

DEPARTMENT OF THE ARMY PERMIT

Permittee: Glen R. DeWillie
Lieutenant Colonel, Corps of Engineers
District Commander
On Behalf of the General Public

Permit No.: 81-000-5

Processing No.: «ACTID»

Effective Date: September 6, 2000

Expiration Date: September 6, 2005

Affirmation Date: «AFFIRM_RP»

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.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS 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: Temporary installation of a water control structure; temporary installation of an open pile or floating dock or work platform to facilitate construction; and temporary placement of an access road or equipment staging area inside the confines of the water control structure, providing that all activities 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 there is full compliance with the following general and special conditions:

NOTE: 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 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:

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SPECIAL CONDITIONS:

1. The water control structure shall consist of an impermeable core with a non-erodible exterior. If fine-grained material (such as clay) is used as a core, a layer of filter fabric or heavy plastic shall be placed securely over the surface of the core. The water control structure shall be removed in its entirety immediately after construction is complete, and the waterway bottom restored to its preconstruction contours. All material removed shall be disposed of at an upland site well removed from any water of the United States including wetlands and shall be adequately contained and stabilized to preclude reentry into these waters.
2. The water control structure shall generally not exceed 500 feet in length measured along the centerline of the structure, and shall generally be limited to less than an average of 10 cubic yards of fill below Ordinary High Water per running foot of structure.
3. The water control structure and ancillary features shall be placed and maintained in a manner that minimizes adverse impacts to fish and other aquatic wildlife, to water quality, to stream flow and flooding, to navigation, and to access and use of navigable waters by the public.
4. The access road or equipment staging area shall be constructed within the confines of a water control structure and shall consist of clean non-erodible material such as broken concrete, stone, timber, steel or other inert materials. This access road or staging area shall not be placed until the water control structure is in place and the area has been completely dewatered, and shall be removed prior to removal of the water control structure. The waterway bottom shall be restored to its preconstruction contours, and all material disposed of at an upland site well removed from any water of the United States, including wetlands.
5. Timbers used for the construction of in water structures must be pressure treated with a preservative and treatment process approved by the American Wood Preservative Association.

Wood treated with creosote or Pentachlorophenol must be aged in the open air for at least three months prior to water use. Chromated Copper Arsenate (CCA) pressure treated wood must be clean and free of CCA surface deposits. Wood with surface deposits must be washed for at least 5 minutes under running water prior to use. Any wood debris such as sawdust or wash water must not enter any water body including wetlands.

6. Except as authorized by this permit, dredging or other alterations to the waterway are prohibited unless specifically approved by the District Commander.

7. Structures located in a community with an approved Local Waterfront Revitalization Program (LWRP) must receive an individual coastal consistency concurrence.

8. For activities and structures located in New York State Significant Coastal Fish and Wildlife Habitats, you must furnish the New York State Department of State with a certification statement that your action is consistent with the State's Coastal Management Plan. Activities and/or structures located in these Significant Habitats are approved by this regional permit only when you obtain an individual consistency certification concurrence for your project from the New York State Department of State. 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 certification concurrence. 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 New York State Department of State.

Consistency statements should be forwarded to:

New York State Department of State
Division of Coastal Resources
41 State Street
Albany, New York 12231-0001

Telephone (518) 474-6000

9. The District Commander reserves the right to include any additional special conditions or require an individual permit as may be necessary to safeguard the public interest or protect important public resources on a case by case basis.

10. **Notification** is required to this office for activities located within sensitive areas. The notification is required for these waterways due to the need for site specific reviews for the protection of Federally threatened or endangered species or species of concern. The Buffalo District will give the U.S. Fish and Wildlife Service a five day review period related to this matter. **Applicants shall not commence work in these waterways** under this permit until the notification process is completed and the applicant receives written verification that the work may proceed. **A list of these areas is attached.**

EXCLUSIONS:

This permit does not apply to:

1. Any freshwater wetlands as defined in Department of the Army permit regulations at Title 33 of the Code of Federal Regulations, Parts 320 et. seq., or 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.
2. State designated freshwater wetlands, 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. Activities that have an adverse 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.
8. Structures which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act 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.

9. 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.

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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 34 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.

REEVALUATION OF THE DECISION TO GRANT A REGIONAL PERMIT: This office may reevaluate its decision on this permit at any time circumstances warrant. Circumstances that

could require a reevaluation 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 reevaluation 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.

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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 reevaluation 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:

Copy of Signed Original Available Upon Request

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.

Transferee

Date

Sample Document

| Locations of Federally-Listed Threatened and Endangered Species that may be affected by the proposed GP 81-000-05 (Temporary Water Control Structures) within the Jurisdiction of Buffalo District. | | | |
|--|--|---------------------------------|-------------------------------------|
| County | Townships/Watershed | Species | Avoidance Action¹ |
| Cayuga | Conquest, Cato | Bald Eagle | 1 |
| Cattaraugus | Perrysburg, Cattaraugus Indian Reservation, Elko, Salamanca, Allegheny | Bald Eagle | 1 |
| | HUCs 05010001 and 05010002 | Clubshell, Northern Riffleshell | 1 |
| Chautauqua | Chautauqua, Westfield, Ripley, Hanover | Bald Eagle | 1 |
| | HUCs 05010001, 05010002, and 05010004 | Clubshell, Northern | 1 |
| Erie | Cattaraugus Indian Reservation | Bald Eagle | 1 |
| Genesee | Alabama | Bald Eagle | 1 |
| | Bergen, Byron | Bog Turtle, Houghton's | 1 |
| Jefferson | Orleans, Brownville | Bald Eagle | 1 |
| | Brownville, Watertown, Hounsfield | Indiana Bat | 2 |
| | Henderson, Ellisburg | Piping Plover | 1 |
| Livingston | Springwater, Conesus | Bald Eagle | 1 |
| Onondaga | Cicero | Bog Turtle | 1 |
| | Pompey, Fabius | Prairie Fringed Orchid, | 1 |
| | Dewitt | Indiana Bat | 2 |
| | Manlius, Lafayette, Onondaga | Indiana Bat | 2 |
| Ontario | Canadice, South Bristol | Bald Eagle | 1 |
| Oswego | Amboy, Richmond, Oswego | Bog Turtle | 1 |
| | Sandy Creek, Richland | Piping Plover | 1 |
| | Redfield | Bald Eagle | 1 |
| St. Lawrence | Parishville, Hammond | Bald Eagle | 1 |
| Schuyler | Dix | Leedy's Roseroot | 1 |
| Seneca | Tyre | Bald Eagle | 1 |
| | Junius | Bog Turtle | 1 |
| Wayne | Arcadia | Bog Turtle, Prairie Fringed | 1 |
| | Savannah | Bald Eagle | 1 |
| Yates | Starkey | Leedy's Roseroot | 1 |
| | Middlesex, Italy | Bald Eagle | 1 |

¹ Avoidance Action Codes: 1) The Corps must give the Service 5 days notice to review project and provide comments. 2) The Corps

must give the Service 5 days notice to review any project that includes tree removal between April 1 and November 1.

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