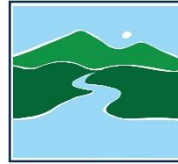


# Lake Encroachment Individual Permit

Under 29 V.S.A. § 401 *et seq.*



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

<p><b>Permittee(s):</b> Vermont Department of Forests, Parks and Recreation</p> <p><b>Waterbody:</b> Silver Lake</p> <p><b>Permit Number:</b> 2016-006</p>	<p><b>Project Description:</b> Floating dock installation</p> <p><b>Project SPAN:</b> n/a</p> <p><b>Project Location:</b> Silver Lake State Park 214 North Road, Barnard</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><b>a. Specific Conditions</b></p> <ol style="list-style-type: none"><li>1. The project shall be carried out in accordance with the final application received by the Department on March 22, 2016 (the Approved Application); and the conditions and specifications of this permit.</li><li>2. 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:<ol style="list-style-type: none"><li>A. The floating dock system shall not require permanent stabilization structures in the water.</li><li>B. The floating dock system shall be removed from the water annually at the end of the operating season for winter storage.</li></ol></li></ol>	
<p><b>b. Standard Conditions</b></p> <ol style="list-style-type: none"><li>1. <u>Completion of construction.</u> The project authorized by this permit must be completed within 5 years of the effective date of this permit.</li><li>2. <u>Permit modification.</u> All permit modifications, shall be treated as a new permit application.</li><li>3. <u>Nuisance species spread prevention.</u> 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 <a href="#">Voluntary Guidelines to Prevent the Spread of Aquatic Invasive Species through Recreational Activities, Aquatic Nuisance Species Task Force, November 2013</a>.</li><li>4. <u>Erosion prevention and sediment control.</u> 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:<ol style="list-style-type: none"><li>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.</li><li>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.</li></ol></li><li>5. <u>Heavy equipment operation.</u> 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.</li></ol>	

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](http://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](http://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: Silver Lake in Barnard is a public water of the state of Vermont. The project encroaches 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 March 22, 2016, the Department received an application from the Vermont Department of Forests, Parks and Recreation (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to install a floating dock system located within the public waters of Silver Lake, Barnard.
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 23, 2016 and closed at 4:30 PM on April 21, 2016. No comments were received. No request for public information was

received.

4. Background; Lake Encroachment Permit History: None
5. Project Description: The project consists of the installation of a floating dock system covering a total area of 392 square feet. The proposed dock is "T"-shaped and will extend 52 feet from the mean water level. The floating dock section that extends perpendicular from the shore is 5 feet wide. The floating dock section comprising the "top of the T shape" that is parallel to the shore is 25 feet long and is 6 feet, 8 inches wide.
6. Project Purpose: The purpose of this proposed project is to provide space for mooring and accessing the Vermont Department of Forests, Parks and Recreation's fleet of non-motorized rental boats and to provide recreational viewing for visitors to Silver Lake State Park. Additionally, the proposed dock will provide upgrades to the existing system which is difficult to install, not compliant with the American Disabilities Act (ADA), and does not easily adjust for fluctuations in water level. The proposed floating dock system will address these issues, meet ADA requirements, and require less maintenance over time.
7. Effect of Encroachment – Whether Excessive for Stated Purpose: The project is not considered to be excessive to provide space for mooring and accessing the Vermont Department of Forests, Parks and Recreation's fleet of non-motorized rental boats.
8. Effect of Encroachment – Less Intrusive Feasible Alternatives: There were no identified less intrusive feasible alternatives to achieve the stated purpose. However, the proposed project will have less intrusive aspects than the existing dock system. The proposed floating dock system will have fewer in-water stabilization points with smaller footprints than the existing stabilization points.
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 Silver Lake. 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.
10. Placement of Fill: The project does not involve the placement of fill.
11. Effects on Water Quality - 29 V.S.A. § 405(b): The project will not result in significant disturbance during project implementation, aside from placement of stabilization points for the floating dock system, which creates a minimal disturbance. The project is not expected to result in adverse impacts to water quality.
12. Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): Impacts from placing the floating dock stabilization points are minimal and limited to a few locations. The impacts are not expected to result in adverse impacts to fish and wildlife habitat.
13. Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): The project's impact on aquatic vegetation will be limited to the locations of the floating dock stabilization points and the newly shaded areas created 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 this area of Silver

Lake, as the expanded dock system is in the general location of the existing dock system and is already used for the same purpose. The project is not expected to result in negative impacts to recreational and public uses, including fishing, swimming and boating. The project will result in a positive effect on boating-related recreation by improving access to non-motorized boats. Access will be improved by the ability of the floating dock to fluctuate with the water level and through the provision of ADA compliant design.

- 15.** Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): The proposed floating dock system will be replacing an existing dock that has historically been used for recreation access. The proposed structure was selected to be unobtrusive in color and to have a lower in profile than the existing structure. 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 proposed floating dock system will create additional encroachment that is larger than the existing encroachment. However, the additional cumulative impacts in this location are considered to be minimal and are outweighed by the public benefits of the project.
- 18.** Public Good Analysis Summary - 29 V.S.A. § 405(b): Based upon findings c. 11-17, 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, non-motorized boating, swimming, ice fishing, and public recreational access. There are no anticipated negative impacts on public trust uses from project implementation. The installation of a floating dock system on Silver Lake provides public benefits in the form of increased access through ADA compliance and the ability of the dock to fluctuate with the water level. 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 the Vermont Department of Forests, Parks and Recreation 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