

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): State of Vermont, Department of Forests, Parks, & Recreation</p> <p>Waterbody: Lake Champlain</p> <p>Permit Number: 2015-036</p>	<p>Project Description: Electrical Line Replacement to Burton Island State Park</p> <p>Project SPAN: 552-17413-847</p> <p>Project Location: 2714 Hathaway Point Road & Burton Island, St. Albans</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.

a. Specific Conditions

1. The project shall be carried out in accordance with the final application received by the Department on August 31, 2015 (the Approved Application); and the conditions and specifications of this permit.
2. Utility Line Replacement Project – The 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 permittee shall install a turbidity curtain or Department approved equivalent barrier, in the lake around the excavation areas/site in near shore area prior to construction. 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 excavation 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 around any and all existing water intake pipes and dry hydrants, if present, and clearly mark such structures prior to excavation and take all necessary and appropriate measures to avoid damaging or impairing function of these structures.

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.
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.
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 Champlain in St. Albans is a public water of the state of Vermont. The project encroaches beyond the shoreline as delineated by the mean water level (MWL) 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 August 31, 2015, the Department received an application from the Vermont Department of Forests, Parks, and Recreation (VFPR) (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to replace an existing electrical transmission line that provides electrical service to Burton Island State Park located within the public waters of Lake Champlain, St. Albans.
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 September 9, 2015 and closed at 4:30 PM on October 8, 2015. No public comments were received.
4. Background; Lake Encroachment Permit History: None.
5. Project Description: The project consists of replacement of an electrical service line located between Kill Kare State Park and Burton Island State Park in St. Albans, Vermont. The project will involve the removal of 155 cubic yards (CY) of existing sandy material and replacement with approximately 155 CY of rip rap below the MWL. The existing electrical cable (1.50" in diameter) located within Lake Champlain will be removed and replaced in the same location with a new 15 kV armored electrical cable (1.60" in diameter). In near shore areas down to the 94 foot lake level elevation, the new cable will be buried below 12" of existing sandy material, then covered with geotextile fabric, a 6" course of ¾" crushed stone, and topped with a 30" course of large rip rap stone (16 cubic foot stone, approximately 2.5' each dimension). The burial in near shore areas will protect the cable where wave and ice action is anticipated, and the cable will be encased in conduit a distance beyond the burial/riprap for protection. Beyond the 94 foot lake level elevation, the electrical cable will be laid on the bottom of the Lake without burial. During construction in near shore areas, in the locations where the cable will be buried, the site will be contained with a silt curtain to contain turbidity to the immediate project work area.
6. Project Purpose: To replace an existing electrical service line located between Kill Kare State Park and Burton Island State Park in St. Albans, Vermont.
7. Effect of Encroachment – Whether Excessive for Stated Purpose: The project is not considered excessive for replacement of an existing electrical service line in the same location.
8. Effect of Encroachment – Less Intrusive Feasible Alternatives: There are no identified less intrusive feasible alternatives to provide continued electrical service during peak demand to Burton Island State Park.
9. Effect of Encroachment – Measures to Reduce Impacts on Public Resources: A silt screen curtain will surround the near shore project areas where excavation is to occur and will extend from the lake bottom to the surface of the water. This will be installed to contain turbidity that will be created during the project and will be maintained and remain in place within the lake until the project is complete and turbidity within the curtain has decreased to the level of turbidity outside of the curtain. Additional erosion prevention and sediment control measures will be implemented on shore to prevent erosion and control sediment from project work areas.

- 10.** Placement of Fill: The project will involve the placement of approximately 155 CY of rip rap beyond the MWL of Lake Champlain for protection of the new cable in near shore areas, which will replace 155 CY of native material to be removed for placement of the cable. The project will also involve the placement of a 6" course of ¾" stone below the rip rap. The addition of fill to the Lake in the near shore areas is not expected to result in adverse impacts as the fill consists of stone and will replace material removed for project construction, and therefore will not result in a net increase in material beyond the MWL.
- 11.** Effects on Water Quality - 29 V.S.A. § 405(b): Negative impacts on water quality are expected to be temporary and limited to the project work area near shore where the cable will be buried, and only during construction. The project area will be contained by use of a silt screen curtain which will extend from the lake bottom to the surface of the water. This will be installed to contain turbidity that will be created during the project and will be maintained and remain in place within the lake until the project is complete and turbidity within the curtain has decreased to the level of turbidity outside of the curtain. Additional erosion prevention and sediment control measures will be implemented on shore to prevent erosion and control sediment from project work areas. The project is not expected to result in long term negative impacts to water quality.
- 12.** Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): The project consists of the replacement of an existing electrical service line in the same location. Construction is restricted until after July 1 of the calendar year to protect for spring fish spawning in near shore areas. The project is not expected to result in additional negative impacts to fish and wildlife habitat.
- 13.** Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): The electrical line replacement project is not expected to result in impacts to aquatic vegetation, as any aquatic vegetation impacted during construction would be expected to recolonize. The project does not propose any removal of shoreline vegetation.
- 14.** Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): The project consists of the replacement of an existing electrical service line in the same location. The cables will be buried in near shore areas and will be protected with conduit. Negative impacts on navigation and other recreational and public uses are expected to be temporary, limited to project installation areas, and only during construction. The project is not expected to result in long term negative impacts on navigation and other recreational and public uses.
- 15.** Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): The electrical line replacement project is expected to be 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 officials 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 electrical line replacement project is not expected to result in additional cumulative impacts, as the existing line is to be removed and replaced in the same location.
- 18.** Public Good Analysis Summary - 29 V.S.A. § 405(b): The project will have a temporary impact on water quality, which will be limited to near shore areas during construction. The project will not result in negative impacts to fish and wildlife habitat or aquatic and shoreline vegetation. The project will have a temporary negative impact on navigation and recreational and public uses, limited to project work areas

during construction. The project will be consistent with the existing natural surroundings, and will not result in additional cumulative impacts. 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, navigation, boating-related recreation. The impacts of the project on public trust uses include temporary impacts during construction, limited to the project work area, due to cable installation equipment. Following construction, impacts on public trust uses are not expected. The project provides public benefits in the form of maintaining electrical service to Burton Island State Park, which provides public opportunities for camping and recreation, public trust uses of the lake, including fishing, boating/kayaking, swimming, and boating-related recreation. The public benefits of the project outweigh the temporary negative impacts during construction. 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.** 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