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NOT APPROVED BY AGENCY 3/7/2012



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

APA Project Permit  
2012-12

Date Issued: \_\_\_\_\_

In the Matter of the Application of

**JLKN ACRES, LLC**

for a permit pursuant to  
9 NYCRR Part 578

To the County Clerk: This permit  
must be recorded on or before  
\_\_\_\_\_. Please index this  
permit in the grantor index  
under the following names:

**1. JLKN Acres, LLC**

SUMMARY AND AUTHORIZATION

JLKN Acres, LLC is granted a permit, on conditions, authorizing the stocking of sterile triploid grass carp to control nuisance native aquatic vegetation, in an area classified as Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Jay, Essex County.

This project may not be undertaken until this permit is recorded in the Essex County Clerk's Office. This permit shall expire unless so recorded on or before \_\_\_\_\_ in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within two years from the date the permit is recorded. The Agency will consider the project in existence when the sterile grass carp have been stocked in Lake Eaton.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

### AGENCY JURISDICTION

The project consists of the control of nuisance aquatic vegetation, a regulated activity involving emergent and deep water marsh wetlands pursuant to 9 NYCRR 578.2 and 578.3(n)(2)(ii).

### PROJECT SITE

The 2,247±-acre project site consists of the bottom of Lake Eaton which is owned by JLKN Acres, LLC. The property is located in the Town of Jay, Essex County, in an area classified Low Intensity Use on the Adirondack Park Land Use and Development Plan Map. It is identified on Town of Jay Tax Map as Section 17.3, Block 2 as Parcel 2. The project site is described in a deed from Forever Wild Development Corp to JLKN Acres, LLC dated March 14, 2006 which was recorded March 31, 2006 in the Essex County Clerk's Office in Liber 1484 of Deeds at Page 323.

### PROJECT DESCRIPTION AS PROPOSED

The project as proposed and conditionally approved herein is summarized as follows: The primary objective of the project is to stock triploid sterile grass carp (*Ctenopharyngodon idella*) to reduce the density of waterweed (*Elodea canadensis*) and bushy pondweed (*Najas flexilis*) in order to improve the ecological, recreational and aesthetic values of Lake Eaton. A stocking of sterile grass carp, not to exceed a stocking rate of 5 fish per vegetative acre and a minimum stocking size of 8-10 inches, is proposed.

Monitoring of the aquatic plant community will begin the same year of the stocking and will continue for a minimum of 3 years (2012-2014). The aquatic surveys will be completed as described in the Supplemental Information Response dated December 29, 2011. Four aquatic plant monitoring transects previously surveyed will be evaluated each year. In addition, the Project Sponsor will monitor water quality annually for a minimum of 4 years, by participating in the CSLAP program or similar monitoring program.

### CONDITIONS

#### BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.

2. This permit is binding on the applicant(s), all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and all the approved maps and plans referred to herein shall be furnished by the applicant(s) to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2012-12 issued \_\_\_\_\_, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
3. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.
4. Prior to stocking of the certified sterile triploid grass carp, the following shall be completed:
  - a. Obtain all permit(s) required from the NYS DEC.
  - b. Install signs at the boat launch and public access areas regarding the presence and return of caught fish to the lake and provide public information to the shoreowners regarding the DEC laws governing the possession and transport of sterile grass carp.
  - c. Obtain U.S. Fish and Wildlife Service ploidy certification for the grass carp to be stocked in Lake Eaton.
  - d. Properly install an approved fish barrier on the outlet drain pipe.
5. Only certified sterile triploid grass carp of a minimum of 8-10 inches in total length and purchased from a NYSDEC approved supplier shall be stocked in Lake Eaton. Based on the preliminary aquatic plant survey, dated August 2012, stock a maximum of 5 fish per vegetated acre or a total of 75 sterile grass carp.
6. The applicant shall regularly inspect and properly maintain the fish signs and fish barrier, including removal of debris from the barrier.

7. The annual monitoring program by a qualified consultant shall consist of the vegetation survey described in the Supplemental Information Request, dated December 29, 2011. The program shall begin the same year of the initial stocking and continue for a minimum of three years. Annual reports shall be submitted to the Agency by December 31 each year. Any changes to the monitoring shall be subject to prior Agency review and approval.
8. Water quality monitoring shall commence the same year as stocking and continue at least four successive years. A minimum of two samples, collected during the months of June through August, shall be required during the first year of sampling and once during the mid-growing season (mid-July to mid-August) for each year thereafter. Annual reports shall be submitted to the Agency by December 31 each year. Any changes to the monitoring program shall be subject to prior Agency review and approval.

#### **Review of Future Aquatic Plant Management**

9. Any subsequent stocking of sterile triploid grass carp or other nuisance aquatic vegetation control efforts, by any method, or by any applicant, on the project site shall require prior Agency review and approval. Any new or amended permit application shall include new or additional detailed scientific information on the status and behavior of nuisance aquatic vegetation in the lake, current monitoring data, including current aquatic plant inventory, the ability of the applicant to undertake the project, options for the maximum protection of native wetland plants including protected species, the extent of water use interference by the nuisance plant, the evaluation of new or additional control alternatives and the status of a comprehensive aquatic plant management plan.

#### **Wetlands**

10. Beyond the one time stocking of sterile triploid grass carp authorized herein, no "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part 578) shall occur on the project site without prior Agency approval. Such activities include, but are not limited to, dredging or filling of a wetland, or any other activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values.

## FINDINGS OF FACT

### Background/Prior History

1. The project site was the subject of previous Agency actions.

Jurisdictional Determinations J2009-524 and J2010-9 stated a permit was necessary for the two-lot subdivision involving wetlands and the creation of a sub-standard sized lot.

Agency Permit 2010-91 authorized a two-lot subdivision resulting in the creation of a 2.1± acre sub-standard lot.

### Existing Environmental Setting

2. The lake is purported to be man-made with one inlet and one outlet. The inlet is situated along the southwestern shoreline and flows through an emergent marsh wetland with no defined channel. The outlet consists of a single metal standpipe (i.e. trickle tube) positioned at a set elevation to facilitate high water levels. The outlet standpipe discharges beyond the margins of the shoreline into a small stream and emergent marsh wetland. The outlet culvert has an existing wire mesh screen to prevent aquatic plants and other debris from washing into the outlet. A replacement of the debris screen will be required prior to stocking of grass carp which will prevent the fish from leaving the lake.
3. The emergent and deep water marsh wetlands and deep water habitat associated with Lake Eaton are present throughout the lake's littoral zone. Emergent marsh cover type wetlands have an overall value rating of "2" and deep water marsh wetlands have an overall value rating of "3".
4. Lake Eaton is 20± acres in size with a reported mean depth of 7± feet and maximum depth of 14± feet. The lake and surrounding land is owned by JLKN Acres, LLC. The Ausable Acres Homeowners Association (AAHA) is a group of landowners which live in the Ausable Acres development and are granted access to the lake for recreational purposes. A private car-top boat launch is available and members of the AAHA can also launch canoes and kayaks from the shoreline. Access to the car-top boat launch is not available to the general public.
5. An aquatic plant survey was completed during August 2011. Nine species of aquatic plants were identified at four transects. The most dominant plant found during the survey was waterweed (Elodea canadensis) and the second most abundant plant was bushy pondweed

(*Najas flexilis*). Other species included coontail (*Ceratophyllum demersum*), floating pondweed (*Potamogeton natans*), ribbon-leaf pondweed (*Potamogeton epihydrus*), and robbins pondweed (*Potamogeton robbinsii*).

No rare, threatened or endangered species were collected or observed during the survey and the New York State Natural Heritage Program is unaware of the existence of any such species in the locality.

6. A comprehensive fisheries survey has never been completed, but several species of fish are reported to be in Lake Eaton including yellow perch, bluegill, largemouth bass and northern pike.
7. The reduction in aquatic plant biomass will improve the overall aesthetics of Lake Eaton, improve recreational usage by increasing open water areas for more boating opportunities and improve fishery habitat. A single stocking is estimated to control aquatic vegetation for five to eight years.

#### **Public Notice and Comment**

8. The Agency notified all adjoining landowners, including all Ausable Acres Homeowner Association members, and those parties as statutorily required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. No comments were received.

#### **Other Regulatory Permits and Approvals**

9. The NYS DEC issued a triploid grass carp stocking permit to the applicant in 2012. The permit will expire on October 31, 2012.

A statewide policy on triploid grass carp Use in New York has been established by the NYS DEC Division of Fish and Wildlife. Pursuant to the policy a negative declaration will be issued by NYSDEC in accordance with State Environmental Quality Review Act.

10. The Agency has been advised by the Town of Jay in a completed Local Government Notice Form that no municipal approval is required for the project.

## PROJECT IMPACTS

### Wetlands / Water Resources

11. Grass carp are known to feed primarily on rooted aquatic macrophytes. Preference for certain macrophytes appear to vary from region to region, but research indicates that waterweed (*Elodea canadensis*) is an aquatic plant preferred by grass carp. In New York State and within the Adirondack Park, it is apparent from other stockings that grass carp primary food preference appears to be plants like bushy pondweed, waterweed, and bladderwort. A change in the overall aquatic plant community may occur at the proposed stocking rate of 5 fish per vegetative acre. However, complete eradication of any species currently present is not likely and the proposed aquatic plant community annual monitoring will provide an assessment of grass carp feeding habits.
12. Replacement and maintenance of the fish barrier screen at the outlet culvert, and posting signs requiring any caught grass carp be returned to the lake, will prevent escape of the non-native species.
13. Water quality monitoring on other large New York State lakes which have released sterile grass carp have shown no significant changes to water quality based on review of monitoring reports and scientific literature. In some instances, water clarity was enhanced. The annual monitoring program with reporting for aquatic vegetation and water quality is an important tool to determine the effectiveness, impacts and any adjustments in management of the lake and its associated wetland community.

### Historic Sites or Structures

14. Based on review of available resource inventory, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

## CONCLUSIONS OF LAW

If undertaken in compliance with the conditions herein:

1. The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the

ability of the public to provide supporting facilities and services made necessary by the project, taking into account the economic and social benefits that might be derived therefrom.

2. The Agency has considered the public policy of the State set forth in ECL 24-0103, the statement of legislative findings set forth in ECL 24-0105, and the effect of the project upon the public health and welfare, fishing, flood, hurricane and storm dangers, and the protection and enhancement of the several wetland functions and benefits. The applicable findings of 9 NYCRR Part 578 can be made.
3. The project would result in minimal degradation or destruction of the wetland with a value rating of 2 or its associated values, and is the only alternative which reasonably can accomplish the applicant's objectives.
4. The project would result in the minimum possible degradation or destruction of any part of the wetland with a value rating of 3 or its associated values; is the only alternative which reasonably can accomplish the applicant's objectives; and would, weighing the benefits of the activity against its cost and the wetland values lost, provide a net social and/or economic gain to the community.

