

Lake Encroachment Individual Permit

Under 29 V.S.A. § 401 *et seq.*



VERMONT DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
WATERSHED
MANAGEMENT DIVISION
LAKES & PONDS PROGRAM

<p>Permittee(s): Square Riggs LLC (DBA Charlotte Sailing Center)</p> <p>Waterbody: Lake Champlain</p> <p>Permit Number: 2015-010</p>	<p>Project Description: Dredging Existing Navigational Channel, McNeil Cove</p> <p>Project SPAN: n/a</p> <p>Project Location: 38 Converse Bay Road, Charlotte</p>
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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.

a. Specific Conditions

1. The project shall be carried out in accordance with the final application received by the Department on March 10, 2015 and in accordance with the additional information supplementing the existing application on June 9, 2015 (the Approved Application); and the conditions and specifications of this permit.
2. The permittee shall notify the Department 24-hours prior to project commencement. Written notification shall be to anr.wsmshoreland@state.vt.us or notification can be made by contacting the Lakes & Ponds Management and Protection Program at (802) 828-1535
3. Dredging shall be completed in accordance with the Approved Application, the additional permit terms and conditions contained herein, and the following conditions:
 - A. The permittee shall install a turbidity curtain or Department approved equivalent barrier, in the lake around the area/site prior to dredging. The barrier shall extend above the lake's surface and be secured to the bottom of the lake to contain turbidity during the project. If turbidity is observed beyond the work area, work shall be stopped immediately and shall not recommence until the source of the turbidity is identified and corrected. The barrier shall not be installed in a way that blocks navigation in a channel, if applicable. The barrier shall remain in place and be maintained until dredging is complete and observations indicate turbidity within the barrier has decreased to the level of turbidity outside the barrier.
 - B. The permittee shall exercise caution when dredging areas/sites near outlet structures, and shall remain at least ten feet away from any spillway, dam, or similar control structure, unless explicitly approved in the Approved Application or as otherwise covered by a Dam Safety Permit.
 - C. The permittee shall exercise caution around any and all existing water intake pipes and dry hydrants, if present, and clearly mark such structures prior to dredging and take all necessary and appropriate measures to avoid damaging or impairing function of these structures.
 - D. The permittee's dredging activity shall not injure or kill turtles, mussels, fish, or other wildlife. The permittee shall promptly and safely remove from the designated dredging area all turtles, mussels, fish, and wildlife found during dredging.
 - E. Dredging shall not involve the removal of large rocks, boulders, or large woody debris from the lake bottom manually or otherwise.
 - F. The dredged material shall be transported to a dry upland site, at least 50 feet from surface waters, and utilized or disposed of in accordance with applicable local, state, and federal regulations. Dredged material shall not be dewatered to a waterbody, wetland, wetland buffer,

or conveyance without treatment and shall be managed in accordance with the Approved Application.

G. Dredging of an area/site shall only occur once during the life of this permit.

b. Standard Conditions

1. Completion of construction. The project authorized by this permit must be completed within 5 years of the effective date of this permit.
2. Initiation of construction. Initiation of the project authorized by this permit is restricted until after July 1 of any calendar year.
3. Permit modification. All permit modifications, shall be treated as a new permit application.
4. Nuisance species spread prevention. 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](#).
5. Erosion prevention and sediment control. 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:
 - A. Areas 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 lake as a result of construction activity and shall not recommence until the source of the turbidity is identified and corrected.
6. Heavy equipment operation. Heavy equipment shall work from shore, and shall not work lakeward of mean water level unless explicitly approved in writing by the Department, and/or specified in the Approved Application.
7. Spill prevention. 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.
8. Waste management. Any pieces of concrete, stone, construction debris, or other waste materials deposited into the lake during project implementation/construction shall be removed from the lake and disposed of properly, in accordance with all applicable local, state, and federal regulations.
9. 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.

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. Appeals.
 - A. Renewable Energy Projects – Right to Appeal to Public Service Board. If this decision relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248, any appeal of this decision must be filed with the Vermont Public Service Board pursuant to 10 V.S.A. § 8506. This section does not apply to a facility that is subject to 10 V.S.A. § 1004 (dams

before the Federal Energy Regulatory Commission), 10 V.S.A. § 1006 (certification of hydroelectric projects), or 10 V.S.A. Chapter 43 (dams). Any appeal under this section must be filed with the Clerk of the Public Service Board within 30 days of the date of this decision; the appellant must file with the Clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in accordance with 10 V.S.A. § 8504(c)(2), and shall also serve a copy of the Notice of Appeal on the Vermont Department of Public Service. For further information, see the Rules and General Orders of the Public Service Board, available online at www.psb.vermont.gov. The address for the Public Service Board is: 112 State Street, Montpelier, Vermont, 05620-2701; Telephone #: 802-828-2358.

- B. 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 Champlain in Charlotte is a public water of the state of Vermont. The project encroaches beyond the shoreline as delineated by the mean water level of Lake Champlain, 95.5 feet National Geodetic Vertical Datum (NGVD) 1929. Therefore, the Department has jurisdiction under 29 V.S.A. Chapter 11.
2. Application Receipt and Review - 29 V.S.A. § 404: On March 10, 2015, the Department received an application from Square Riggs LLC (DBA Charlotte Sailing Center) (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to dredge a previously dredged and existing navigational channel in McNeil Cove located within the public waters of Lake Champlain, Charlotte.
3. Public Notification - 29 V.S.A. § 405(a): The Department gave written notice of this application to the municipality in which the proposed encroachment is located, abutting property owners, and others having an interest in this matter and provided an opportunity for interested persons to file written comments or request a public information meeting. The notice period began on April 24, 2015, and in response to public comments and a request for a public informational meeting, the public notice period was extended through 4:30 PM on July 10, 2015. A public informational meeting was held on July 6, 2015 at 10:00 a.m. at the Charlotte Town Hall. Public comments were received from interested persons and are addressed in the Response Summary attached to this decision.
4. Background; Lake Encroachment Permit History: The Department issued an encroachment permit to William H. Rowley and the Charlotte Sailing Center on April 9, 2003 (Permit Number 2002-031) to dredge accumulated sediment from the same navigational (boat) channel in McNeil Cover, Lake Champlain,

subject to the conditions of the issued permit, including but limited to containment of resuspended sediment to the project work area. The project was completed in the fall of 2003. The Department also previously issued an encroachment permit to the Lake Champlain Transportation Company on June 13, 1989 (Permit Number 89-02) to dredge accumulate sediment from the same navigational (boat) channel. The project was completed in 1990.

5. **Project Description:** The project involves dredging accumulated sediment from an existing navigational channel in McNeil Cove of Lake Champlain, which is located in the vicinity of the Charlotte Sailing Center and adjacent to the Lake Champlain Transportation ferry terminal. The navigational channel has accumulated sediment that impedes the sailing center's ability to launch and remove boats from the lake. The navigational channel will be dredged to a bottom width of 10 feet, with 2:1 (h:v) side slopes. The navigational channel dredging will begin at the Charlotte Sailing Center launching bulkhead and extend approximately 541 feet in a southwesterly direction. Approximately 2000-2100 cubic yards of accumulated sediment is expected to be removed from the channel which will bring the lake bottom elevation of the channel to 86 feet, allowing for the channel to have a water depth of 6 feet when the lake water surface elevation is at 93 feet. The dredging will be completed with an excavator working from a barge, with dewatered dredge spoils transported by barge to the launching bulkhead, where the material will then be transported by dump truck to the existing disposal location at the northeast corner of the Charlotte Sailing Center property. The dredge work area is to be contained by a turbidity curtain for the duration of project work, including for dewatering of dredge spoils. The disposal site is located over 400 feet away from the lake and is contained by an existing berm that was constructed during last use of the disposal site for a prior dredging project. The estimated timeline to complete the project is five days and is expected to be completed later in the season when lake water levels are at a seasonal low.
6. **Project Purpose:** The project will reestablish depth in an existing navigational channel to allow for the launching and removal of boats in McNeil Cove of Lake Champlain.
7. **Effect of Encroachment – Whether Excessive for Stated Purpose:** The project involves dredging of a previously established navigational channel to a depth necessary for maintaining existing use of the channel for launching and removing boats at an existing sailing center. The project is not considered to be excessive for the achieving the stated project purpose.
8. **Effect of Encroachment – Less Intrusive Feasible Alternatives:** The accumulated sediment effectively prohibits the safe launching and removal of boats in this location. There are no less intrusive feasible alternatives to achieve the stated project purpose. Dredging an existing navigational channel is considered to be the least intrusive feasible alternative.
9. **Effect of Encroachment – Measures to Reduce Impacts on Public Resources:** A silt screen curtain will surround the dredging location and extend from the lake bottom to the surface of the water. This will be installed to contain turbidity that will be created during the dredging and will be maintained and remain in place within the lake until the project is complete and turbidity within the curtain has decreased to the level of turbidity outside of the curtain. Additional erosion prevention and sediment control measures will be implemented on shore to prevent erosion and control sediment from within the dewatering and dredge spoils disposal location. The disposal site is located away from the lake and contained by an existing berm that was constructed during last use of the disposal site for a prior dredging project.

- 10.** Placement of Fill: The project does not involve the placement of fill beyond the mean water level of Lake Champlain.
- 11.** Effects on Water Quality - 29 V.S.A. § 405(b): A silt screen curtain will surround the dredging location and extend from the lake bottom to the surface of the water. This will be installed to contain turbidity that will be created during the dredging and will be maintained and remain in place within the lake until the project is complete and turbidity within the curtain has decreased to the level of turbidity outside of the curtain. Additional erosion prevention and sediment control measures will be implemented on shore to prevent erosion and control sediment from within the dewatering and dredge spoils disposal location. The disposal site is located away from the lake and contained by an existing berm that was constructed during last use of the disposal site for a prior dredging project. Adverse impacts to water quality will be temporary and will be contained to the project work area.
- 12.** Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): The project will not have an adverse impact on fish and wildlife habitat beyond the temporary and localized disturbance that will occur during the dredging. The Department has further conditioned the project to be complete no earlier than July 1 within the calendar year, to protect fish and wildlife spawning activity.
- 13.** Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): The project is not expected to have long-term impacts on aquatic plants, as aquatic plants are expected to reestablish after project completion. The dredge spoils disposal site is located away from the lake in an area that was previously cleared of vegetation during the last dredge project. The project will not adversely impact shoreline vegetation.
- 14.** Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): The project's negative impacts on navigation, and other recreational public uses, including fishing and swimming, will be limited to the work area and the time period during project implementation. The project is expected to be completed in five days. Navigation and boating is already limited in this area due to the accumulation of sediment. The project location is also within an area of the cove that is not typically used for swimming. The completed project, removing the accumulated sediment from the existing navigational channel and restoring water depths necessary for launching and removing boats from the sailing center will have a long term positive impact on public boating.
- 15.** Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): Dredging an existing navigational channel within McNeil Cove of Lake Champlain is not expected to impact the existing natural surroundings. The completed project will be consistent with the existing 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 offices and the project is considered to be consistent with municipal shoreland zoning ordinances. The municipality of Charlotte requested a public informational meeting which was held on July 6, 2015. No comments were received from state offices and the project is considered to be consistent with applicable state plans.
- 17.** Cumulative Impact - 29 V.S.A. § 405(b): The removal of sediment from the existing navigational channel will have a positive cumulative impact by restoring water depths necessary for the launching and the removal of boats by the sailing center. The project is not expected to have negative cumulative impacts associated with water quality, fish and wildlife habitat, aquatic and shoreline vegetation.

18. Public Good Analysis Summary - 29 V.S.A. § 405(b): The project will have a temporary impact on water quality, fish and wildlife habitat, and aquatic vegetation, which will be limited and contained to the project work area. The project will have no impact on shoreline vegetation. The project will have a temporary impact on navigation and on recreational and public uses, which will also be limited to the project work area. The project is not expected to have a negative impact on the existing natural surroundings, and will have a long-term positive cumulative impacts. Overall, the proposed 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 boating, fishing, and swimming. The impacts of the project on public trust uses include temporary closure of the project work area during dredging. The dredging project provides public benefits in the form of improvements to navigation in an area of McNeil Cove, which will allow for safer launching and removal of boats at an existing sailing center. Adverse impacts on the public trust resource will be localized and temporary and are outweighed by the restoration of public trust uses, primarily boating and boating-related recreation. The Department has therefore determined that the project is consistent with the public trust doctrine. The Department finds that, based on the available information, the public benefit provided by the project outweighs any impacts the project will have on the public trust resource.

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 Square Riggs LLC (DBA Charlotte Sailing Center) 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 5 years thereafter. 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.

David K. Mears, Commissioner
Department of Environmental Conservation

By: _____
Perry Thomas, Program Manager
Lakes & Ponds Management and Protection Program