Lake Encroachment
Denial Decision

Under 29 V.S.A. § 401 *et seq.*

VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATERSHED MANAGEMENT DIVISION
LAKES & PONDS PROGRAM

Applicant(s): Lake St. Catherine Conservation Fund **Waterbody: Lake St. Catherine, Lily Pond, Little Lake** **Decision Number: 2015-005**	**Project Description: Dredging through the use of a hydrorake** **Project Address: Identified locations throughout Lake St. Catherine, Lily Pond, and Little Lake; in Poultney and Wells, Vermont**

Based upon the findings contained within this decision, the Department of Environmental Conservation (the Department) has determined that the project described herein, as set forth in the following findings and in the application on file with the Department, does not comply with the criteria of 29 V.S.A. § 405, and is inconsistent with the public trust doctrine, and is hereby **denied.**

a. Findings

1. Jurisdiction - 29 V.S.A. § 403: Lake St. Catherine, Lily Pond, and Little Lake in Poultney and Wells are public waters of the state of Vermont. The project would have encroached beyond the shoreline as delineated by the mean water level. Therefore, the Department has jurisdiction under 29 V.S.A. Chapter 11.

2. Application Receipt and Review - 29 V.S.A. § 404: On January 26, 2015, the Department received an application from the Lake St. Catherine Conservation Fund (applicant) under the provisions of 29 V.S.A. Chapter 11 seeking authorization to dredge using a hydrorake at locations within Lake St. Catherine, Lily Pond, and Little Lake in Poultney and Wells. The Department surveyed each proposed dredge location on June 18, 2015 (Appendix 1). At each location, water depth was recorded to assess the extent to which access and use was impeded due to the accumulation of sediment. Notes on aquatic plant populations and fish and wildlife habitat were also recorded.

3. Public Notification - 29 V.S.A. § 405(a): The Department gave written notice of this application to the selectmen of the town in which this project is located, abutting property owners, and others having an interest in this matter and provided an opportunity for interested persons to file written comments or request a public information meeting. The notice period began on March 20, 2015 and ended on March 30, 2015. Public comments were received and are addressed in the Response Summary attached to this decision. No request for a public informational meeting was received.

4. Background; Lake Encroachment Permit History: Dredging through the use of a hydrorake is known to have been in use since 1991 within Lake St. Catherine, Lily Pond, and Little Lake. Most recently, Lake Encroachment Individual Permit #2012-012, issued September 7, 2012 to the Lake St. Catherine Conservation Fund, approved the use of a hydrorake to dredge accumulated sediment, decaying vegetation, and debris from 15 near-shore areas in Little Lake and areas within the channels to the north and south of Little Lake to restore previously accustomed public uses that had been impeded by the accumulation of sediment. Lake Encroachment Individual Permit #2012-060, issued June 27, 2013 to the Lake St. Catherine Conservation Fund, authorized with permit conditions, the use of a hydrorake to dredge accumulated sediment, decaying vegetation, and debris from 20 out of 27 proposed near-shore areas in Lake St. Catherine and Little Lake to restore previously accustomed public uses that had been impeded by the accumulation of sediment. Seven proposed dredge locations were denied permit

authorization. Lake Encroachment Individual Permit #2014-004, issued June 16, 2014 to the Lake St. Catherine Conservation Fund, authorized with permit conditions, the use of a hydrorake to dredge accumulated sediment, decaying vegetation, and debris from 9 out of 11 proposed near-shore areas in Lake St. Catherine, Lily Pond, and Little Lake to restore previously accustomed public uses that had been impeded by the accumulation of sediment. Two proposed dredge locations were denied permit authorization.

5. Project Description: The project would have dredged accumulated sediment, decaying vegetation, and debris from 11 near-shore areas in Lake St. Catherine, Lily Pond, and Little Lake, using a hydrorake. The project would not have removed shoreline vegetation.

6. Project Purpose: The purpose of the project as proposed was to restore select locations to relatively recently accustomed public uses of boating, fishing, and swimming.

7. Effect of Encroachment – Whether Excessive for Stated Purpose: The Department has determined that access and public uses of these areas is not impeded by the accumulation of sediment. Based on survey documentation of bottom substrate (e.g., depth to hard bottom, minimal sediment accumulation) and other site characteristics, dredging of the 11 identified locations is considered to be excessive for the stated purpose due to the lack of impediment to access and public uses caused by accumulated sediment.

8. Effect of Encroachment – Less Intrusive Feasible Alternatives: The Department has determined that the accumulation of sediment does not impede access or public uses. Several proposed dredging locations were observed to have a common abundance of aquatic vegetation, which may be considered a nuisance by the public depending on use. Less intrusive feasible alternatives to dredging are available to address use impediment due to nuisance aquatic vegetation. Less Intrusive Feasible Alternatives include but are not limited to:

- Installation of a dock for noncommercial use as identified per 29 V.S.A. Ch. 11 § 401 et seq.; or

- Remove aquatic vegetation without the use of a powered mechanical device; or

- Consult with the Department's Aquatic Nuisance Control Permit Program to discuss the feasibility of obtaining a permit under 10 V.S.A. § 1455 – Aquatic Nuisance Control, for the use of pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices in waters of the state to control nuisance aquatic plants.

9. Effect of Encroachment – Measures to Reduce Impacts on Public Resources: The project is denied, therefore no additional measures to reduce impacts on public resources are specified herein.

10. Placement of Fill: The project would not have involved the placement of fill in the lake.

11. Effects on Water Quality - 29 V.S.A. § 405(b): Turbidity would have resulted in the immediate work areas during project implementation and would have settled over time and could have been contained by use of a silt screen curtain/turbidity curtain. No long term adverse impacts to water quality would have resulted from the project.

12. Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): The removal of aquatic vegetation and disturbance/alteration of the substrate at the proposed dredge locations would have negatively impacted fish and wildlife habitat. Numerous proposed dredge locations were observed to be heavily used for fish spawning. Dredging at these locations would have had negative impacts to fish and wildlife habitat.

13. Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): The Department made observations for the presence of rare aquatic plant species at the proposed dredging locations to determine whether the project would have an adverse impact to a rare species overall abundance and population stability in the lake. A rare plant species, whorled watermilfoil (*Myriophyllum verticillatum*), was observed at one of the proposed dredging locations. Aquatic vegetation was observed at nearly all proposed dredge locations. Therefore, dredging would have had adverse impacts to aquatic vegetation by removing nearly all aquatic vegetation at each location. Shoreline vegetation was not a part of the project and therefore would not have been negatively impacted.

14. Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): Accumulation of sediment was not observed to impede access or public uses for all proposed dredging locations during a site visit conducted on June 18, 2015 by the Department. As a result, the project would have had impacts to public uses temporarily during completion and would have provided limited positive effects on navigation, boating, and swimming after completion as a result of the removal of aquatic vegetation, not as a result of the removal of accumulated sediment. The project would have also resulted in negative impacts to fishing, as removal of aquatic vegetation and resulting bottom disturbance and substrate alteration was expected to negatively impact fish and wildlife habitat.

15. Consistency with the Natural Surroundings - 29 V.S.A. §405(b): The project would not have removed shoreline vegetation and most emergent vegetation along the immediate shoreline would have been excluded from the project area. Aside from temporary disturbance during project implementation, the completed project would have been consistent with the natural surroundings.

16. Consistency with Municipal Shoreland Zoning Ordinances and Applicable State Plans - 29 V.S.A. §405(b): No adverse comments were received during the investigation from local and state officials, and the project would have therefore been considered to be consistent with municipal shoreland zoning ordinances and applicable state plans.

17. Cumulative Impact - 29 V.S.A. §405(b): The dredging would have resulted in a negative cumulative impact due to the removal of fish and wildlife habitat and aquatic vegetation.

18. Public Good Analysis Summary - 29 V.S.A. § 405(b): The project was not expected to result in long-term impacts to water quality and would not have resulted in adverse impacts to shoreline vegetation and would have been considered consistent with natural surroundings. The project was, however, expected to have negatively impacted fish and wildlife habitat and aquatic vegetation, and would have resulted in temporary negative impacts on public use of near-shore areas for navigation and other recreational uses, such as fishing. The project was found to be excessive to achieve the stated purpose because access and public use of the project areas are not considered to be impeded by the accumulation of sediment and would have had only limited positive effects on navigation and other recreational and public uses after completion of the project due to the removal of aquatic vegetation, not accumulated sediment. Less intrusive feasible alternatives to dredging were identified that could improve access and public use of the project areas that are considered to be partially impeded by aquatic vegetation. Overall, the project would have resulted in negative cumulative impacts and would have adversely affected the public good.

19. Public Trust Analysis: The public trust doctrine requires the Department to determine what public trust uses are at issue, to determine if the proposal serves a public purpose, to determine the cumulative effects of the proposal on the public trust uses, and to balance the beneficial and detrimental effects of the proposal. The public trust uses relevant to this proposal are fishing, boating, and swimming. The

dredging would have provided public benefits in the form of limited and site specific improvements to the relevant public trust uses through the removal of aquatic vegetation, not the removal of accumulated sediment. These benefits would have predominantly been for the immediate lakeshore property owners. The project would have negatively impacted the public resource by eliminating site specific fish and wildlife habitat and aquatic vegetation. As the project would have only affected immediate near-shore environments by reducing aquatic vegetation, the potential positive benefits to public trust uses would not have outweighed the adverse impacts on fish and wildlife habitat. Accumulated sediments were not found to impede public trust uses and therefore the impacts of dredging would have been excessive and negatively impacted the public trust resource. The Department has identified less intrusive feasible alternatives for improving public access and use. The Department has therefore determined that the project is not consistent with the public trust doctrine. The Department finds that, based on the available information, the potential positive public benefits of the project do not outweigh the negative impacts the project would have on the public trust resource.

b. Standard Conditions

1. Appeals.

A. Renewable Energy Projects – Right to Appeal to Public Service Board. If this decision relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248, any appeal of this decision must be filed with the Vermont Public Service Board pursuant to 10 V.S.A. § 8506. This section does not apply to a facility that is subject to 10 V.S.A. § 1004 (dams before the Federal Energy Regulatory Commission), 10 V.S.A. § 1006 (certification of hydroelectric projects), or 10 V.S.A. Chapter 43 (dams). Any appeal under this section must be filed with the Clerk of the Public Service Board within 30 days of the date of this decision; the appellant must file with the Clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in accordance with 10 V.S.A. § 8504(c)(2), and shall also serve a copy of the Notice of Appeal on the Vermont Department of Public Service. For further information, see the Rules and General Orders of the Public Service Board, available online at www.psb.vermont.gov. The address for the Public Service Board is: 112 State Street, Montpelier, Vermont, 05620-2701; Telephone #: 802-828-2358.

B. All Other Projects – Right to Appeal to Environmental Court. Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. The appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings available at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry Street; 2nd Floor, Suite 303; Burlington, VT 05401 Telephone #: 802-951-1740.

c. Denial

Based upon the foregoing findings, and in consideration of the Department's Interim Procedures for the Issuance or Denial of Encroachment Permits, dated October 4, 1989, excluding Section 3, which was Invalidated by Lamoille County Superior Court, Docket No. S96-91, 9/04/92, it is the decision of the Department that the project described herein, as set forth in the above findings and in the plans on file with the Department, does not comply with the criteria of 29 V.S.A. § 405, and is inconsistent with the public trust doctrine.

In accordance with 29 V.S.A. § 401 *et seq.*, the Department hereby issues this decision and denial to the Lake St. Catherine Conservation Fund for the above named project.

Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

By: _____ Perry Thomas 2015.10.29 08:50:17 -04'00'

Perry Thomas, Program Manager
Lakes & Ponds Management and Protection Program

Appendix 1 – Department Survey of Proposed Hydrorake/Dredge Locations; June 18, 2015

Waterbody	Landowner	Address	Depth at Location	Access/Use Impaired (Y/N)	Additional Site Observations
Lake St. Catherine	Loffredo	401 Stonehenge Road, Poultney	2'-4'	N	Firm bottom; ~15'x20' floating leaved aquatic vegetation patch
Lake St. Catherine	Pascarella	622 Cones Point Road, Poultney	2'-6'	N	Firm bottom; uncommon to no aquatic vegetation
Lily Pond	Solomon	86 Lily Pond Lane, Poultney	2'-4'	N	Firm bottom; abundant aquatic vegetation; dense fish spawning location
Lily Pond	Stark	98 Lily Pond Lane, Poultney	2'-4'	N	Firm bottom; abundant aquatic vegetation; dense fish spawning location
Little Lake	Abrams	337 Lochlea Lane, Wells	2'-3'	N	Firm bottom along immediate shore; soft bottom at depth; abundant aquatic vegetation
Little Lake	Debonis	14 Clayton Tract, Wells	3'-4'	N	Uncommon aquatic vegetation
Little Lake	Gilbert	247 Lochlea Lane, Wells	1'-3'	N	Firm bottom along immediate shore; soft bottom at depth; abundant aquatic vegetation
Little Lake	Guhl	99 Little Lake N., Wells	2'-5'	N	Mixed aquatic vegetation and fish nests; ~10'x10' emergent aquatic vegetation patch
Little Lake	Riso	12 Clayton Tract, Wells	3'-4'	N	Uncommon aquatic vegetation
Little Lake	Rogers	2 Quinn Cove Road, Wells	2'-3'	N	Firm bottom around dock; Rare aquatic plant *Myriophyllum verticillatum* population
Little Lake	Sabella	237 VT Rt. 30, Wells	2'	N	Soft bottom