

Lake Encroachment Individual Permit

Under 29 V.S.A. § 401 *et seq.*



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

<p>Permittee(s): Beach Properties, Inc. Waterbody: Lake Champlain Permit Number: 2016-004</p>	<p>Project Description: Floating dock installation and retaining wall upgrade Project Location: 4800 Basin Harbor Road, Vergennes</p>
<p>Based upon the findings contained in this permit, it is the decision of the Department of Environmental Conservation (the Department) that the project described herein, as set forth in the following findings and in the application on file with the Department, complies with the criteria of 29 V.S.A. § 405 and is consistent with the public trust doctrine, and is hereby approved under the following conditions and specifications.</p>	
<p>a. Specific Conditions</p> <ol style="list-style-type: none"> 1. The project shall be carried out in accordance with the final application received by the Department on March 14, 2016 (the Approved Application); and the conditions and specifications of this permit. 2. Concrete or other “structural” retaining wall replacement projects shall be constructed in accordance with the Approved Application, the additional permit terms and conditions contained herein, and the following conditions: <ol style="list-style-type: none"> A. The wall addition shall be constructed no greater in width and length, and no further lakeward (including footing and other design features if applicable) than the existing wall. B. Existing water depths in front of the replacement wall shall be maintained. C. Reference measurements shall be made and demarcated as necessary in the field using temporary grade stakes and/or lines, or another equivalent method, by the permittee prior to project implementation/construction, to ensure project compliance with permit conditions (a)(2)(A) and (a)(2)(B) above. D. Fluid concrete shall be placed only in tightly sealed and dewatered forms. Caution shall be exercised during construction to prevent concrete spillage. E. Water pumped from concrete forms shall be discharged to an on-shore containment area. No pumped or turbid water shall be discharged directly to the lake. Work shall stop immediately if visible turbidity occurs in the lake as a result of construction activity and shall not recommence until the source of the turbidity is identified and corrected. F. Concrete wash water shall not be discharged directly to the lake, to upland areas, rivers/streams, wetlands, or to stormwater/drainage conveyance. Concrete wash water shall be discharged only to an impermeable on-shore containment area and disposed of properly, in accordance with applicable local, state, and federal regulations. It shall be the responsibility of the permittee to ensure concrete equipment operators are aware of and abide by this permit condition. G. Any sandbags that may be used temporarily during construction shall be removed from the lake. In addition, sandbags shall not be left in the lake, or stored in a location that will result in a discharge of sand to the lake as a result of wind, waves, stormwater runoff, or ice. H. The permittee shall install a turbidity curtain or Department approved equivalent barrier, in the lake around the project work area. The barrier shall extend above the lake’s surface and be secured to the bottom of the lake to contain turbidity during the project. If turbidity is observed beyond the work area, work shall be stopped immediately and shall not recommence until the source of the turbidity is identified and corrected. The barrier shall not be installed in a way that 	

blocks navigation in a channel, if applicable. The barrier shall remain in place and be maintained until the project is complete and observations indicate turbidity within the barrier has decreased to the level of turbidity outside the barrier.

- I. Initiation of construction for the concrete or other “structural” retaining wall replacement authorized by this permit is restricted until after July 1 of any calendar year.

3. Installation and Maintenance of Floating Dock System – Project shall be constructed in accordance with the Approved Application, the additional permit terms and conditions contained herein, and in accordance with the following special conditions:

- A. The floating dock system shall provide dockage for transient boaters.
- B. The floating dock system shall provide access for non-powered watercraft.
- C. During winter storage of the floating dock system, signs shall be placed that are visible from shore and from the water that warn of open water conditions due to the presence of bubblers.

b. Standard Conditions

1. Completion of construction. The project authorized by this permit must be completed within 5 years of the effective date of this permit.
2. Permit modification. All permit modifications, shall be treated as a new permit application.
3. Nuisance species spread prevention. Prior to placing any equipment (e.g., boat, trailer, vehicle, or gear) that has been in or on any other waterbody into public waters for project implementation/construction, the permittee shall decontaminate the equipment in compliance with the [Voluntary Guidelines to Prevent the Spread of Aquatic Invasive Species through Recreational Activities, Aquatic Nuisance Species Task Force, November 2013](#).
4. Erosion prevention and sediment control. Erosion prevention and sediment control best management practices shall be utilized and maintained to prevent erosion and control sediment to minimize and prevent adverse impacts to water quality during construction of the authorized project. In addition, the permittee shall comply with the following conditions:
 - A. Areas disturbed by the construction activities shall be protected from erosion through the application of seed and mulch upon completion of construction, and shall be temporarily mulched during construction in advance of precipitation events.
 - B. Work shall stop immediately if visible turbidity occurs in the lake as a result of construction activity and shall not recommence until the source of the turbidity is identified and corrected.
5. Heavy equipment operation. Heavy equipment shall work from shore, and shall not work lakeward of mean water level unless explicitly approved in writing by the Department, and/or specified in the Approved Application.
6. Spill prevention. Fuel and lubricants from equipment shall not be discharged into the water. Any spills shall be managed in accordance with all applicable local, state, and federal regulations.
7. Waste management. Any pieces of concrete, stone, construction debris, or other waste materials deposited into the lake during project implementation/construction shall be removed from the lake and disposed of properly, in accordance with all applicable local, state, and federal regulations.
8. Compliance with other regulations. This permit does not relieve the permittee from obtaining all other approvals and permits prior to commencement of activity or from the responsibility to comply with any other applicable federal, state, and local laws or regulations, including but not limited to the Vermont Solid Waste Management Rules, the Vermont Wetland Rules, and the Vermont Shoreland Protection Act.

9. Transfer of permit. Prior to transferring ownership over the encroachment authorized by this permit or the portion of property associated with the encroachment authorized by this permit, the permittee shall give the Department notice of the transfer. The notice shall include the name and contact information for the current permittee and prospective permittee, the proposed date of permit transfer, and a statement signed by the prospective permittee stating that he/she has read and is familiar with this permit and agrees to comply with and be bound by its terms and conditions.
10. Access to property. The permittee shall allow the Commissioner of the Department, or a duly authorized representative, at reasonable times and upon presentation of credentials, to enter upon permittee's property, or to otherwise access the authorized encroachment, if necessary, to inspect the project to determine compliance with this permit.
11. Legal responsibilities for damages. The Department, by issuing this individual permit, accepts no legal responsibility for any damage direct or indirect of whatever nature and by whoever suffered arising out of the approved project.
12. Rights and Privileges. This permit does not authorize any damage to private property or invasion of private rights or the violation of federal, state, or local laws or regulations. In addition, this permit does not convey any title or interest to the lands lying under public waters or waters affected.
13. Duty to comply and enforcement. The permittee shall comply with all terms and conditions of this permit. Any permit noncompliance shall constitute a violation of 29 V.S.A. Chapter 11 and may be cause for an enforcement action and revocation, modification, or suspension of this permit. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.
14. Reopener. If, after granting this permit, the Department determines that there is evidence indicating that an authorized activity does not comply with the requirements of 29 V.S.A. Chapter 11, the Department may reopen and modify this permit to include different limitations and requirements.
15. Revocation. This permit is subject to the conditions and specifications herein and may be suspended or revoked at any time for cause including: failure by the permittee to disclose all relevant facts during the application process which were known at that time; misrepresentation of any relevant fact at any time; non-compliance with the conditions and specifications of the permit; or a change in the factors associated with the encroachment's effect on the public trust or public good so that on balance the Department finds that the encroachment adversely affects the public trust or public good.
16. Severance. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
17. 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. Findings

1. Jurisdiction - 29 V.S.A. § 403: Lake Champlain in Vergennes is a public water of the state of Vermont. The project encroaches beyond the shoreline of Lake Champlain, 95.5 feet National Geodetic Vertical Datum (NGVD) 1929. Therefore, the Department has jurisdiction under 29 V.S.A. Chapter 11.
2. Application Receipt and Review - 29 V.S.A. § 404: On March 14, 2016 the Department received an application from Beach Properties, Inc. (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to install a floating dock system and to upgrade a retaining wall at the Basin Harbor Club Marina located within the public waters of Lake Champlain in Vergennes.
3. Public Notification - 29 V.S.A. § 405(a): The Department gave written notice of this application to the municipality in which the proposed encroachment 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 15, 2016 and closed at 4:30 PM on April 13, 2016. No comments were received. No request for a public meeting was received.
4. Background; Lake Encroachment Permit History: NONE
5. Project Description: This project consists of maintenance and upgrades to the Basin Harbor Club & Resort’s marina. The applicant will remove 4 out of 7 existing concrete docks, all existing moorings and the existing wood floating docks to install new commercial steel truss floating docks. The new docks will provide 75 dock slips and include an Americans with Disabilities Act of 1990 (ADA) compliant swimming dock and ADA compliant kayak launch. The marina will not offer any moorings, fuel and pump-out services, mechanical services, or winter boat storage. The existing concrete seawall and riprap will be elevated to address frequent submersion; the applicant proposes to raise the wall to 100.5 feet NGVD along 117.5 linear feet. The applicant also proposes to raise the height of the riprap wall adjacent to the

seawall by one course of stone (approximately 12 inches). A new concrete footing and seawall will be installed along an 8-foot area to replace the location where two existing concrete docks will be removed and ADA compliant gangway will be installed. The proposed floating dock system will remain in the harbor during the winter months, stored in a compact configuration. Four bubblebers will be installed in the winter and used when accumulating ice is present. The permittee will install signage warning of thin ice/open water in three access locations around the floating dock system. The signs will be visible from shore and from the water.

6. **Project Purpose:** The purpose of this project is to address the unsafe and deteriorating conditions of the existing concrete dock systems and to accommodate mixed-use access of the marina by removing four concrete docks and all moorings. The proposed project will upgrade the existing marina to a floating dock system that includes an ADA accessible kayak/canoe launch and swim area.
7. **Effect of Encroachment – Whether Excessive for Stated Purpose:** The project is not considered excessive for meeting the stated purpose. The applicant has made an effort to reduce the existing impacts through the proposed project.
8. **Effect of Encroachment – Less Intrusive Feasible Alternatives:** There were no identified less intrusive feasible alternatives to achieving the stated project purpose. The proposed project will remove the unsafe and deteriorating concrete docks and replace them with less intrusive floating docks to accommodate the applicant’s established waterfront programs. Raising the elevation of the existing seawall is necessary to reduce erosion concerns when the lake level is at or above 97.0 feet and to comply with ADA specifications.
9. **Effect of Encroachment – Measures to Reduce Impacts on Public Resources:** The applicant will follow the [Voluntary Guidelines to Prevent the Spread of Aquatic Invasive Species through Recreational Activities, Aquatic Nuisance Species Task Force, November 2013](#) prior to placement of any equipment or project related materials in Lake Champlain. Heavy equipment, if required for project implementation will work from shore only. Erosion prevention and sediment control best management practices will be utilized and maintained if areas are disturbed during project implementation. The applicant has developed a winter storage procedure that seasonally reduces the encroachment footprint.
10. **Placement of Fill:** The removed concrete docks and associated materials will be placed directly into a dump truck and carried to an off-site location. The project will result in additional fill beyond the mean water level through raising the elevations of the existing concrete wall, the existing riprap stabilization area, and the corresponding shoreline grades. 117.5 linear feet of concrete wall will be installed; the footing will be comprised of 74 cubic yards and the upper wall will total approximately 13 cubic yards, creating about 87 cubic yards of seawall. Approximately 250 cubic yards of material consisting of 4-inch minus crushed stone, topped with ¾ -inch minus crushed stone will be placed as back fill behind the wall. 88 linear feet of Pantan stone riprap will be installed to match existing stone. 42 cubic yards of 2-inch minus crushed stone topped with ¾-inch minus crushed stone will be placed as back fill behind the riprap. The adverse impacts of additional fill in the lake will be outweighed by the benefits of long term stabilization of the shoreline and compliance with ADA regulations. 30, 6,000-pound anchor blocks and 24, 3-inch and 1, 4-inch galvanized steel anchor spud pipes will be installed in the lakebed to hold the new dock system in place. The adverse impacts associated with placement of these anchors at the location of an existing marina are considered minimal and will be outweighed by the removal of all existing moorings and the improved safety and access conditions provided through this project.

- 11.** Effects on Water Quality - 29 V.S.A. § 405(b): The installation of the floating dock system dock system at the Basin Harbor Club will not result in significant disturbance during project implementation aside from the one-time placement of anchor blocks necessary for securing the dock system. The dock system will not provide fueling or pump-out facilities. Winter storage of docks in this location will not negatively impact water quality. The project is not expected to result in adverse impacts to water quality. During retaining wall upgrade activities, fluid concrete will be placed within a tightly sealed form consisting of dry concrete. Caution will be exercised during construction to prevent concrete spillage. Water pumped from concrete forms will be discharged to an on-shore containment area. No pumped or turbid water will be discharged directly to the lake. Work will stop immediately if visible turbidity occurs in the lake as a result of construction activity and will not recommence until the source of the turbidity is identified and corrected. The project will not adversely impact water quality.
- 12.** Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): The project will have a minimal impact to fish and wildlife habitat that is outweighed by reducing concrete erosion in the lake and the removal of existing moorings. The project's impacts on fish and wildlife habitat will be limited to the locations of the placed anchor blocks used to secure the new docks. The impacts are considered minimal and are not expected to result in significant adverse impacts to fish and wildlife habitat. Raising the elevation of the existing wall is not expected to affect fish and wildlife habitat adversely.
- 13.** Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): The project's impacts on aquatic vegetation will be limited to the location of the anchor blocks used to secure the new docks, in addition to the creation of newly shaded areas by the dock system. Any aquatic vegetation that is impacted during project implementation and operation is expected to reestablish. The project will not result in the removal of shoreline vegetation. The project will not result in adverse impacts to aquatic and shoreline vegetation.
- 14.** Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): The project is not expected to result in negative impacts to navigation in Basin Harbor, as the new dock system is in the general location of the existing system and moorings, which are already used for the same purpose. The project is not expected to result in negative impacts to recreational and public uses, including fishing and swimming in this area, the proposed project will provide safety upgrades and ADA compliant access to the swimming area. The project will not result in adverse impacts to navigation and other recreational and public uses, including fishing and swimming. The project will result in a positive effect on boating-related recreation by providing additional transient slips, including space for non-powered recreational water crafts including kayaks and paddle boards. During the winter months, the floating dock system will be stored in the water in a compact fashion. Four bubblers will be used to protect the dock system. Signage will be placed to restrict access around the dock due to unsafe conditions. This activity will result in restricted navigation and public use in a small area in Basin Harbor during winter months. This restriction is justified to protect public safety.
- 15.** Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): This location of the Basin Harbor, Lake Champlain has historically been used as a recreational marina; docks and recreational activities have occurred at Basin Harbor for over 100 years. The project is considered consistent with the existing 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 officers and the

project is therefore considered to be consistent with municipal shoreland zoning ordinances and applicable state plans.

17. Cumulative Impact - 29 V.S.A. § 405(b): The project will result in minor additional cumulative impact at the existing Basin Harbor Club marina within Lake Champlain, due to the addition of fill in the project location. The additional cumulative impact is outweighed by the safety and access improvements at a publicly accessible marina that caters to multiple uses and by the removal of existing moorings and eroding concrete docks.
18. Public Good Analysis Summary - 29 V.S.A. § 405(b): Based upon findings c. 11-17, the project will have a temporary minimal impact on water quality, fish and wildlife habitat, and aquatic vegetation. The project will have a positive impact on recreation and public uses. Overall, the proposed project will not adversely affect 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/kayaking, swimming, ice fishing, ice skating, navigation, and boating-related recreation. The impacts of the project on public trust uses include minimal impact on water quality, aquatic habitat, and aquatic vegetation. The marina upgrade provides public benefits through the removal of degrading, unsafe concrete docks and the removal of all moorings. The upgrades will improve water quality over time and improve safety and access to multiple public recreational uses. The minimal environmental impacts may be temporary and will prevent future impacts. The upgrades improve safety and access for multiple uses. The Department has therefore determined that the project is consistent with the public trust doctrine.

d. Authorization

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, complies with the criteria of 29 V.S.A. § 405, and is consistent with the public trust doctrine.

In accordance with 29 V.S.A. § 401 *et seq.*, the Department hereby issues this decision and permit to Beach Properties, Inc. for the above named project. The Department has approved the project subject to the conditions contained herein.

This permit shall not be effective until 10 days after the Department's notice of action and permit issuance in accordance with 29 V.S.A. § 405(c) and shall expire 15 years thereafter. **Prior to the expiration of this permit, the permittee shall reapply for a lake encroachment permit, if the permittee wishes to maintain the encroachment authorized by this permit.** If the permittee wishes to modify the encroachment or conduct other jurisdictional activities not authorized by this permit, the permittee must submit a new permit application.

Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

By: _____
Perry Thomas, Program Manager
Lakes & Ponds Management and Protection Program