

Lake Encroachment Individual Permit
Under 29 V.S.A. § 401 et seq.



Permittee Information	
Permittee(s): Vermont Department of Fish and Wildlife Waterbody: Lake Rescue Permit Number: 2536-LEP	Project Description: Floating Dock Installation Parcel Address: Fishing Access Road, Ludlow Coordinates: 43.4553840, -72.7017850
a. Specific Conditions	
<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>The floating dock installation shall be carried out in accordance with the Approved Application, the additional permit terms and conditions contained herein, and such amendments as may be approved in writing by the Department, and the following specific conditions:</p> <ol style="list-style-type: none"> 1. The project shall be completed in accordance with the approved configuration as identified on the page titled "Dock Layout" in the Approved Application and shall not extend further than 48 feet beyond mean water level. 2. The floating dock system shall not include permanent stabilization structures below mean water level. 3. The floating dock system shall be removed annually at the end of the operating season for winter storage. 	
b. Standard Conditions	
<ol style="list-style-type: none"> 1. <u>Permit modification.</u> Permit modifications shall be reviewed in accordance with 10 V.S.A. Chapter 170 or its approved replacement. 2. <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. 3. <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: <ol style="list-style-type: none"> A. Areas above mean water level 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 water as a result of construction activity and shall not recommence until the source of the turbidity is identified and corrected. 4. <u>Heavy equipment operation.</u> Heavy equipment shall work from shore, and shall not work lakeward of mean water level unless approved in writing by the Department, and/or specified in the Approved Application. 5. <u>Spill prevention.</u> 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. 	

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6. Waste management. Any pieces of concrete, stone, construction debris, or other temporary project materials deposited below mean water level during project implementation/construction shall be removed from the water and disposed of properly, in accordance with all applicable local, state, and federal regulations.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. Appeals. 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 Rescue in Ludlow is a public water of the state of Vermont. The project encroaches beyond the shoreline as delineated by the mean water level. Therefore, the Department has jurisdiction under 29 V.S.A. Chapter 11.
2. Application Receipt and Review - 29 V.S.A. § 404: On February 9, 2018 the Department received an application from the Vermont Department of Fish and Wildlife (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to install a floating dock system located within the public waters of Lake Rescue, Ludlow.
3. Public Notification - 29 V.S.A. § 405(a): Upon receipt of the application, the Department proceeded in accordance with 10 V.S.A. Chapter 170.
4. Background; Lake Encroachment Permit History:
Permit # 2014-015: Repair and improvements to the Vermont Department of Fish and Wildlife public access area boat ramp located on Lake Rescue.
5. Project Description: The project is to install an Americans with Disabilities Act (ADA) compliant floating dock system at a Vermont Department of Fish and Wildlife Public Access Area. The dock is 6 feet wide and extends 48 feet beyond mean water level. The dock includes a 6-foot-wide by 24-foot wide access ramp connected to a 6-foot wide by 24-foot long dock section. The dock system is not anchored in the water. A 6-foot by 6-foot permanent pile supported anchor platform will be installed above mean water level on an existing impervious surface. No excavating, dredging or fill are required for this project.
6. Project Purpose: The purpose of this project is to update the existing public boat launch dock with an ADA compliant floating dock system to improve recreational access.
7. Effect of Encroachment – Whether Excessive for Stated Purpose: The project is not considered excessive for the purpose.
8. Effect of Encroachment – Less Intrusive Feasible Alternatives: The floating dock system does not require any in-water anchoring. The project is considered a less intrusive alternative.
9. Effect of Encroachment – Measures to Reduce Impacts on Public Resources: The dock installation does not require disturbance to the lakebed or to shoreline vegetation. Heavy equipment, if needed, will work from shore. The floating dock system will be installed at an existing public access area.
10. Placement of Fill: This project does not involve the placement of fill.
11. Effects on Water Quality - 29 V.S.A. § 405(b): The project does not have any in-water anchoring and will not disturb the shoreline or the lakebed; it is not expected to have an adverse impact on water quality.

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Under 29 V.S.A. § 401 et seq.



12. Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): The dock installation does not require any in-water anchoring; the project is not expected to have an adverse impact on fish and wildlife habitat.
13. Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): No aquatic or shoreland vegetation will be removed for this project. The project will not result in adverse impacts to aquatic and shoreline vegetation.
14. Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): Recreational uses will be improved by the ability of the floating dock to fluctuate with the water level and through the provision of an ADA compliant design. The completed project will have a positive effect on public access and boating-related recreational activities, such as fishing. Swimming and picnicking are prohibited activities at the permittee's facility and will not be impacted by the project. The dock improvements are not expected to negatively impact navigation to or from the existing access area.
15. Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): The proposed floating dock system will replace an existing dock that has historically been used for recreation access. The project is considered consistent with the 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 officers 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 is the minimum necessary to achieve the project purpose and will have a minimal cumulative impact.
18. Public Good Analysis Summary - 29 V.S.A. § 405(b): Based upon findings c. 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, ice fishing, and public recreational access. There are no anticipated negative impacts on public trust uses from project implementation. The installation of a floating dock system on Lake Rescue provides public benefits in the form of increased access through ADA compliance and the ability of the dock to fluctuate with the water level. 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 the Vermont Department of Fish and Wildlife 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.

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Emily Boedecker, Commissioner
Department of Environmental Conservation

By: _____

Misha Cetner, Environmental Analyst
Lakes and Ponds Management and Protection Program
Watershed Management Division

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