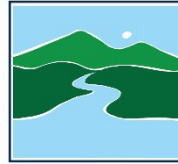


Lake Encroachment Individual Permit

Under 29 V.S.A. § 401 *et seq.*



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

<p>Permittee(s): Vermont Department of Fish & Wildlife</p> <p>Waterbody: Lake Memphremagog – South Bay</p> <p>Permit Number: 2016-008</p>	<p>Project Description: Public Access Ramp and Dock Removal; Addition of ADA Accessible Dock</p> <p>Project SPAN: 435-136-15634</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 30, 2016 and in accordance with the additional information received from the applicant on May 2, 2016 (the Approved Application); and the conditions and specifications of this permit. 2. Public access ramp and dock removal and addition of ADA (Americans with Disabilities Act) accessible dock shall be completed 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"> A. The permittee shall install a turbidity curtain or Department approved equivalent barrier, in the lake around the area/site prior to excavation. 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 dredging is complete and observations indicate turbidity within the barrier has decreased to the level of turbidity outside the barrier. B. The permittee shall exercise caution when excavating areas near outlet structures, and shall remain at least ten feet away from any spillway, dam, or similar control structure, unless explicitly approved in the Approved Application or as otherwise covered by a Dam Safety Permit. C. The permittee shall exercise caution around any and all existing water intake pipes and dry hydrants, if present, and clearly mark such structures prior to excavating and take all necessary and appropriate measures to avoid damaging or impairing function of these structures. D. The permittee’s excavating activity shall not injure or kill turtles, mussels, fish, or other wildlife. The permittee shall promptly and safely remove from the designated dredging area all turtles, mussels, fish, and wildlife found during dredging. E. The excavated material shall be transported to a dry upland site, at least 50 feet from surface waters, and utilized or disposed of in accordance with applicable local, state, and federal regulations. Excavated material shall not be dewatered to a waterbody, wetland, wetland buffer, or conveyance without treatment and shall be managed in accordance with the Approved Application. 	

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. Initiation of construction. Initiation of the project authorized by this permit is restricted until after July 1 of any calendar year unless explicitly approved in writing by the Department, and/or specified in the Approved Application.
3. Permit modification. All permit modifications, shall be treated as a new permit application.
4. 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](#).
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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 Memphremagog – South Bay in Newport 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 April 17, 2015, the Department received an application from the Vermont Department of Fish & Wildlife (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to remove a public access ramp and dock and add an ADA accessible dock located within the public waters of Lake Memphremagog – South Bay, Newport.
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 May 6, 2015 and closed at 4:30 PM on May 15, 2015. No comments were received. No request for a public information meeting was received.
4. Background; Lake Encroachment Permit History: None
5. Project Description: This project includes removing an existing concrete plank access ramp (approximately 3 cubic yards of dredged material below mean water level) and existing concrete plank ramp apron. An existing wooden dock and existing concrete slab will also be removed. All concrete structures to be removed will be replaced with $\frac{3}{4}$ inch to $1\frac{1}{2}$ inch stone (approximately 3 cubic yards of fill below mean water level). An existing propeller wash hole has created an underwater berm which will be removed by dredging approximately 15 cubic yards of material (all below mean water level). A geotextile filter curtain will be placed around the entire work area to prevent any sediment from entering the lake. Additionally, a new concrete dock anchor (6 feet long, 6 feet wide, and 3 feet thick) and footing (8 feet long, 8 feet wide, and 1-foot-thick) will be constructed using reinforced cast-in-place concrete. A prefabricated 50 feet long L-shaped dock will be attached to the anchor. A new paved ADA compliant parking space and dock approach path will be constructed on existing impervious surface. The parking space is 40 feet long and 10 feet wide, while the approach path is 5 feet to 6 feet wide and 60 feet long (L-shaped path). Turf will be established in all areas where disturbed soils are exposed.
6. Project Purpose: The purpose of this project is to remove the existing concrete plank access ramp and existing wooden dock (as well as all associated concrete pads/aprons), remove the underwater berm, and add a dock next to the newer, existing concrete access ramp located roughly 50 feet south of the plank ramp. To make this ramp and new dock ADA accessible, an ADA complaint parking space and pathway will be constructed just west of the dock anchor. The estimated start date for this project is July 1, 2016 and the estimated completion date is September 30, 2016.
7. Effect of Encroachment – Whether Excessive for Stated Purpose: This project is not excessive for the stated purpose.
8. Effect of Encroachment – Less Intrusive Feasible Alternatives: No less intrusive, feasible alternative has been identified. A geotextile filter curtain will be installed to enclose the proposed work, from water surface to lake bottom, and prevent any turbidity from escaping the approximate limits of construction. Stone fill shall be free of all silt, clay, and organics.

9. Effect of Encroachment – Measures to Reduce Impacts on Public Resources: The construction area will be enclosed by a geotextile filter curtain, which will ensure no turbidity travels into the lake. The filter curtain will be installed before any other work begins, and will remain installed until the entire project is complete. Additionally, at the end of construction, turf will be established on all exposed soils.
10. Placement of Fill: This project includes removing an existing concrete plank access ramp (approximately 3 cubic yards of dredged material below mean water level) and existing concrete plank ramp apron. An existing wooden dock and existing concrete slab will also be removed. All concrete structures to be removed will be replaced with $\frac{3}{4}$ inch to $1\frac{1}{2}$ inch stone (approximately 3 cubic yards of fill below mean water level). An existing propeller wash hole has created an underwater berm which will be removed by dredging approximately 15 cubic yards of material (all below mean water level). A geotextile filter curtain will be placed around the entire work area to prevent any sediment from entering the lake. Additionally, a new concrete dock anchor (6 feet long, 6 feet wide, and 3 feet thick) and footing (8 feet long, 8 feet wide, and 1-foot-thick) will be constructed using reinforced cast-in-place concrete. A prefabricated 50 feet long L-shaped dock will be attached to the anchor.
11. Effects on Water Quality - 29 V.S.A. § 405(b): The construction area will be enclosed by a geotextile filter curtain, which will ensure no turbidity travels into the lake. The filter curtain will be installed before any other work begins, and will remain installed until the entire project is complete. Additionally, at the end of construction, turf will be established on all exposed soils.
12. Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): This project minimizes effects to fish and wildlife habitat by ensuring the project does not begin until after July 1 of any calendar year.
13. Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): Installing the concrete dock anchor will remove the minimum necessary of shoreline vegetation that consists of low growing herbaceous vegetation, which is considered cleared area under 10 V.S.A. § 1442(3). Additionally, removing the existing concrete plank access ramp and wooden dock will allow some of the native shoreline vegetation to naturally re-establish over time.
14. Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): During construction, the existing boat launch will be unavailable for a short time and users will have to use a different boat launch. These effects will be minimized by notifying the public before any boat launch ramp closings and minimizing the amount of time the ramp is closed. Public access and uses are anticipated to improve after completion of the project.
15. Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): This area is already a Fish & Wildlife boat access area with 2 boat launches. The shoreline is covered in tall grasses. The shoreline will not change much except for the addition of a new dock. Removing the existing concrete plank access ramp and existing wooden dock will allow some of the natural shoreline vegetation to re-establish. This project is consistent with the existing 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 offices and the project is therefore considered to be consistent with applicable municipal shoreland zoning ordinances and any applicable state plans.
17. Cumulative Impact - 29 V.S.A. § 405(b): The proposed project will repair and improve an existing public ramp at an existing access area on Lake Memphremagog – South Bay in Newport in order to provide

safer public boat access and to provide the public with better launching conditions. The cumulative impact of the proposed project is positive due to the long lasting improvements to the facility providing improved and safer public access.

18. Public Good Analysis Summary - 29 V.S.A. § 405(b): Based upon findings c. 11-17, the 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 provides a public purpose or benefit, 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 recreational and include boating and fishing. The completed project will have a positive impact on public trust uses by making the public boat launching facility safer and easier to use, thus enhancing public use of the public water. The public benefits associated with the project outweigh the potential negative impacts on public trust uses and 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 Fish & Wildlife 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 5 years thereafter. 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.

David K. Mears, Commissioner
Department of Environmental Conservation

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