

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): Lake Champlain Transportation Co.</p> <p>Waterbody: Lake Champlain</p> <p>Permit Number: 2015-040</p>	<p>Project Description: Replacement of oak piling structures with steel structures for safety and navigation improvements at existing commercial ferry terminal.</p> <p>Project SPAN: 255-081-10597</p> <p>Project Location: 1268 Gordon's Landing, Grand Isle</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 October 29, 2015 (the Approved Application); and the conditions and specifications of this permit.2. Piling Replacement Project: The project 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. Existing water depths around the new piling structures shall be maintained.B. Construction shall not involve the use of concrete.C. Only clean stone/fill shall be used.D. 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.E. Construction is restricted until after November 30 of the 2015 construction season to protect for lake trout spawning in project areas during the fall/early winter. If the project does not commence or is otherwise not completed during 2015, construction shall only occur during the period before April 1, or during the period between July 1 and October 1, of the calendar year to protect for fish spawning during spring and fall.	
<p>b. Standard Conditions</p> <ol style="list-style-type: none">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.2. <u>Permit modification.</u> All permit modifications, shall be treated as a new permit application.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 Voluntary Guidelines to Prevent the Spread of Aquatic Invasive Species through Recreational Activities, Aquatic Nuisance Species Task Force, November 2013.4. <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:

- 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 or from a barge.
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 Grand Isle is a public water of the state of Vermont. The project encroaches beyond the shoreline as delineated by the mean water level 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 October 29, 2015, the Department received an application from Lake Champlain Transportation Co. (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to replace existing oak piling structures with steel structures at an existing commercial ferry terminal located within the public waters of Lake Champlain, Grand Isle.

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 October 29, 2015 and closed at 4:30 PM on November 27, 2015. No comments were received. No request for a public information meeting was received.
4. Background; Lake Encroachment Permit History: The Lake Champlain Transportation Grand Isle ferry terminal is also subject to existing Lake Encroachment Permit #2009-014 for repairs to the southern ramp and for fill associated with the existing ferry landing facility, previously authorized under Lake Encroachment Permit #1994-015 and Lake Encroachment Permit #1973-002.
5. Project Description: The project consists of the replacement of existing failing oak piling structures that are used to (1) guide a commercial ferry into the existing ferry slip in rough weather and (2) that are used to allow for safe access to the tied up ferry. The existing oak piling structures will be removed and replaced with steel structures that will be set in the lake and filled with stone. The new steel structures will be fabricated off site in Burlington, Vermont and then transported to the location of the existing ferry terminal in Grand Isle, Vermont. The work will be completed by use of a barge and crane. A total of 3 new steel structures will be installed.

One (1) 15' x 15' x 20' tall oblong structure will be placed in the middle of the two existing working ferry slips, utilizing 10 steel I-beams, each with a dimension of 8" x 40' long, encased with steel sheet piling, and filled with stone. The steel I-beams will be set into the lake bottom, which extends approximately 8-10 feet to ledge. The structure will extend no more than 3' above the lake at a water surface elevation of 98'. This structure will serve as a guide for the commercial ferry, and will be independent from shore and will not be used for foot traffic.

Two (2) 10' x 20' x 24' tall structures will be placed in the shape of an "L" for the west tie-up slip, utilizing 12 steel I-beams, each with a dimension of 8" x 35' long, encased with steel sheet piling, and filled with stone. The "L" structure will have a personal ramp set atop the stone for foot traffic access to the tied up ferry. The steel I-beams will be set into the lake bottom, which extends approximately 18" to ledge. One of the two structures will extend no more than 5.5' above the lake at a water surface elevation of 98'. The second structure will extend no more than 9.5' above the lake at a water surface elevation of 98'.

In total the guide structure and tie-up structure will be filled with approximately 525 cubic yards of stone and in total they will occupy 625 square feet of lake surface area.

6. Project Purpose: The purpose of the project is to replace existing failing oak pilings that guide an existing commercial ferry into an existing ferry slip in rough weather and that allows safe access to the tied-up ferry.
7. Effect of Encroachment – Whether Excessive for Stated Purpose: The project is not considered excessive for replacement of failing oak pilings to provide for safe ferry guidance and access at an existing commercial ferry slip.
8. Effect of Encroachment – Less Intrusive Feasible Alternatives: No less intrusive feasible alternatives were identified that would meet the stated project purpose.
9. Effect of Encroachment – Measures to Reduce Impacts on Public Resources: A silt screen curtain will be used around project work areas and will extend from the lake bottom to above 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. Only clean stone/fill will be used and heavy equipment will work from

shore or from a barge.

- 10.** Placement of Fill: The project involves the placement approximately 525 cubic yards of stone within steel sheet pilings supporting by steel I-beams. The adverse impacts associated with placement of fill at the location of an existing ferry terminal where many pilings currently exist are considered minimal and will be outweighed by the safety and access improvements at a publicly accessible commercial ferry operation.
- 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 only during construction. The project area will be contained by use of a silt screen curtain which will extend from the lake bottom to above the surface of the water. This will be installed 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. Only clean stone/fill will be used and heavy equipment will work from shore or from a barge, minimizing impacts to water quality. 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): Construction is restricted until after November 30 of the 2015 construction season to protect for lake trout spawning in project areas during the fall/early winter. If the project does not commence or is otherwise not completed during 2015, construction will only occur during the period before April 1, or during the period between July 1 and October 1, of the calendar year to protect for fish spawning during spring and fall. 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 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 the removal of any shoreline vegetation.
- 14.** Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): The immediate project area located at an existing commercial ferry terminal is not typically used for recreational uses such as fishing, swimming, and boating-related recreation, and therefore impacts to these uses are not expected. The project is expected to result in a positive impact to navigation for the existing publicly accessible commercial ferry operation, as the terminal will be safer for navigation by the ferry to the slips and will be safer for access to the ferry when tied up at the west slip.
- 15.** Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): The project will replace existing piles at an existing commercial ferry terminal and is therefore considered 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 project will result in minor additional cumulative impact at the existing commercial ferry terminal within Lake Champlain, due to the addition of fill in the project location. The additional minor cumulative impact is outweighed by the safety and access improvements at a publicly accessible commercial ferry operation.
- 18.** Public Good Analysis Summary - 29 V.S.A. § 405(b): Based upon the findings 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 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, and commerce. The impacts of the project on public trust uses include temporary impacts on boat navigation in the immediate project area during construction. These impacts are not expected to negatively impact the existing ferry service which will continue to operate during construction. The immediate project area, located at an existing commercial ferry terminal, is not typically used for other public trust uses such as swimming, fishing, and recreational boating. The project provides public benefits in the form of safety and access improvements at a publicly accessible commercial ferry operation. The public benefits are considered to outweigh temporary impacts on navigation in the immediate project work area during constructions. 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 Lake Champlain Transportation Co. 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