

DEPARTMENT OF THE ARMY PERMIT

Permittee: Daniel B. Snead, P.E.
Lieutenant Colonel, Corps of Engineers
District Commander
On Behalf of the General Public

Permit No.: 87-000-13

Processing No.:

Effective Date: 27 February 2009

Expiration Date: 27 February 2014

Affirmation Date:

Issuing Office: U.S. Army Engineer District, Buffalo
1776 Niagara Street
Buffalo, New York, 14207-3199

IMPORTANT: PRIOR TO COMMENCING THE ACTIVITY AUTHORIZED BY THIS PERMIT OR DIRECTING A CONTRACTOR TO PERFORM SUCH ACTIVITY ON YOUR BEHALF, BE SURE THAT ALL PARTIES READ, UNDERSTAND AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT. WRITTEN AFFIRMATION ON THE APPLICABILITY OF THIS PERMIT IS REQUIRED FROM THE CORPS BEFORE WORK CAN COMMENCE.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS OF THIS PERMIT MAY RESULT IN AN ORDER TO REMOVE THE ACTIVITY; CIVIL AND/OR CRIMINAL PENALTIES OR BOTH.

AUTHORITIES: You have been authorized to undertake the activity described below pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403),
and
Section 404 of the Clean Water Act (33 U.S.C. 1344)

AUTHORIZED ACTIVITY: Placement of fill in existing boat slips and boat wells that have been excavated into previously dry upland property that have received written affirmation of permit applicability from the U.S. Army Engineer District, Buffalo.

LOCATION OF THE AUTHORIZED ACTIVITY: Waters of the United States that are located within the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo.

The general public is hereby authorized by the Secretary of the Army to perform the work authorized by this permit provided the following general and special conditions are fully complied with.

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. The term "activity" as used in this permit includes all structures and work authorized by this permit.

GENERAL CONDITIONS:

1. The work authorized under this regional permit must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed twelve months beyond the expiration date. If you find that you need more time to begin and/or complete the authorized activity, submit your written request for a time extension to this office at least three months before the respective date(s).
2. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
3. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
4. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
5. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions

caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

6. This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual standard permit or any letter of permission.

SPECIAL CONDITIONS:

1. Placement of fill under this authorization is limited to boat slips and boat wells that have an interior surface area below the Ordinary High Water mark of not more than 750 square feet or maximum dimensions of up to approximately 25 feet in width and 30 feet in length.

2. Work will be accomplished by first installing a non-erodible plug at the waterward end of the boat slip or boat well. The plug may consist of clean rock, poured in place concrete, sheet piling or timbers. Installation of the plug shall not extend any further waterward than the adjacent banks, with no encroachment on state lands or land underwater. Following installation of the plug, a layer of filter fabric shall be placed on the landward side of the plug and the enclosed area will be filled with clean material to an elevation that is compatible with the surrounding upland property. Note that concrete, sheet piling or timbers shall only be used in the instance that the adjacent area is a vertical bulkhead.

3. This authorization does not apply to any boat well or boat slip that totally encompasses the outlet of any flowing stream, is located in what was once a special aquatic site, or occurs in any open water area that is not associated with a shoreline feature. In addition, this authorization will not apply to any boat slip or boat well that supports significant stands of aquatic vegetation and serves as high quality habitat for terrestrial and aquatic fauna.

4. You are not authorized to engage in the dredging of bottom materials below the Ordinary High Water mark for use as slip fill or erosion protection except as specifically provided for in Special Condition No. 5 of this permit.

5. Excavation, including dredging of littoral or bottom materials to provide a stable base for the plug or fill containment wall, is limited to a maximum of 15 cubic yards below the Ordinary High Water mark. The excavated material may be used as backfill for the slip provided it is clean and free of organic debris. Under no circumstances shall any interim stockpiling of dredged material occur in waters of the United States.

6. Excavated material not specifically used as backfill shall be deposited on upland property well removed from any water of the United States including wetlands and shall be appropriately stabilized to prevent erosion.

7. You must insure that the plug used to contain the fill placed in the boat slip is adequately designed to withstand the erosive forces including wave action normally

encountered at the project site.

8. Except as noted in Special Condition No. 10, the plug or containment wall installed at the entrance to the slip shall follow the general alignment of the shoreline flanking either side of the former slip opening.
9. Pressure treated wood used for the construction of in-water structures must not be treated with creosote, but must be treated with some other preservative and treatment process currently approved by the American Wood Preservers Association and must be aged in the open air for at least three months prior to in-water use. Wood with surface deposits shall be washed for at least five (5) minutes under running water prior to use and the washing shall occur greater than 100 feet from a wetland or waterbody. Any wood debris such as sawdust or wash water must not enter any water body, including wetlands.
10. In the event you choose to use rock to retain and protect the boat slip or boat well fill, it shall be sloped so that the toe does not extend more than 5 feet waterward of the former slip entrance.
11. In the event poured concrete is used to contain the fill in the boat slip or well, tight fitting forms shall be employed to minimize the potential for spillage of uncured concrete into the waterway. The forms shall be dewatered prior to the pouring of concrete.
12. To the extent possible, installation of the plug will be performed during low water periods to minimize impact on the surrounding waterway.
13. In order to maintain water quality conditions and avoid potential water quality violations during the filling-in of boat slips, the use of siltation curtains or similar protective measures shall be placed bank to bank waterward before the installation of the non-erodible plug and kept in place and maintained until turbidity has settled.
14. The materials used to backfill the boat slip or boat well or to contain the backfill will consist of clean material and shall be free of refuse, wood, construction debris, plaster, asphalt, toxic or hazardous materials, low level nuclear waste or any other environmentally damaging materials.
15. Filled boat slips and boat wells will be graded, capped with topsoil, and immediately seeded and mulched to prevent erosion. Other porous materials such as gravel may be used in lieu of the topsoil cap.
16. The fill placed in the slip will be maintained to prevent erosion that would adversely impact water quality or the adjacent aquatic habitat.
17. The District Commander reserves the right to include any additional special conditions on a site specific basis that are deemed necessary to protect the aquatic environment or the needs and welfare of the general public.

18. For activities and structures located in New York State Significant Coastal Fish and Wildlife Habitat areas and/or areas with approved Local Waterfront Revitalization Programs, you must furnish the New York State Department of State (DOS) with a certification statement that your action is consistent with the State's Coastal Management Plan. Activities and/or structures located in these areas are approved by this regional permit only when you obtain an individual consistency certification concurrence for your project from the DOS. No work shall be started under this permit until the concurrence has been secured or the state has failed to act on the consistency certification within six months and the certification is presumed. You must comply with all conditions of your individual coastal consistency concurrence. In addition, you must furnish the District Engineer, Buffalo District, with a copy of the DOS consistency concurrence letter or a **dated** copy of the consistency certification that you provided to the DOS. Additional information can be found on the NYSDOS website at: <http://nyswaterfronts.com/consistency-coastalpolicies.asp> . Consistency statements should be forwarded to:

NYS Department of State
Office of Coastal, Local Government and Community Sustainability
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001

Telephone (518) 474-6000

19. **Endangered Species:** The application must include a written statement indicating if any federally listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. Please note that there are no known threatened or endangered (T&E) species under the jurisdiction of the National Marine Fisheries Service within the Buffalo District. Therefore, all requests for information regarding the presence of T&E species should be directed to the US Fish & Wildlife Service (USFWS) via the website found at: <http://www.fws.gov/northeast/nyfo/es/esdesc.htm> (Click on "Consultation" for a step-by-step process.). The application must include a copy of any correspondence from the USFWS regarding the presence of T&E species or evidence that the applicant has utilized the USFWS T&E website. Website evidence shall include a County list of T&E species. For projects located in counties containing T&E species, the application shall also include a discussion of potential T&E habitat within the project site. If there is potential habitat for any federally listed species within the project site:

- 1) send the results of any habitat surveys
- 2) include a detailed description of the proposed project, including approximate proposed project construction schedule and project activities (e.g., land clearing, utilities, stormwater management).
- 3) include a description of the natural characteristics of the property and surrounding area (e.g., forested areas, freshwater wetlands, open waters, and soils). Additionally, please include a description of surrounding land use (residential, agricultural, or commercial).

- 4) provide a description of the area to be impacted by the proposed project, including trees to be removed.
- 5) include the location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5 Minute Topographic Quadrangle (Quad) with the name of the Quad(s) and latitude/longitude clearly labeled.
- 6) provide a description of conservation measures to avoid or minimize impacts to listed species.

EXCLUSIONS:

This permit does not apply to:

1. Activities that have an effect on historic, cultural or archaeological sites identified in the latest published version of the National Register of Historic Places, or sites eligible for inclusion in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.
2. Activities that have an effect on sites included in the latest published version of the National Register of Historic Landmarks, which are published periodically in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.
3. Any other areas named in Acts of Congress or Presidential Proclamations as National Wilderness Areas, National Recreational Areas, Lakeshores, Parks, Monuments and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries, except where specifically authorized by this regional permit.
4. Activities that have an effect on a component of the National Wild and Scenic Rivers System, or areas listed in the Nationwide Rivers Inventory, Final List of Rivers for New York as published by the U.S. Department of the Interior, or in a component of a State Wild and Scenic River. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service and/or the New York State Department of Environmental Conservation.
5. Activities that have an effect on rivers currently being studied at the direction of Congress as potential additions to the National Wild and Scenic Rivers System, or rivers for which Wild and Scenic Rivers studies have been completed and forwarded to Congress and which Congress is still considering. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service.
6. State designated freshwater wetlands; State designated important agricultural lands and those which will be designated by the State in the future, historic resources on

the State Register of Historic Places and resources which are a part of the State Nature and Historic Preserve Trust, when these resources lie within the designated New York State Coastal Area.

Note: Limitations in items 1 through 6 above do not apply when the work is for the benefit and uses of the site and is specifically endorsed, in writing, by the responsible Federal and State government officials such as the State Historic Preservation Officer, Refuge Manager, Regional Directors of U.S. Department of the Interior Offices such as the National Park Service and the U.S. Fish and Wildlife Service, etc.

7. Any freshwater wetland as defined in Department of the Army permit regulations at Title 33 of the Code of Federal Regulations, Parts 320 et. seq.

8. Any other special aquatic sites as defined in the U.S. Environmental Protection Agency Guidelines for Specification of Disposal Sites for Dredged or Fill Material at Title 40 of the Code of Federal Regulations, Part 230 when the specific site area is a vegetated shallow, pool and riffle complex area or mud flat area that is designated as such in the future, or the District Commander has determined to be an ecologically sensitive site.

9. Activities which may contribute to or affect flooding or restrict the flow of any tributary, stream or watercourse are not authorized under this General Permit.

10. Activities which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act (ESA) of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. No activity is authorized under this Regional Permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the Critical Habitat of such species. Authorization of an activity by this Regional Permit does not authorize the 'take' of a threatened or endangered species as defined under the ESA. In absence of separate authorization (E.G., an ESA Section 10 permit, a Biological Opinion with 'incidental take' provisions, etc.) from the U.S. Fish and Wildlife Service, both lethal and non-lethal 'takes' of protected species are in violation of the ESA.

11. Activities performed or proposed, unless the property owner has submitted a written request for authorization describing the activity, and the District Commander has determined that it complies with the terms and conditions of this permit.

LIMITS OF THIS AUTHORIZATION

1. The granting of this permit does not obviate the need to obtain other Federal, State or local authorizations as required by law. Specifically, a permit pursuant to the Environmental Conservation Law Articles 15, 24 or 35 may be required from the New

York State Department of Environmental Conservation.

2. Issuance of this permit does not grant you any property rights or exclusive privileges, nor does it authorize any injury to the property or rights of others.
3. This permit does not authorize interference with any existing or proposed Federal project, nor does it convey any authority to interfere with the right of the public to free navigation on all navigable waters of the United States.

LIMITS OF FEDERAL LIABILITY: In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damages associated with any future modification, suspension, or revocation of this permit.

RELIANCE ON APPLICANT'S DATA: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

RE-EVALUATION OF THE DECISION TO GRANT A REGIONAL PERMIT: This office may re-evaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.
2. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate.
3. Significant information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in Title 33 of the Code of Federal Regulations Part 325.7 or enforcement procedures such as those contained in

Title 33 of the Code of Federal Regulations Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations (such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

EXTENSIONS: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Extension requests must be submitted in accordance with the directions given in General Condition 1.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Signed copy available on request

Daniel B. Snead, P.E.
Lieutenant Colonel, Corps of Engineers
District Commander

27 February 2009
Date

When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below and forward a copy to this office.

Transferee

Date