFORMANCE STANDARDS AT 310 CMR 10.56(4)(A)1. AND 2., AND (C) AS CONDITIONED BY THIS ORDER. FF#5. ON OCTOBER 12, 2020 THE NATURAL HERITAGE AND ENDANGERED SPECIES PROGRAM OF THE MASSACHUSETTS DIVISION OF FISH AND WILDLIFE (NHESP) ISSUED THE EQUIVALENT OF A CONDITIONAL ?NO ADVERSE EFFECT DETERMINATION?. UPON THE ADOPTION OF THE PRESUMPTIVE CONDITIONS WITHIN THIS DETERMINATION INTO THIS ORDER OF CONDITIONS, THE PROJECT COMPLIES WITH 310 CMR 10.59.

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FF#6. THE PITTSFIELD CONSERVATION COMMISSION HAS DETERMINED THAT THE PROJECT, AS PROPOSED IN THE NOTICE OF INTENT AND SUPPLEMENTAL INFORMATION, MEETS THE REQUIREMENTS AND PRECONDITIONS OF AN ECOLOGICAL RESTORATION LIMITED PROJECT PER 310 CMR 10.53(4)(E)5. SPECIAL CONDITIONS: CONDITIONS GOVERNING OPERATION OF ONOTA LAKE DAM CONTROLS:

SC#18. THIS ORDER OF CONDITIONS HEREBY ESTABLISHES THAT, FOR PURPOSES OF COMPLIANCE WITH THIS ORDER, THE "FULL SUMMER POOL" OR "NORMAL POOL ELEVATION" OF ONOTA LAKE IS 1,079.00 FEET ABOVE MEAN SEA LEVEL (AMSL, PER NAVD 1988) PER FUSS & O'NEILL PHASE I INSPECTION/EVALUATION REPORT DATE OF INSPECTION NOVEMBER 13, 2018. THIS ELEVATION IS THE LEVEL OF THE TOP OF THE SPILLWAY. SPECIAL CONDITIONS WITHIN THIS ORDER WHICH ALLOW MANIPULATION OF CONTROLS WITHIN ONOTA LAKE DAM SHALL BE MEASURED AGAINST THIS ELEVATION. \*A FULL SUMMER POOL OR FULL POOL IS THE WATER LEVEL OF A RESERVOIR AT NORMAL OPERATING CONDITIONS. (SEE: "FULL POOL". USBR.GOV. BUREAU OF RECLAMATION GLOSSARY).

SC#19. ANY DRAWDOWN SHALL COMMENCE ON OR AFTER OCTOBER 15 OF ANY CALENDAR YEAR. ON THE SAME DAY THAT THE COMMENCEMENT OF DRAWDOWN IS INITIATED, THE PERMITTEE SHALL NOTIFY BOTH NHESP AND MASSDEP-WERO-BWR-DWW VIA E-MAIL, AND IN A FORMAT AGREED TO BY BOTH COMMONWEALTH AGENCIES.

SC#20. ANY DRAWDOWN SHALL CEASE ON OR BEFORE DECEMBER 1 OF ANY CALENDAR YEAR.

SC#21. ANY DRAWDOWN SHALL NOT EXCEED THE LOWERING OF THE "NORMAL POOL ELEVATION" BELOW THE TARGET ELEVATION OF 1,077.00 FEET AMSL (I.E., 24 INCHES).

SC#22. DURING ACTIVE DRAWDOWN BETWEEN OCTOBER 15 AND DECEMBER 1 OF ANY GIVEN CALENDAR YEAR, THE RATE OF DRAWDOWN SHALL NOT EXCEED 3-INCHES DURING ANY GIVEN CALENDAR DAY (FROM MIDNIGHT TO 11:59 PM).

SC#23. WHEN DRAWN DOWN IN ACCORDANCE WITH THIS ORDER, REFILLING OF ONOTA LAKE TO THE "NORMAL POOL ELEVATION" OF 1,079.00 FEET SHALL BE ACHIEVED ON OR BEFORE APRIL 1 OF ANY GIVEN CALENDAR YEAR FOLLOWING THE DRAWDOWN. SHOULD THE PERMITTEE NOT ACHIEVE THE "FULL SUMMER POOL ELEVATION" DUE TO ICING OR OTHER CONDITIONS, IT SHALL NOTIFY THE PITTSFIELD CONSERVATION COMMISSION, NHESP AND MASSDEP-WERO-BWR-DWW VIA E-MAIL AND PROVIDE AN ANTICIPATED DATE TO ACHIEVE THE "FULL SUMMER POOL ELEVATION" WHICH SHALL NOT BE LATER THAN APRIL 15TH. ON THE SAME DAY THAT THE REFILL ACHIEVES THE "FULL SUMMER POOL ELEVATION", THE PERMITTEE SHALL NOTIFY BOTH NHESP AND MASSDEP-WERO-BWR-DWW VIA E-MAIL, AND IN A FORMAT AGREED TO BY BOTH COMMONWEALTH AGENCIES.

SC#24. DURING DRAWDOWN, OUTFLOW FROM THE LOW-LEVEL OUTLET AT ONOTA LAKE DAM SHALL NOT EXCEED 41.6 CUBIC FEET PER SECOND.

SC#25. ONCE THE TARGET WATER ELEVATION IS ACHIEVED, OUTFLOW SHALL REASONABLY EQUAL INFLOW TO THE GREATEST EXTENT POSSIBLE UNTIL COMMENCEMENT OF REFILL. THE PURPOSE OF THIS MANIPULATION IS TO MAINTAIN A STABLE WATER LEVEL ELEVATION, WHICH SHALL NOT,



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EXCEPT TEMPORARILY AS THE RESULT OF A SIGNIFICANT WEATHER EVENT, VARY IN EXCESS OF A RANGE OF 1,077.00 FEET TO 1,078.00 FEET. 26. DURING REFILL, OUTFLOW FROM THE LOW-LEVEL OUTLET AT ONOTA LAKE DAM SHALL MEET OR EXCEED 5.2 CUBIC FEET PER SECOND. ANCILLARY CONDITIONS:

SC#27. THE APPLICANT AND ALL OTHERS SUBJECT TO THIS ORDER SHALL COMPLY WITH AND ADHERE TO THE "CONTINGENCY PLAN" SUBMITTED IN THE NOTICE OF INTENT. IN THE EVENT OF ANY FISH KILL WITHIN ONOTA LAKE, THE PERMITTEE SHALL BEAR RESPONSIBILITY TO IMMEDIATELY CONTACT THE MASSDEP'S EMERGENCY RESPONSE SECTION AT 413-755-2246; THE MASSACHUSETTS DIVISION OF FISHERIES AND WILDLIFE AT 508-792-7270 (DURING NORMAL WORKING HOURS); AND THE MASSACHUSETTS ENVIRONMENTAL POLICE AT 1-800-632-8075.

SC#28. NO DRAWDOWN PERMITTED HEREIN SHALL COMMENCE UNLESS FISH SCREENS THAT HAVE BEEN APPROVED IN WRITING BY NHESP ARE CORRECTLY PLACED AT THE OUTLET INVERTS, AND REMAIN IN PLACE UNTIL REFILL HAS BEEN ACHIEVED, OR UNLESS NHESP GRANTS WRITTEN AUTHORITY TO NOT EMPLACE A FISH SCREEN, AND THE PERMITTEE PROVIDES A COPIED NOTICE OF SUCH WRITTEN AUTHORITY TO MASSDEP.

SC#29. NO DRAWDOWN PERMITTED HEREIN, IN EXCESS OF 2 FEET BELOW THE NORMAL POOL ELEVATION, SHALL COMMENCE UNLESS THE COFFER DAM LOCATED AT THE UPSTREAM INVERT OF THE DAN CASEY MEMORIAL DRIVE CAUSEWAY IS REPLACED OR REPAIRED AND THEN APPROVED IN WRITING BY NHESP, AND REMAINS IN PLACE UNTIL REFILL HAS BEEN ACHIEVED, OR UNLESS NHESP GRANTS WRITTEN AUTHORITY TO NOT EMPLACE THIS COFFER DAM, AND THE PERMITTEE PROVIDES A COPIED NOTICE OF SUCH WRITTEN AUTHORITY TO MASSDEP.

SC#30. UPON COMPLETION OF THE PROJECT, THE APPLICANT SHALL SUBMIT WITH THEIR REQUEST FOR A CERTIFICATE OF COMPLIANCE, AN AFFIDAVIT PREPARED BY A PROFESSIONAL QUALIFIED AT 310 CMR 10.60(1)(B), STATING THAT THE PROJECT HAS BEEN CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS ORDER OF CONDITIONS AND THE REFERENCED PLANS OF RECORD.

SC#31. THIS ORDER SHALL EXPIRE FIVE YEARS FROM ITS DATE OF ISSUANCE, AND SHALL NOT BE GRANTED AN EXTENSION PERMIT, UNLESS NHESP GRANTS WRITTEN AUTHORITY TO SEEK AND OBTAIN AN EXTENSION PERMIT, AND THE PERMITTEE PROVIDES A COPIED NOTICE OF SUCH WRITTEN AUTHORITY TO MASSDEP. COMPLIANCE MONITORING REQUIREMENTS:

SC#32. PRIOR TO THE INITIATION OF ANY DRAWDOWN PERMITTED HEREIN, THE PERMITTEE SHALL OBTAIN, INSTALL, AND MAINTAIN A STAFF GAUGE, GRADUATED IN INCHES AND FEET, UPON AN APPROPRIATE VERTICAL COMPONENT OF ONOTA LAKE DAM FOR THE USE OF AUTHORIZED PERSONNEL; AND AT A PUBLICLY VIEWABLE LOCATION AND OF A SIZE READABLE AT EACH OF THE FOLLOWING LOCATIONS: A.) UPON AN APPROPRIATE VERTICAL COMPONENT OF THE DAN CASEY MEMORIAL DRIVE CAUSEWAY STRUCTURE AS PART OF THE NEW BOX CULVERT THAT IS CURRENTLY BEING DESIGNED / PERMITTED BY THE CITY DPS. . B.) ON THE FISHING PIER AT BURBANK PARK. UPON THESE STAFF GAUGES, THE PERMITTEE SHALL DISTINCTIVELY DEMARCATÉ AND CLEARLY LABEL THE "FULL POOL" ELEVATION, AND THE "TARGET DRAWDOWN" ELEVATION.

SC#33. PROVIDED THAT THE MASSACHUSETTS DIVISION OF ECOLOGICAL RESOURCES OR OTHER

**Massachusetts Department of Environmental  
Protection**

Bureau of Resource Protection - Wetlands

**WPA Form 5 - Order of Conditions**

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

Provided by MassDEP:  
MassDEP File #:263-1152  
eDEP Transaction #:1234989  
City/Town:PITTSFIELD

STATE AGENCY MAINTAINS A TELEMTRY UNIT ON ONOTA LAKE, DATA COLLECTED BY THE TRANSPONDER LOCATED UPON THE STRUCTURE OF ONOTA LAKE DAM SHALL BE CONFIGURED OR MODIFIED TO REPORT WATER LEVEL ELEVATIONS ON AN HOURLY BASIS. IN ADDITION, THE PERMITTEE SHALL MAINTAIN A LOGBOOK NOTING ALL MODIFICATIONS MADE TO THE LOW LEVEL OUTLET. . THE ATTACHED TABLE SHALL BE USED OR AUTOMATED TO COLLECT AND REPORT THIS DATA.

SC#34. DATA COLLECTED VIA THE TRANSPONDER SHALL MINIMALLY BE COLLECTED BETWEEN OCTOBER 15 OF ANY GIVEN CALENDAR YEAR, AND THE FOLLOWING APRIL 1, UNLESS THE DRAWDOWN AND REFILL ARE INITIATED AND ACHIEVED WITHIN A SHORTER PERIOD BETWEEN THESE DATES.

SC#35. IN THE EVENT OF THE FAILURE OF THE TRANSPONDER, THE PERMITTEE SHALL USE THE STAFF GAUGES TO MANUALLY COLLECT AT LEAST DAILY DATA, UNTIL SUCH TIME AS THE TRANSPONDER HAS BEEN REPAIRED OR REPLACED.

SC#36. DATA COLLECTED SHALL BE AVAILABLE THROUGH AN INTERNET LINK TRACKING THE TELEMTRY UNIT MEASUREMENTS PROVIDED FOR ON THE PITTSFIELD CONSERVATION COMMISSION WEBSITE. DATA SHALL BE RECORDED AND PRESENTED IN A FORMAT AGREED UPON AND ACCEPTABLE TO THE COMMONWEALTH AGENCIES LISTED ABOVE.

**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

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

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

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

1. Municipal Ordinance or Bylaw \_\_\_\_\_

2. Citation \_\_\_\_\_

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

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

1. Municipal Ordinance or Bylaw \_\_\_\_\_

2. Citation \_\_\_\_\_

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

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

**Massachusetts Department of Environmental Protection**

Bureau of Resource Protection - Wetlands

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**E. Signatures**

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

10/30/2020  
1. Date of Original Order

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

7  
2. Number of Signers

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

Signatures:

Elizabeth Bocchino

~~See Attached Signature Page~~

James Conant

Jonathan Lothrop

Thomas Sakshaug

Nicholas Caccamo

Franz Forster

Stephanie Storie

by hand delivery on

by certified mail, return receipt requested, on  
November 2, 2020

Date

Date

**F. Appeals**

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

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

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act

# Electronic Signature Page

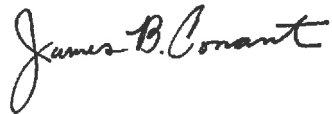
DEP File Number: 263-1152

Dated: October 30, 2020

**This order is signed electronically pursuant to the vote taken by the  
Pittsfield Conservation Commission and recorded at the Berkshire Middle District Registry of  
Deeds, Book 6659, Page 24.**

Signatures:

James Conant



Thomas Sakshaug



Franz Forster



Elizabeth Bocchino



Stephanie Dick



Nicholas Caccamo



Jonathan Lothrop





**Massachusetts Department of Environmental  
Protection**  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 - Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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Signature of Applicant

Rev. 4/1/2010

# Receipt



## Summary/Receipt

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**Form Name:** WPA Form 5 - OOC

Conservation Commission: PITTSFIELD  
Mass DEP File #: 263-1152  
Applicant Name: JAMES MCGRATH  
Signed by: James Conant

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Massachusetts Department of Environmental Protection

## eDEP Transaction Copy

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Document: **WPA Form 5 - OOC**

Size of File: **146.47K**

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