

DEPARTMENT OF THE ARMY PERMIT

Permittee: Owen J. Beaudoin
Lieutenant Colonel, Corps of Engineers
District Commander
On Behalf of the General Public

Permit No.: 87-000-13

Processing No.:

Effective Date: February 14, 2014

Expiration Date: February 14, 2019

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 U.S. Army Corps of Engineers before work can commence.

Non-compliance 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.

401 WATER QUALITY CERTIFICATION: The New York State Department of Environmental Conservation (NYSDEC) has issued Section 401 Water Quality Certification for this permit.

COASTAL ZONE MANAGEMENT CONSISTENCY DETERMINATION: The New York State Department of State (NYSDOS) concurs with the Corps' Coastal Zone Management consistency determination for this Regional Permit, except for the conditions identified below.

Individual consistency certification concurrence is required in the following instances:

1. For structures and fills located in New York State Significant Coastal Fish and Wildlife Habitat areas and/or areas with approved Local Waterfront Revitalization Programs.

NOTE: 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 on the last page of this permit and forward a copy of the permit to this office to validate the transfer of this authorization.

DEFINITIONS: The term "**you**" and its derivatives, as used in this permit, mean the permittee or any future transferee. The term "**this office**" refers to the Buffalo District Corps of Engineers Regulatory office 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.

Navigable waters (as regulated under Section 10 of the Rivers and Harbors Act) - Those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity. A list of navigable waters in the Buffalo District can be found on the Buffalo District web site at www.lrb.usace.army.mil/Regulatory/, or by calling (716) 879-4330.

Ordinary High Water Mark - The line on the shore established by the fluctuations of water as indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

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 30 days 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. 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.
4. 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.
5. 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. Use of creosote treated wood is prohibited in New York State. All treated wood must be aged in the open air for at least three months prior to in-water use. Wood must be clean and free of surface deposits. Timber with surface deposits must be washed for at least five minutes under running water prior to use. Any wood debris, such as sawdust or wash water, must not enter any water body including wetlands. This washing must occur more than 100 feet from a wetland or waterbody. For more information, contact the applicable New York State Department of Environmental Conservation regional office

and U.S. Environmental Protection Agency regional office.

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 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. **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, for activities that are proposed to occur within sensitive areas, as identified on the attached list (Table 1). For activities that are proposed to occur within these sensitive areas, the application must include a discussion of potential threatened and endangered species (T&E) habitat within the project site. Refer to the USFWS T&E website at <http://www.fws.gov/northeast/nyfo/es/section7.htm> for information on habitat requirements for listed species. 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) provide a description of conservation measures to avoid or minimize impacts to listed species.

Work in the townships, watersheds, or locations identified on Table 1 shall not commence under this permit until the requirements of the Endangered Species Act have been satisfied and the applicant receives written verification that the work may proceed from this office. Note that as a result of consultation with the USFWS, the District Engineer may add species-specific conditions to the permit.

18. **National Wild and Scenic Rivers (NWSR) System:** The application must include a written statement indicating if the activity is located within a component of the National Wild and Scenic Rivers (NWSR) System, or on rivers currently being studied at the direction of Congress as potential additions to the NWSR System, or rivers for which Wild and Scenic Rivers studies have been completed and forwarded to Congress and which Congress is still considering. The portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. No activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. In addition, the application must include a statement indicating if the activity is located within areas listed in the Nationwide Rivers Inventory (list is available at: <http://www.nps.gov/ncrc/programs/rtca/nri/states/ny.html>). Activities located in the above areas will be evaluated on a case by case basis, which will include coordination with the National Park Service.

19. **Cultural Resources:** The application must include a written statement indicating if the proposed activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. In order for the Buffalo District to determine if National Historic Preservation Act Section 106 consultation is required, the application must include a written statement indicating if any properties listed or eligible for listing, in the National Register of Historic Places may be affected by the proposed project. A copy of any completed survey reports shall be provided with the PCN. If a survey has not been performed then the statement shall include a list of resources checked in the determination. Copies of any available correspondence from NYS Office of Parks, Recreation, and Historic Preservation (SHPO) regarding historic properties shall be provided with the application. Information regarding cultural resources may be found at: <http://nysparks.com/shpo/online-tools/>. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer (THPO), as

appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

AGENCY COORDINATION REQUIREMENTS:

1. You must furnish the New York State Department of State (NYSDOS) with a completed permit application, project drawings and a certification statement that your action is consistent with the State's Coastal Management Plan 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. In addition, you must furnish the District Engineer, Buffalo District, with a copy of the CZM certification concurrence letter or a dated copy of the consistency certification that you provided to the NYSDOS. Consistency statements and project drawings should be forwarded to:

New York State Department of State
Division of Coastal Resources
One Commerce Plaza
99 Washington Avenue
Albany, New York 12231-0001
Telephone (518) 474-6000

2. You must furnish the appropriate New York State Department of Environmental Conservation (NYSDEC) Regional Permit Office with a completed permit application, project location map and project drawings.

EXCLUSIONS:

This permit does not apply to:

1. Cases where the District Engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
2. 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.
3. Any freshwater wetland as defined in Title 33 of the Code of Federal Regulations, Parts 320 et. seq., or other special aquatic site 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 or mudflat area that the State has specifically designated as an important fish spawning or nursery area or significant fish and wildlife habitat, or is designated as such in the future, or the District Engineer has determined to be an ecologically sensitive area.

Note: Limitations in items 2 through 3 above do not apply to any authorized activity 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.

4. 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 directly or indirectly 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 (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under this Regional Permit which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. 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 the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with

“incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

5. 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.

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:

Owen J. Beaudoin
Lieutenant Colonel, Corps of Engineers
District Commander

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

Table 1. Locations of Federally-Listed Threatened and Endangered Species and Candidate Species that may be affected by Regional Permit 87-000-13 for the placement of fill in existing boat slips and boat wells that have been excavated into previously dry upland property that are located in waters of the U.S. within the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo, under Section 404 of the Clean Water Act 1977 (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899. This table is effective as of February 14, 2014 and expires on February 14, 2019.

County	Townships/Watershed	Species/Status/and or Critical Habitat	Avoidance Action Code ¹
Cattaraugus	HUCs 05010001 and 05010002 (Allegheny River, Cassadaga and Conewango Creek basin.)	Clubshell, Rayed bean (Endangered)	1
Cayuga	Projects in wetlands in all Towns where project is at elevation < 1,000 ft	Bog turtle (Threatened)	1
	All Towns, elevation under 900'	Indiana bat (Endangered)	2
Chautauqua	HUCs 05010001, 05010002, and 05010004 (Allegheny River, Cassadaga and Conewango Creek)	Clubshell, Rayed bean	1
Genesee	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle, Houghton's goldenrod (Threatened), Eastern massasauga (Candidate)	1
Jefferson	All Towns, elevation under 900'	Indiana bat	2
	Town of Ellisburg, within 500 meters or 1,640 feet of the Lake Ontario Ordinary High Water line	Piping plover (Endangered) Great Lakes critical habitat	1
Lewis	All Towns, elevation under 900'	Indiana bat	2
Madison	All Towns, elevation under 900'	Indiana bat	2
Monroe	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1
Oneida	All Towns within 40 miles of the Town of Dewitt and elevation under 900'	Indiana bat	2
	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1

Onondaga	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Town of Cicero.	Bog turtle	1
	All Towns, elevation under 900'	Indiana bat	2
Ontario	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1
Orleans	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1
Oswego	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1
	All Towns, elevation under 900'	Indiana bat	2
	Sandy Creek and Richland, within 500 meters or 1,640 feet of the Lake Ontario Ordinary High Water line	Piping plover Great Lakes critical habitat	1
St. Lawrence	All Towns within 40 miles of Watertown, and elevation under 900'	Indiana bat	2
Schuyler	Dix, along west side of Seneca Lake	Leedy's roseroot (Threatened)	1
Seneca	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1
	All Towns within 40 miles of Town of Dewitt and elevation under 900'	Indiana bat	2
Tompkins	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Town of Ithaca.	Bog turtle	1
Wayne	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1
	All Towns within 40 miles of Town of Dewitt, elevation under 900'	Indiana bat	2
Yates	Starkey, along west side of Seneca Lake	Leedy's roseroot	1

¹ Avoidance Action Codes:

- 1) The Corps will coordinate with the USFWS per the Standard Local Operating Procedures for Endangered Species.
- 2) The Corps will coordinate with the USFWS per the Standard Local Operating Procedures for Endangered Species for any project that includes tree removal.