

DEPARTMENT OF THE ARMY PERMIT

Permittee: Mark D. Feierstein  
Lieutenant Colonel, Corps of Engineers  
District Commander  
On Behalf of the General Public

Permit No.: 87-000-1

Processing No.:

Effective Date: May 17, 2000

Expiration Date: May 17, 2005

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.

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)

**AUTHORIZED ACTIVITY:** Construct and maintain open pile or floating dock(s), dock(s) with a deck, observation platform(s) in wetlands or other special aquatic sites, stairway(s), mooring pile(s), mooring buoy(s), swim platform, marine railway, boat hoist/jet ski hoist and boat sheds that have received written affirmation of permit applicability from the U.S. Army Engineer District, Buffalo.

**LOCATION OF THE AUTHORIZED ACTIVITY:** Navigable 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 begin within one year of the affirmation date and 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. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, unless you make a good faith transfer to a third party in accordance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you may be required to remove the structure(s) and restore the site to its original pre-project conditions.
3. 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.
4. 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.
5. 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.

## SPECIAL CONDITIONS:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.
2. Structures authorized by this permit shall not extend waterward more than 100 feet from the Ordinary High Water (OHW) shoreline or 20 percent of the waterway width, whichever is less. The waterway width is measured from the Ordinary High Water shoreline perpendicular to the centerline of the waterway.
3. A variance in the maximum offshore distance of a structure may be granted in cases where conformity with existing structures would be practical, where exceptions would be reasonable due to the shoreline configuration, or for structures crossing shoals, wetlands or other special aquatic sites. All variances must be approved on a case by case basis by this office.
4. Configuration of dock(s) may vary in plan (i.e. straight, T, U, or L shaped) provided the total length of all segments and separate structures does not exceed 150 feet and the surface area of the dock(s), including finger piers, decks, platforms, etc. does not exceed 1200 square feet. The dock(s) shall not exceed 8 feet in width.
5. Only one swim platform, two boat hoists or jet ski hoists, boat shed, or marine railway per property owner is authorized by this permit. Multiple docks, docks with decks or platforms may be constructed provided that the proposed or all existing and proposed structures are within the size limitations specified in this permit.
6. Regular or irregular shaped configurations (i.e. dock[s] with a deck) are allowed at the shoreline and/or at the waterward terminus of the structure provided the surface area of each deck does not exceed 240 square feet and the New York State Department of State determines on a case by case basis that the structure is consistent with the New York State Coastal Management Program.
7. 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

8. Structures authorized by this permit may cross wetlands or other special aquatic sites, but the crossing must not exceed four feet in width and shall be a minimum of three feet above the Ordinary High Water elevation or substrate level if the area is typically not inundated.
9. All structures authorized by this permit must be set back a minimum of 10 feet from the common boundary line of adjoining properties that are under separate ownership. The setback is measured at the point where the common boundary terminates at the Ordinary High Water shoreline. A variance in this distance may be granted where there are natural limiting features or limited shoreline available and coordination with adjacent property owner(s) has occurred. All variances must be approved by this office on a case by case basis.
10. The top of the dock must be a minimum of one foot above the Ordinary High Water elevation.
11. Side staving, if used, shall not extend lower than one half of the distance between the Ordinary High and Low Water levels.
12. Timber treated with pentachlorophenol shall not be used where they will come in contact with a water of the United States. Wood treated with Pentachlorophenol may only be used on structures that will remain above the ordinary high water line. Treated wood that will be used below the ordinary high water level must be treated in accordance with the standards and methods of the American Wood Preserver's Association (AWPA) and in accordance with the AWPA Book of Standards. CCA and Creosote treated wood can be used below the ordinary high water level providing that they have been pressure treated, not cold soaked. Only CCA type C is acceptable. Creosote treated wood must be aged a minimum of six (6) months prior to placement below the ordinary high water line of a water of the United States.
13. This permit does not authorize the placement of enclosed buildings, boathouses, fuel storage tanks, sinks, toilets, showers, fuel dispensing or sanitary pump out facilities waterward of the Ordinary High Water shoreline.
14. The surface area of a swim platform shall not exceed 200 square feet.
15. The surface area of each boat hoist or boat shed shall not exceed 900 square feet.
16. The total surface area of all observation platform(s) located in wetlands or other special

aquatic sites shall not exceed 900 square feet.

17. The authorization of observation platform(s) located in wetlands or other special aquatic sites must be for educational purposes, and is limited to Federal, State or local wildlife management or educational agencies.

18. All mooring buoys must be approved by the Ninth Coast Guard District. Information concerning the approval process may be obtained by calling (216) 902-6074 or by writing to:

Commander (OAN)  
Ninth Coast Guard District  
ATTN: Private Aids to Navigation  
1240 East Ninth Street  
Cleveland, Ohio 44199-2060

19. 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.

20. Construction should be scheduled for a time of year when water levels are low and fish spawning activities are not occurring.

#### EXCLUSIONS:

This permit does not apply to:

1. 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., 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, except for structures described in Special Conditions 7, 8, 16, and 17 of this permit.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. That any proposal that would result in fragmentation of the contiguous wetlands or essentially overcrowd the wetland with docks and related human activity so as to adversely impact the functions and values of the wetland will not be authorized by this regional 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 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.

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:

\_\_\_\_\_  
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

Prompt Permit