

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



Permittee Information	
Permittee(s): Town of Wilmington	Project Description: Shoreline Stabilization
Waterbody: Lake Raponda	Parcel Address: Lake Raponda Road, Wilmington
Permit Number: 2609-LEP	Coordinates: 42.883561, -72.820193
a. Specific Conditions	
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.	
The new (i.e., not replacement) stone or other “non-structural” shoreline stabilization project 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:	
<ol style="list-style-type: none">1. Initiation of the project authorized by this permit shall occur no earlier than July 1 of any calendar year unless approved in writing by the Department.2. The project shall be completed in accordance with the approved configuration as identified on the page titled “Final Site Plan – Dated 06/04/2018” in the Approved Application.3. The project shall not reclaim lost land through placement of new fill beyond the location of the existing shoreline or create new land lakeward of the existing shoreline. Any addition of fill beyond mean water level shall be the minimum necessary to achieve stabilization goals. The project shall not convert existing sloped shorelines to a vertical plane, unless specified in the Approved Application.4. Existing water depths lakeward beyond mean water level of the project shall be maintained.5. Reference measurements shall be made and demarcated as necessary in the field using temporary grade stakes and/or lines, or another equivalent method, by the permittee prior to project implementation/construction, to ensure project compliance with permit conditions (a)(3) and (a)(4) above.6. No greater than 216 cubic yards of fill shall be added below mean water level, and the placement of fill shall not extend more than 8 feet beyond mean water level.7. Any sandbags or other temporary fill shall be removed from the waterbody prior to or upon completion of the project. In addition, sandbags or other temporary fill shall not be left in the waterbody, or stored in a location that will result in a discharge to the waterbody.8. The permittee shall install a turbidity curtain or Department approved equivalent barrier, in the waterbody around the project work area. The turbidity curtain shall extend above the waterbody’s surface and be secured to the lakebed to contain turbidity during construction. 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 turbidity curtain shall not be installed in a way that blocks navigation. The turbidity curtain shall remain in place and be maintained until the project is complete and observations indicate turbidity within the barrier has decreased to the level of turbidity outside the barrier.9. Large rocks, boulders, or large woody debris present in the waterbody shall not be removed from the waterbody manually or otherwise.	

b. Standard Conditions

1. **Permit modification.** Permit modifications shall be reviewed in accordance with 10 V.S.A. Chapter 170 or its approved replacement.
2. **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](#).
3. **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 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. **Heavy equipment operation.** 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. **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.
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.**

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 Raponda in Wilmington 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 June 4, 2018, the Department received an application from the Town of Wilmington (permittee), under the provisions of 29 V.S.A. Chapter 11, for authorization to

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- stabilize an eroding shoreline along Lake Raponda Road located within the public waters of Lake Raponda, Wilmington.
- 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:** None
 - 5. Project Description:** The project is to stabilize 215 linear feet of shoreline along Lake Raponda Road along Lake Raponda. The project will use natural stone, encapsulated soil lifts, and vegetation to stabilize the shore. Eight-ounce non-woven geotextile fabric will be placed on the lake bed and against the eroded shoreline. Approximately 168 cubic yards of 8-12-inch stone will be placed along 215 linear feet of shoreline over the geotextile fabric, extending 8 feet beyond mean water level to create a stable rock toe at a 2:1 slope. Three layers of encapsulated soil lifts will be placed on top of the rock toe. The soil lift placed directly on the rock toe will extend 6 feet beyond mean water level and the following two soil lifts will be stacked in a manner that creates a 1:1 slope up to the top of the bank. The soil lifts will be made from biodegradable coconut erosion fabric. Approximately 48 cubic yards of topsoil will be used to fill the encapsulated soil lifts and to backfill the encapsulated soil lifts after they are placed. A native seed mix will be seeded between the soil lifts and on the top soil lift. After placement of the encapsulated soil lifts, a mixture of native shrubs and trees will be planted into the encapsulated soil lifts and at the top of the bank. Upon project completion, approximately 4,800 square feet of shoreline vegetation will be established and maintained on the bank.
 - 6. Project Purpose:** The purpose of this project is to stabilize the shoreline, prevent further erosion and undercutting along the shoreline-road interface, and to restore a naturally vegetated shoreline.
 - 7. Effect of Encroachment – Whether Excessive for Stated Purpose:** The use of natural stone, vegetation, and bioengineering materials to restore a naturally vegetated shoreline is not considered excessive for the stated purpose. The encroachment beyond mean water level is the minimum necessary to achieve the project purpose.
 - 8. Effect of Encroachment – Less Intrusive Feasible Alternatives:** The use of natural stone, vegetation, and bioengineering materials to restore a naturally vegetated shoreline is considered to be a less intrusive feasible alternative.
 - 9. Effect of Encroachment – Measures to Reduce Impacts on Public Resources:** The project that encroaches below mean water level will not take place until after July 1 to protect spring fish spawning. A turbidity curtain will be installed in the water around the work area to contain turbidity. Heavy equipment will work from shore.
 - 10. Placement of Fill:** Approximately 168 cubic yards of 8-12-inch stone will be placed along 215 linear feet of shoreline over the geotextile fabric, extending 8 feet beyond mean water level to create a stable rock toe at a 2:1 slope. Three layers of encapsulated soil lifts will be placed on top of the rock toe. The soil lift placed directly on the rock toe will extend 6 feet beyond mean water level and the following two soil lifts will be stacked in a manner that creates a 1:1 slope up to the top of the bank. The soil lifts will be made from biodegradable coconut erosion fabric. Approximately 48 cubic yards of topsoil will be used to fill the encapsulated soil lifts and to backfill the encapsulated soil lifts after they are placed.
 - 11. Effects on Water Quality - 29 V.S.A. § 405(b):** A turbidity curtain will be installed in the water around the work area to contain turbidity. Heavy equipment will work from shore. Stabilization of the shoreline with natural stone and vegetation is anticipated to have a positive effect on water quality.

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- 12. Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b):** The project will not involve work prior to July 1 of the calendar year to protect fish spawning habitat. There will be temporary minimal adverse impacts to fish and wildlife habitat along the immediate shoreline and be limited to the project area while the project is under construction. After completion of the project and the establishment of shoreline vegetative, temporary minimal adverse impacts will be outweighed by the benefits of long term stabilization of the shoreline and establishment of vegetation. The establishment of vegetation is anticipated to have a positive effect on fish and wildlife habitat.
- 13. Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b):** The project does not propose the removal of aquatic or shoreline vegetation. The project will establish 4,800 square feet of shoreline vegetation. There will be no adverse impact to aquatic vegetation while there will be a positive effect on shoreline vegetation.
- 14. Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b):** The project is expected to have short-term negative impacts on navigation and other recreational and public uses, which will be limited to the immediate project work area during project construction. Shoreline stabilization with stone and vegetation will result in long-term improvements to water quality and fish and wildlife habitat in this location and therefore will be expected to have a positive effect on recreational and public uses.
- 15. Consistency with the Natural Surroundings - 29 V.S.A. § 405(b):** Establishing a naturally vegetated shoreline is 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):** Shoreline stabilization along Lake Raponda Road will result in long-term positive effects on water quality and fish and wildlife habitat to Lake Raponda. The positive effects to Lake Raponda from the project outweighs the cumulative impact of the encroachment.
- 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/kayaking, swimming, boating-related recreation, and navigation. The impacts of the project on public trust uses include short-term limited impacts to navigation and recreation in the project work area during project implementation. The stabilization of the shoreline along Lake Raponda Road using natural stone, encapsulated soil lifts, and vegetation provides public benefits in the form of long-term protection of the shoreline and the road. The project will provide benefits for fish and wildlife habitat and for the protection of water quality. The public benefits associated with the project outweigh the temporary negative impacts on public trust uses and 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

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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 Town of Wilmington 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.

Emily Boedecker, Commissioner
Department of Environmental Conservation

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