

2022

APPLICATION FOR CONDITIONAL USE PERMIT/VARIANCE
FOR CONSTRUCTION OF A BOATHOUSE IN THE SHORELAND PROTECTION DISTRICT
TOWN OF GREENSBORO

PO Box 119, Greensboro, VT 05841
(802) 533-2911 Fax (802) 533-2191
zoning@greensborovt.org

FOR ADMINISTRATIVE USE ONLY

Application Number: 2022-005 Tax Map Number 23-20-37
Zoning District Shoreland Protection District
Date Application Received 3 / 16 / 2022 Fee Paid \$ _____
Reason for Seeking Conditional Use Permit or Variance:
Boathouse rebuild 2.7 SPD - J 8.8 New Use / Encroachment SPD

Please provide all of the information requested in this application. Failure to provide all required information will delay the processing of this application. Submit the completed application and a check payable to the *Town of Greensboro* according to the attached fee schedule.

Applicant(s):

Name(s): Andrew Nicely
Mailing Address: 3523 Albemarle St. NW, Washington, DC, 20008
Telephone(s) Home: _____ Work: _____ Cell: 571-335-5769
E-Mail: anicely1@yahoo.com

Landowner(s) (if different from applicant(s)):

Name(s): Linda B. Nicely
Mailing Address: 5606 E. Caballo Dr., Paradise Valley, AZ, 85253
Telephone(s) Home: 480-948-3238 Work: _____ Cell: _____
E-Mail: lindanicely1971@gmail.com

Physical Location of Property (911 address):

Cottage 133/135, High Pines Rd, Greensboro, VT, 05841

Type of Permit:

Conditional Use Variance

Property Description:

Acreage in lot .87 acres

(Please Note: If your property is enrolled in the Current Use Program, your application may impact your Current Use status. Please verify your status with Vermont Property Valuation and Review, Current Use Program at 802-828-6633).

Feet of Road Frontage N/A

Setbacks: Front _____ (to center of road) Left Side _____
Right side _____ Rear _____
Lakeshore Approximately 15' Other _____

Dimensions of Proposed and/or Existing Boathouse:

Existing:

Length 27' No. of Stories 1
Width 20'
Height 12'

Proposed:

Length 27' No. of Stories 1
Width 20'
Height 12'

Boat Houses:

- A.) A new Boat House shall be constructed behind the Natural Berm, if it exists. Where there is no Natural Berm, the following applies:
- i. The Boat House shall be built behind the high water mark. Verified _____
 - ii. Stumps of any trees cut during the construction of the Boat House shall be left in the ground. Verified _____
 - iii. Provisions for adequate control of stormwater runoff shall be made. Verified _____
- B.) A Boat House shall not have plumbing. Verified _____
- C.) The maximum size of a Boat House's footprint shall be 400 sq. feet. Square Footage _____
- D.) The maximum height of a Boat House shall be 15 feet. Height _____
- E.) There is a limit of one (1) Boat House per tax lot. Verified _____
- F.) No decks, porches, or other similar appendages will be allowed on Boat Houses. Verified _____
- G.) A new or reconstructed Boat House shall require a Conditional Use Permit. Verified _____
- H.) A new or reconstructed Boat House shall be used only for storage of boats. Verified _____

Sketch or attach a general plot plan showing the following:

1. Location of property.
2. Location of buildings on property.
3. Location of driveway.
4. Location of water source and septic/waster water system.
5. Location of existing or proposed Boat House.

Please refer to the attached site plan and project description.

Sketch a floor plan or diagram showing the dimensions of the proposed building Boat House. (This should show the rooms in the inside of the building, including both upstairs and downstairs if there is more than one floor.)

Please refer to the attached existing/proposed sketch.

Please attach a landscape design plan for your project. Include types of plantings, landscape materials to be utilized and size and location of access paths. *New lawns shall not extend into the buffer.*

This project proposes to restore any disturbed landscape to preconstruction conditions.

Conditional Use Criteria:

At your DRB hearing, you will be asked to present your proposal. Please be prepared to address the impact of your project based on the following criteria.

"The DRB shall make its findings on general and specific standards. Such general standards shall require that the proposed conditional use shall not result in an undue adverse effect on the following:

1. The capacity of existing or planned community facilities; (e.g. schools, police and fire service, etc.);
2. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the Town Plan (e.g. why your project is consistent with other uses in the area or how your project fits in with existing development);
3. Traffic on roads and highways in the vicinity;
4. Bylaws and ordinances then in effect;
5. Utilization of renewable energy resources.

Specific standards shall include:

1. Minimum lot size shall be that which is required for the district in which the use occurs unless other standards are given for conditional use lot size in the district in question;
2. Setbacks for conditional uses will be the same as for permitted uses unless other standards are given for conditional use setbacks in the district in question.
3. Landscaping and/or fencing may be required for commercial and industrial uses to provide screening when in the judgment of the DRB such screening is necessary to protect the character of the area affected.
4. Exterior signs shall conform to the following in all districts:
 - (a) No free standing internally lit signs shall be permitted
 - (b) All signs shall be compatible in size, materials, and workmanship to the area in which they are located.
5. Location on the lot, of structures and service areas shall be compatible with other structures in the area affected.
6. In each district, uses are given specific criteria. In all cases these criteria will be adhered to.
7. Noise, air pollution and effects on the character of the neighborhood shall be considered."

(Page 36 in the Greensboro Zoning By-Laws).

Variance Criteria:

"The DRB may grant a variance and render a decision in favor of the appellant only if all of the following facts are found, and findings are specified in its written decision.

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not to the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;
2. Because of these physical circumstances or condition, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the appellant;
4. The variance, if authorized, will not:
 - a) Alter the essential character of the neighborhood or district in which the property is located;
 - b) Substantially or permanently impair the appropriate use or development of adjacent property;
 - c) Reduce access to renewable energy resources;
 - d) Be detrimental to the public welfare.
5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan." (Pages 37 & 38 of the Greensboro Zoning By-Laws).

At your DRB hearing, you will be asked to present your proposal. Please be prepared to explain why your project should be granted a variance.

Permission to Enter Property & Applicant Certification Signatures

Signing of this application authorizes the Zoning Administrator to enter onto the premises for the purpose of verifying information presented.

The undersigned hereby certifies that the information submitted in this application regarding the above property is true, accurate and complete and that I (we) have full authority to request approval for the proposed use of the property and any proposed structures. I (we) understand that any permit will be issued in reliance of the above representations and will be automatically void if any are untrue or incorrect.

This permit is void if the development under this permit is not begun within one year of the date of approval or if construction is not completed within two years.

Construction may not be started until 15 days from the date of approval on this permit.

Signature of Applicant(s) Andrew A. Pinsky Date 3/4/2022

Signature of Landowner(s) Linda B. Nicely Date March 14, 2022

Note: Failure to develop your property in accordance with your application and any conditions of this permit may result in an enforcement action and may affect your ability to sell or transfer clear title to your property.

Appeal from a decision or act of the Zoning Administrator must be made in writing to the Development Review Board, c/o the Town Clerk's Office at the address shown above, with the appropriate fee, within 15 days of the decision or act. Failure to appeal this decision will mean that all interested persons are bound by this decision and will foreclose these persons from contesting this decision either directly or indirectly in the future. **This permit shall not take effect until the time for such appeal has passed.**

Please note that this is only a local permit and state permits may be needed for your project. Please contact the Permit Specialist at the VT Agency of Natural Resources at (802)751-0130.

FOR ADMINISTRATIVE USE ONLY	
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
<input checked="" type="checkbox"/> Referred to the Development Review Board	
Date <u>3-22-2022</u>	Signature <u>[Signature]</u>
Remarks and/or Conditions: _____	
Date of Approval or Denial by Development Review Board: _____	
Applicant/Landowner Received a Copy of the Applicable Building Energy Standards: _____ (Date)	
Applicant/Landowner Did NOT Need to Receive a Copy of the Applicable Building Energy Standards (Due to the fact that the structure will not be heated or cooled): _____ (Date)	

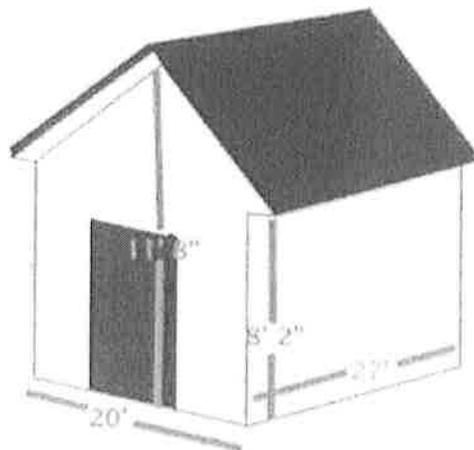
ANDREW NICELY
3523 ALBEMARLE STREET N.W.
WASHINGTON, DC 20008
571-335-5769
anicely1@yahoo.com

Boathouse Building Description

Applicants are seeking to rebuild an existing, non-conforming boathouse in the Shoreland Protection District. The existing boathouse, which is believed to have been constructed in the 1920s, has a wooden frame and is supported by a concrete foundation that rests on the lakebed. The approximate dimensions of the wooden boathouse structure are 20' wide by 27' long by 12' tall at the center arch. The concrete foundation consists of two sections. The left section (when standing onshore and facing the lake) is approximately 6' wide and 31' long. The right section is approximately 10' wide at the end and 31' long. There is a gap between the two concrete sections on the end facing the lake to allow a boat to be moored in the water inside the boathouse. The shoreline entrance to the boathouse is level with the lakeshore, and all but a few feet of the boathouse foundation is in the water.

The boathouse foundation appears to have been constructed by assembling timber forms in the water, filling them with rock ballast (i.e., a crib dock), and then encapsulating the crib sections in concrete. Over the past 100+ years, the foundation has been damaged by hydraulic pressure from the formation of ice in the winter and by impacts from ice floes during the spring when the ice on Caspian Lake is thawing. The boathouse foundation is damaged beyond repair, as is the wooden boathouse itself.

Applicants propose to rebuild the boathouse on the exact same footprint, in the exact same location. A sketch of the existing and proposed replacement boathouse follows:



The building height of 11' 8" in the drawing reflects the elevation of the wooden structure measured from the existing concrete foundation. It is possible that the height of the re-constructed foundation will be lower than the existing concrete foundation. In that event, Applicants intend to increase the height of the boathouse structure by the same amount. For example, if the existing concrete foundation is 3' above the water level and the re-constructed foundation is only 2' above the water level, Applicants intend to increase the height of the wooden boathouse structure by the same amount, 1'. In all events, that absolute height of the boathouse, as measured from the mean water level, will remain the same.

The siding design and color will harmonize with the exterior of the main camp (medium gray in color, wood siding) and the surrounding landscape. It will have an asphalt shingle roof, as it does now. Applicants use the existing boathouse to store boats and dock furniture. They intend to use the re-constructed boathouse for the same purpose.

Applicants have received a Lake Encroachment Permit from the Vermont Department of Natural Conservation, Watershed Management Division, authorizing them to demolish the existing boathouse and concrete foundation and to construct a new boathouse of the same size, in the same location, supported by a piling foundation system. A copy of the Lake Encroachment Permit is enclosed.

Applicants' adjoining landowners—the Iglehearts and the Graylins—--informed the Applicants that they support the project.

Conditional Use Hearing

Andrew Nicely

April 14, 2022

To consider a conditional use request by Andrew Nicely to reconstruct a boathouse at 133 High Pines Road.

The application requires a review under the following sections of the Greensboro Zoning Bylaws: 2.7 Shoreland Protection District; 5.4 Conditional Uses; and 8.8 New Uses and Encroachments Within the Shoreland Buffer Zone.

Warnings were posted on March 23, 2022, at the Greensboro Town Hall, the Greensboro Post Office, the Greensboro Bend Post Office, and Willey's and Smith's Stores. The warning was sent to the applicant and the following abutters and neighboring property owners: the William S. Gordon III Trust; Alexandra Graylin-Frey; Kimball Igleheart Family Trust on March 23, 2022. It was published in the Hardwick Gazette on Wednesday, March 23, 2022.

Development Review Board members present: Jane Woodruff, Nat Smith, MacNeil, Wayne Young, BJ Gray, Mike Metcalf, Tim Brennan, Lise Armstrong (alternate), Joann LaCasse (alternate).

Development Review Board members absent: None.

Others present: Andrew Nicely.

Correspondence from interested persons: None.

During the course of the hearing the following exhibits were submitted: None.

The hearing was conducted by electronic communication (ZOOM).

Summary of Discussion

Ms. Woodruff, chair, began the hearing at 7:05 p.m. and thanked the new Board members for attending. She noted the hearing was quasi-judicial, explained the procedure for the hearing, and asked the clerk to swear in Mr. Nicely.

Mr. Nicely said his grandparents had originally acquired the family property. The existing boathouse is presumed to date from the 1920's or '30's. The boathouse has not been modified in the past 100 years. In general, the wooden structure is in fair shape. However, the foundation is collapsing. The applicant noted he had spoken with adjacent landowners, the Graylin-Freys and the Iglehearts, and informed them of his intention to repair the boathouse. He reported that these neighbors supported this plan.

Since a portion of the boathouse is in the water, a state permit is required. Mr. Nicely initiated discussions with the Department of Environmental Conservation last summer to determine what repair and what methods would be allowable. The project received an approved permit. At the state's request, the new foundation will be different. The existing foundation is a wooden crib and cement wall enclosure around boulders. The state expressed a preference for pilings in the reconstructed foundation so fish will be able to swim among the pilings. Removal of the current foundation is a significant project. The concrete and boulders are heavy and must be disposed of

properly. Setting in the new pilings is also expected to be complicated. Rebuilding the wooden boathouse is anticipated to be the simplest part of the project.

The applicant explained that the proposed boathouse rebuild will reconstruct the structure exactly as it is. The siding will be similar wood and painted gray. The footprint will remain identical. The new foundation may sit a foot or two lower. If so, the boathouse will be taller, but it will not exceed the current height. No decks will be added. The proposed boathouse rebuild will conform to the current landscape. No plumbing will be added.

The Board inquired how heavy equipment will prevent damage to the shoreline. The applicant noted there are two options. One possibility is that heavy equipment will be used on the shore. The other option is to use a barge that would enter from the public boat launch and moor adjacent to the work site. The state expressed a preference for as much work as possible to be done on shore. The applicant acknowledges the concern about heavy equipment and noted care would be taken. Contractors would lay steel plates to prevent digging into the shore. No work can commence between April and the end of July. The applicant expected work would likely happen in late September or early October, possibly in 2023. The Board clarified that the proposed roof would also be asphalt shingles. Some discussion ensued about repairs to the dock. The applicant has obtained a state permit to reconstruct this dock. The Board complemented the design and detailed proposal.

Mr. Nicely thanked the Board for their time. He reiterated that his family are long-time stewards of the lake. He expressed appreciation for the lake's clear water and assured the Board that his family would supervise the work to insure it is done carefully.

The hearing ended at 7:34 p.m. The Board entered into deliberative session at 7:35 p.m. and came back into public session to announce their decision at 8:01 p.m.

Findings of Fact:

Based on the application and testimony, the Development Review Board makes the following findings:

2.7 Shoreland Protection District

A boathouse is a conditional use in the Shoreland Protection District.

5.4 Conditional Uses

B) General Standards

The proposed conditional use will not have an adverse effect on:

1. *the capacity of existing or planned community facilities.* Boathouses are a common use in the Shoreland Protection District and do not use community facilities.
2. *the character of the area, as defined by the purpose of purposes of the zoning district within which the project is located.* Similar boathouses are around the lake.
3. *traffic in the vicinity.* Traffic will not be increased by this structure.
4. *bylaws and ordinances presently in effect.* The boathouse will not affect the town's bylaws and ordinances.

5. *the utilization of renewable energy resources.* Renewable energy resources will not be affected by this structure.

C) Specific Standards:

1. *The lot must meet the minimum size required for the district unless other standards are given for conditional use lot size in the district.* This is a pre-existing nonconforming lot of .87 acres.

2. *Setbacks will be the same as for other permitted uses unless other standards are given for conditional use setbacks in the district.* This pre-existing nonconforming building is proposed to be reconstructed in the same location.

3. *Fencing/landscaping may be required for commercial and industrial uses to provide screening if the Board deems it necessary to protect the character of the area.* This is a residential use, so no fencing or landscaping is required.

4. *Exterior signs shall not be internally lit and must be compatible in size, materials, and workmanship to the area in which they are located.* No signs are included in the application.

5. *The proposed structure is compatible with other structures in the area.* The proposed boathouse design compliments existing structures in the Shoreland Protection District.

6. *The proposed structure adheres to the uses allowed in the relevant district.* Boathouses are a Conditional Use in this district.

7. *The proposed structure will not affect noise or air pollution in the area.* Noise or air pollution will not be increased by the proposed boathouse.

8.8 New Uses and Encroachments Within the Shoreland Buffer Resource Zone

B) Conditional Uses.

3. Boathouses.

f. No decks, porches or other similar appendages will be allowed on boathouses. No decks, porches, or other appendages will be included in this boathouse reconstruction.

g. A new or reconstructed boathouse shall require a conditional use permit. This proposed boathouse meets the criteria for a conditional use permit.

h. A new or reconstructed boathouse shall be used only for the storage of boats. This building is intended solely for the storage of boats.

Decision and Conditions:

Based upon these findings, the Development Review Board voted unanimously (7 – 0) to approve the application to rebuild the Nicely boathouse at 133 High Pines Road. The Board determined that the standards for a conditional use permit were met.

Conditions:

1. Any and all necessary state and federal permits must be in place before construction begins.

Signed:

_____, chair
 Jane Woodruff

_____, clerk
 Brett Ann Stanciu

date _____

date _____

NOTICE:

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made within 30 days of the date of this decision, pursuant to 24 V.S.A. #4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.



Lake Encroachment Permit Application

Under Chapter 11 of Title 29, § 401 *et seq.*



Application Number: <i>For Lake Encroachment Permitting Use Only</i>		3620-LEP
Submission of this application constitutes notice that the person in Section D intends to encroach beyond the mean water level of a lake or pond, and certifies that the project will comply with Chapter 11 of Title 29, § 401 <i>et seq.</i> All information required on this form must be provided, and the requisite fees (Section H) must be submitted made payable to the State of Vermont.		
A. Project Information		
1. Physical Address (911 Address – if applicable): Cottage 135, High Pines Road		
2a. Town - County: Greensboro - Orleans		2b. Zip: 05841
3a. SPAN (###-###-##### – if applicable): 264-083-10673		(School Parcel Account Number can be obtained from your property tax bill or from your Town Clerk)
3b. Project coordinates (decimal degrees, can be found on Google Maps) Latitude: 44°34'57.6"N Longitude: 72°18'00.5"W		
4. Name of Lake/Pond: Caspian Lake - Greensboro		44.58267, -72.30014
5a. Have you ever applied for a permit with the Agency of Natural Resources associated with this parcel? <input type="radio"/> Yes <input checked="" type="radio"/> No		
5b. If yes, please describe (e.g., Wetlands, Act 250, Wastewater, etc.):		
6a. Is this application for a Lake Encroachment permit amendment? <input type="radio"/> Yes <input checked="" type="radio"/> No If no, skip 6b and 6c.	6b. What is the original Lake Encroachment permit number?	6c. Amendment type? <input type="radio"/> Major <input type="radio"/> Minor
B. Project Description		
1. Describe the proposed project including the materials and equipment that may be used during construction. Please include: (a) volume of fill added and/or removed; (b) dimensions of proposed project; (c) distance beyond mean water level the project will extend; and (d) linear feet of shoreline impacted. If this project is to remove and replace an existing encroachment, please include the dimensions of the existing structure. (see attached addenda)		
BOATHOUSE: existing upper structure is 12 ft tall x 20 ft wide x 27 ft long, sitting on 31 ft-long concrete foundation arms that are 6-10 ft wide; a total of 31 ft beyond MWL; proposed will be 12' tall x 20' wide x 27' long; concrete foundation to be removed completely and replaced with 16 8-in galvanized steel pilings supporting a platform that is 6-10 ft wide. Replacement boathouse to be built in the same aerial footprint as existing, but with reduced fill on the lakebed. Total encroachment of 31 ft beyond MWL		
PIER: entire structure is 60 ft long and extends ~55 ft beyond MWL; concrete section will remain as is, but capped w. 6 inches of fluid concrete on the end and on some holes on the side; existing 11' long x 4' wide failed cribbing at end will be replaced with timber platform supported by approximately 12 8-in galvanized steel pilings - LLM, email 12/13 and 12/22/21		
2. Describe the purpose of the proposed project: (see attached addenda)		
3. Describe what less intrusive feasible alternatives have been considered: (see attached addenda)		

4. Describe the public benefits of the proposed project (e.g., erosion control, improvements to boating/swimming/fishing, public access, etc.):

(see attached addenda)

C. Encroachment Effects

1. What measures are proposed to minimize the project's effects on water quality (e.g., use of a turbidity curtain during construction, heavy equipment will work from shore, etc.)?

(see attached addenda)

2. How will the project minimize effects to fish and wildlife habitat (e.g., construction of the project that disturbs the lakebed will not occur during spring fish spawning (March 15 – July 1))?

(see attached addenda)

3. Does the project propose removal of aquatic or shoreline vegetation? If removing shoreline vegetation (e.g., trees, shrubs, groundcover, duff layer), a Shoreland Protection Permit may be needed.

(see attached addenda)

4. Describe the surrounding shoreline. What measures are proposed to ensure the project is consistent with the surroundings?

(see attached addenda)

5. Will the project impact navigation, recreation, or other public uses? If so, how will these effects be minimized?

(see attached addenda)

D. Applicant/Landowner Information and Certification

If applicable, all landowners must sign the application. Submit additional pages if necessary.

1. Name: Linda B. Nicely

2a. Mailing Address: 5606 E. Caballo Drive

2b. Town: Paradise Valley

2c. State: AZ

2d. Zip: 85253

3. Phone: 480-948-3238

4. Email: lindanicely1971@gmail.com

5a. Have you completed the voluntary Natural Shoreland Erosion Control Certification course? Yes No

5b. If yes, please include the location and year you attended the course:

A list of certified contractors is available online.

Applicant/Landowner Certification:

As **APPLICANT**, I hereby certify that the statements presented on this application are true and accurate and recognize that by signing this application, I agree to complete all aspects of the project as authorized. I understand that failure to comply with the foregoing may result in violation of the Chapter 11 of Title 29, § 401 *et seq.*, and the Vermont Agency of Natural Resources may bring an enforcement action for violations of the Act pursuant to 10 V.S.A. chapter 201.

Applicant/Landowner Signature: Linda B. Nicely Date: 7/8/21, 2021

E. Application Preparer Information and Certification (check box if same as Section D.)

1. Name: Andrew A. Nicely

2a. Mailing Address: 3523 Albemarle Street N.W.

2b. Town: Washington

2c. State: DC

2d. Zip: 20008

3. Phone: 571-335-5769

4. Email: anicely1@yahoo.com

5a. Have you completed the voluntary Natural Shoreland Erosion Control Certification course? Yes No

5b. If yes, please include the location and year you attended the course:

A list of certified contractors is available online.

Application Preparer Certification:

As **APPLICATION PREPARER**, I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Check this box to request co-applicant status. By checking this box, you will be considered a co-permittee and are responsible for the conditions of the permit. Co-permittee status will likely be required for any individual or entity other than the permittee for construction based/lakebed disturbing encroachments (e.g., shoreline stabilization, dredging, boathouse repair, concrete wall/dock repair, etc.).

Application Preparer Signature: Andrew A. Nicely Date: 11/12/2021

F. Adjoining Property Owner Notification (For additional information, please see the Adjoining Property Owner Notification Guidance)

AN I certify, by initialing to the left, that I have notified adjoining property owners of the proposed project using the letter template sent by U.S. Mail.

G. Additional Required Documentation (Please check the box to ensure you have completed the following)

- All sections of the application are complete or otherwise indicate "not applicable"
- Application includes site plans with dimensions
- Project description includes distance beyond mean water level the project will extend
- Application includes photos of project area

H. Permit Application Fees

Select the most applicable permit description(s) and requisite fee(s). If the proposed project involves more than one of the project types, multiple fees may apply. For example, a project involving structural shoreline stabilization and marina improvement will require both fees (2) and (3).

1. Non-structural erosion control project (e.g., sloped, dry-laid rip rap):

Administrative Processing Fee: \$155.00

Total:

2. Structural erosion control project (e.g., vertical wall replacement)

Administrative Processing Fee: \$250.00

Total:

3. Other Projects (e.g., marina improvements, boathouse repair, dredging):

Administrative Processing Fee: \$300.00

\$ 300.00

Application Review Fee: 1% of Total Project Cost
(*\$20,000 max fee, check box if project cost is over \$2,000,000*)

Enter the Total Project Cost:
\$ 180,000.00

\$ 1,800.00

Total Fee:

\$ 2,100.00

Refund Policy:

- If an application is modified, withdrawn or denied after technical review has commenced; all fees are retained.
- If an application is withdrawn prior to administrative review; all fees will be refunded.
- If an application is withdrawn after administrative review but prior to commencement of technical review, deemed administratively incomplete and returned to applicant, or determined that a permit is not required; administrative fees are retained and permit application review fees will be refunded.

Application Submittal:

Submit this form and appropriate fee, payable to:

State of Vermont – Vermont Department of Environmental Conservation
Watershed Management Division – Shoreland Permitting
1 National Life Drive, Davis 3
Montpelier, VT 05620-3522

ANDREW NICELY
3523 ALBEMARLE STREET N.W.
WASHINGTON, DC 20008
571-335-5769
anicely1@yahoo.com

November 12, 2021

State of Vermont-- Vermont Department of Environmental Conservation
Watershed Management Division -- Shoreland Permitting
1 National Life Drive, Davis 3
Montpelier, VT 05620-3522

Re: Lake Encroachment Permit Application

Dear Sir or Madam:

Enclosed please find a completed application seeking a Lake Encroachment Permit to reconstruct our boathouse and repair our concrete pier dock on Caspian Lake in Greensboro, Vermont. Also enclosed is the required fee.

I have contacted the abutting property owners on both sides of the proposed project (the Igleheart family to the left, and the Graylin-Frey family to the right) and have been informed that they support the project and do not intend to raise any objection to the permit application.

In addition, I am attaching a letter from a local fisherman, Robert Perron, who often fishes off our dock. As he explains in the letter, he supports the application and is in favor of the proposed repairs.

Please contact me should you have any questions or require additional information.

Very truly yours,

/s/

Andrew A. Nicely

Enclosures

ADDENDUM A to LAKE ENCROACHMENT PERMIT APPLICATION

Cottage 133/135, High Pines Road, Caspian Lake, Greensboro

Section B. – Project Description

Item 1: Describe the proposed project including the materials and equipment that may be used during construction. Please include: (a) volume of fill added and/or removed; (b) dimensions of proposed project; (c) distance beyond mean water level the project will extend; and (d) linear feet of shoreline impacted. If this project is to remove and replace an existing encroachment, please include the dimensions of the existing structure.

The proposed project consists of replacing an existing boathouse along with its foundation and repairing an existing concrete pier dock in front of Cottage 135, High Pines Road, on Caspian Lake in Greensboro, Vermont.

The existing boathouse, which is believed to have been constructed in the 1920s, has a wooden frame and is supported by a concrete foundation that rests on the lakebed. The approximate dimensions of the wooden boathouse structure are 20' wide by 27' long. The concrete foundation consists of two sections. The left section (when standing onshore and facing the lake) is approximately 6' wide and 35' long. The right section is approximately 10' wide and 35' long. There is a gap between the two concrete sections on the end facing the lake to allow a boat to be moored in the water inside the boathouse. The shoreline entrance to the boathouse is level with the lakeshore, and all but a few feet of the boathouse foundation is in the water.

The boathouse foundation appears to have been constructed by assembling forms in the water, filling them with rock ballast, and then pouring concrete. Over the past 100+ years, the foundation has been damaged by hydraulic pressure from the formation of ice in the winter and by impacts from ice floes during the spring when the ice on Caspian Lake is thawing. The boathouse foundation is damaged beyond repair in the Owner's assessment, as is the wooden boathouse itself. Pictures of the boathouse, in its current condition, are provided in Addendum B, along with a drawing showing the approximate dimensions.

The existing concrete pier dock was constructed in two sections. The first section, which begins at the shoreline and extends approximately 49' into Caspian Lake, appears to have been built in the same manner as the boathouse foundation; forms were assembled, filled with rock ballast, and concrete was poured on top and along the sides. The second section, constructed at the termination of the concrete section, consists of one large wooden crib filled with rock ballast. This wooden section adds approximately 11' to the overall length of the dock. Approximately half of the wooden crib section is submerged slightly below the average water level in the lake. The dock is approximately 7' wide where it abuts the shoreline, and maintains the same width for the first 24' feet that it extends out into the lake; after 24', the dock becomes wider in a triangular shape.

The pier dock is suffering from two problems. First, the concrete section has several areas at or below the waterline where a hole has opened up on the side, permitting water to enter and where ice can form during the winter, causing hydraulic pressure that damages the structure. Second, the large timbers that make up the frame of the crib section are beginning to separate at the corners of the crib where they are held together by iron rods. A few of the timbers closer to the waterline already have released, probably because of the pressure created by the weight of the rock ballast pushing against them. Some of the rock ballast already has spilled to the lakebed. Pictures of the pier dock and a rough sketch of its dimensions are provided in Addendum C.

Boathouse Proposal

Applicants propose to completely remove the wooden boathouse structure and concrete foundation, and install a replacement foundation consisting of galvanized steel piles. Once the pile foundation is in place, Applicants propose to build a new timber-framed boathouse of the same dimensions as the existing boathouse (20' x 27'). If completed in this manner, the boathouse component of the proposed project would remove approximately 3,400 cubic feet of fill from the lake, consisting of rock ballast, concrete, and timber. The shoreline abutting the boathouse area will not be adversely affected because it already is protected by a concrete retaining wall that remains in sound condition.

Pier Dock Proposal

Applicants propose to remove the crib dock section at the end of the pier dock and replace it with galvanized steel piles that will be connected for support. A platform will be installed on top of the piles, level with the existing concrete dock, using pressure-treated supports and LPE decking boards. If completed in this manner, the proposed repairs for which approval is sought in this application will result in the removal of approximately 2,800 cubic feet of fill from the lake, consisting mostly of rock ballast and timber. The shoreline abutting the pier dock will not be adversely affected because no concrete will be removed at the shoreline.

In accordance with 29 VSA 403(b)(4), which exempts from the permitting requirement "ordinary repairs and maintenance to existing commercial and noncommercial structures," Applicants plan to perform some necessary repairs to the concrete section of the pier dock while carrying out the rest of the project. Specifically, the end of the existing concrete pier will be encapsulated with a strong reinforced barrier to prevent further damage from hydraulic pressure and impacts from ice floes during the spring. In addition, the holes on the sides of the dock will be repaired with a 6" reface along the sides of the existing concrete pier (and cap) using reinforced rebar/coil road within sound-tight forms and 5000psi concrete. Applicants mention this detail for informational purposes only.

The equipment required to complete the proposed project likely will include a backhoe, a loader, a pile driver, dump trucks, and a cement truck. To the extent feasible, the project will be completed with all heavy equipment operating from shore. If necessary, certain tasks may be completed from a barge moored offshore.

Item 2: Describe the purpose of the proposed project.

The purposes of the proposed project are severalfold. First, the boathouse component of the project is designed to remove a damaged and deteriorating boathouse structure, and its deteriorating foundation, from the lakeshore, and to replace it with a functional boathouse supported by a sound foundation. Completion of the boathouse component will result in the removal of thousands of cubic feet of fill from the lake. Next, the pier dock component of the project is designed to rehabilitate the existing pier dock in a manner that restores its functionality while simultaneously reducing significantly the amount of fill that it contributes to the lake.

Item 3: Describe what less intrusive feasible alternatives have been considered.

Applicants have considered a number of alternatives for both the boathouse and pier dock components of the project—all of which were determined to be feasible—and have proposed the approaches that are believed to be the least intrusive. Specifically, we considered replacing the boathouse foundation with a similar design consisting of cribs filled with rock ballast and covered with a concrete shell. In addition, Applicants considered replacing the boathouse foundation with a crib foundation consisting of cribs fashioned from pressure-treated timbers and filled with the rock ballast from the existing foundation, but not covered with a concrete shell. Applicants are open to using either of the foregoing approaches but suspect that the Department would regard them as more intrusive.

With respect to the pier dock, Applicants have considered removing the crib section at the end and replacing it with a similar wooden crib structure, which would be weighted down using the ballast from the existing cribs. In addition, Applicants have considered replacing the existing crib section with pre-fabricated concrete walls, either with or without rock ballast supporting them. As another alternative, Applicants have considered replacing the existing crib section with a new poured concrete section. One other alternative approach would replace the existing crib section with prefabricated concrete “strong blocks” that stack upon each other like giant Legos. Again, Applicants believe that the proposed approach is the least intrusive feasible alternative, but would be glad to implement one of the other approaches if the Department deems them to be superior.

Taking into account the factors underlying the public trust doctrine, Applicants also have considered the notion that, in theory, simply removing the crib section and all of its fill from the lake—without installing a replacement of some kind—would reduce the encroachment resulting from the pier dock. Applicants have determined, however, that such a step would threaten the integrity of the concrete section of the pier dock because the crib section provides a buffer protecting it from ice floes during the spring. The public interest would not be promoted by a design that causes the concrete section of the dock to fracture, resulting in pieces of concrete falling into the lake. Under the circumstances, if Applicants were denied permission to install a replacement for the crib section (of the same size as the existing one), they could not justify the substantial expense of removing the crib section and its fill. Thus, allowing the replacement of the failing crib section will confer a net benefit on the public.

Item 4: Describe the public benefits of the proposed project (e.g., erosion control, improvements to boating/swimming/fishing, public access, etc.).

The proposed project will achieve several public benefits upon completion with a net improvement to public trust uses and lake ecology as compared to the status quo. First, if accomplished in the manner proposed herein, the project will remove thousands of cubic feet of rock ballast and concrete fill from Caspian Lake, resulting in a shrinkage of the existing overall encroachment. This net reduction of the near-shore encroachment will enable gradual restoration of ecological function to areas previously covered in ballast and fill. Second, repair of the crib section of the pier dock will improve public safety for boaters because, at present, the outermost portion of the exposed crib section is a few inches below the surface of the water when the lake is at typical levels. As a result, the presence of the rock ballast just below the water's surface may not be detected by boaters who are unfamiliar with the lake and could pose a danger to inattentive or unfamiliar boaters. Third, Applicants allow the public to fish from the dock and the crib section poses a danger to anyone who may attempt to approach the edge of the structure for the purpose of retrieving a fish, casting a fishing line, or unhooking a snag on the timber crib supports. Moreover, replacement of the crib section of the dock with a more secure structure will allow anglers to safely enjoy access to deeper water and with it, increased chances of catching fish.

Applicants' property abuts the lake shore and is accessible by a lake path that is used by members of the public on a regular basis. (Although there is no easement or public right-of-way, and although some lakefront owners have lawfully installed fences to prevent the public from traversing the lake path across their properties, Applicants have never objected to this use.) From fall to late spring, when Applicants are not in residence, members of the public frequently park in Applicants' driveway while going down to the pier dock to fish. The dock is a popular fishing spot because it allows access to deeper water for those who do not own a boat, and it extends far enough into the lake that it is possible to back-cast spinning rods and even fly rods without getting tangled in the trees and brush along the edge of the lake.

The proposed repairs to the pier dock will ensure the safety of boaters and members of the public fishing from the dock.

The proposed project will not alter the existing shoreline which, to date, has not experienced any notable erosion.

Section C. – Encroachment Effects

Item 1: What measures are proposed to minimize the project's effects on water quality (e.g., use of a turbidity curtain during construction, heavy equipment will work from shore, etc.)?

Applicants will take all feasible steps to minimize the project's impact on the water quality of Caspian Lake. Based on preliminary discussions with a marine construction contractor that has inspected the site, Applicants believe that most, if not all, of the work can be completed with all heavy equipment operated from the shore. There is one large tree on the shoreline that may interfere with the use of certain heavy equipment if the contractor is not permitted to remove some

of the lower branches of the tree. If certain tasks cannot be completed safely from shore, Applicants propose to undertake them from a barge moored near the end of the pier dock.

The contractor carrying out the work will install a turbidity curtain in the lake during construction to prevent sediment from traveling away from the work site. In addition, the contractor will install a cofferdam when repairing the sides of the concrete section of the pier dock.

Item 2: How will the project minimize effects to fish and wildlife habitat (e.g., construction of the project that disturbs the lakebed will not occur during spring fish spawning (March 15 – July 1)?

Applicants appreciate the importance of ensuring that construction activities in Vermont lakes do not unduly interfere with the fish and wildlife habitat, including the spring fish spawning period from March through July 1. Loons, herons, Canadian geese, and other fowl also are active on Caspian Lake during late spring and through the summer. In addition, Caspian Lake sees a lot of human activity over the summer months, including swimmers, boaters, and people fishing. With these considerations in mind, Applicants propose to undertake the project between October and early March.

Item 3: Does the project propose removal of aquatic or shoreline vegetation? If removing shoreline vegetation (e.g., trees, shrubs, groundcover, duff layer), a Shoreland Protection Permit may be needed.

The project does not propose the removal of any aquatic or shoreline vegetation.

Item 4: Describe the surrounding shoreline. What measures are proposed to ensure the project is consistent with the surroundings?

The shoreline surrounding the proposed project is protected by a concrete retaining wall. The remainder of the shoreline on Applicants' property includes a sandy beach of approximately 10' and a berm secured by shrubs, native trees, and rocks. Because the project involves the repair and replacement of existing structures, the project will remain consistent with the surroundings on Applicants' property.

Item 5: Will the project impact navigation, recreation, or other public uses? If so, how will these effects be minimized?

The project, once completed, will *positively* affect navigation, recreation, and other public uses of the lake in several respects. First, by shrinking the overall footprint of the encroachment from the existing structures, the project will reduce impediments to navigation on the lake in the vicinity of the existing structures and allow a portion of the lakebed now covered in fill and ballast to return to a natural condition. Sections of the concrete foundation under the boathouse have broken off, forming obstacles in the lake above and below the waterline that must be avoided. At some point, if the boathouse foundation is not repaired, the boathouse itself will collapse into the lake, releasing wooden boards, sections of timber, and other debris that may float away and pose a danger to boaters. Second, the failing crib section at the end of the pier dock poses a danger to navigation because the crib section contains a large number of rocks that have settled slightly

below the waterline, the presence of which may not be apparent to boaters who are unfamiliar with the lake or who are not paying close attention as they pass by the dock. There is the potential for boats to run aground on the submerged rock ballast. The crib section of the dock also interferes with the public's use of the dock for fishing. The crib section, which extends approximately 11' from the end of the concrete section, makes it difficult to retrieve fish and lures while standing on the publicly-accessible concrete section. In addition, because the rocks in the crib section are loose, it is dangerous to walk on them.

The proposed repairs and reconstruction will improve navigation on the lake by removing potentially dangerous sections of concrete and rock ballast from the lake and replacing them with piles covered with a decking system that will be readily visible to boaters and other public users of the lake, and more resistant to the deteriorating forces of wind, waves, and ice over time. The decking system installed at the end of the dock also will enhance the safety of the public when fishing from the dock.

The construction process itself is not expected to have any adverse impacts on navigation, recreation, or other public uses. As noted above, Applicants plan to carry out the work between October and early March, when boating, swimming, and other activities on the lake will have declined significantly from their summer peaks. If, as predicted, most of the work can be completed from shore, the construction activities should not interfere with the public's use of the lake, including any activities that might take place near the construction site.

The Town of Greensboro has been delegated authority by the Vermont Natural to adopt and administer a Lake Shoreland Protection District (SPD) as a means of implementing Vermont's Shoreland Protection Program. The proposed project lies within the Town's SPD governed by Article 8 in the Zoning Bylaw, which also establishes a 150' Shoreland Buffer Resource Zone. Within that zone, the Bylaw § 8.8 permits a "new or reconstructed Boat House" subject to Conditional Use Review and approval by the Development Review Board. Conditional Use Approval is anticipated because the proposed project would not increase the footprint or other dimensions of the existing structure in the Buffer Resource Zone and would be a replacement of a structure that has long been a feature of the shoreline in this area. Moreover, replacement would enhance the "character of the area", which is a Conditional Use criterion, because it will rehabilitate a deteriorating structure. If the boat house reconstruction described herein is approved by the Department of Environmental Conservation, the applicant understands that any Lake Encroachment Permit would be conditioned also on Conditional Use approval from the Town's DRB.

Aerial view - LLM



VERMONT Natural Resources Atlas
Vermont Agency of Natural Resources

Search

Quick Tools

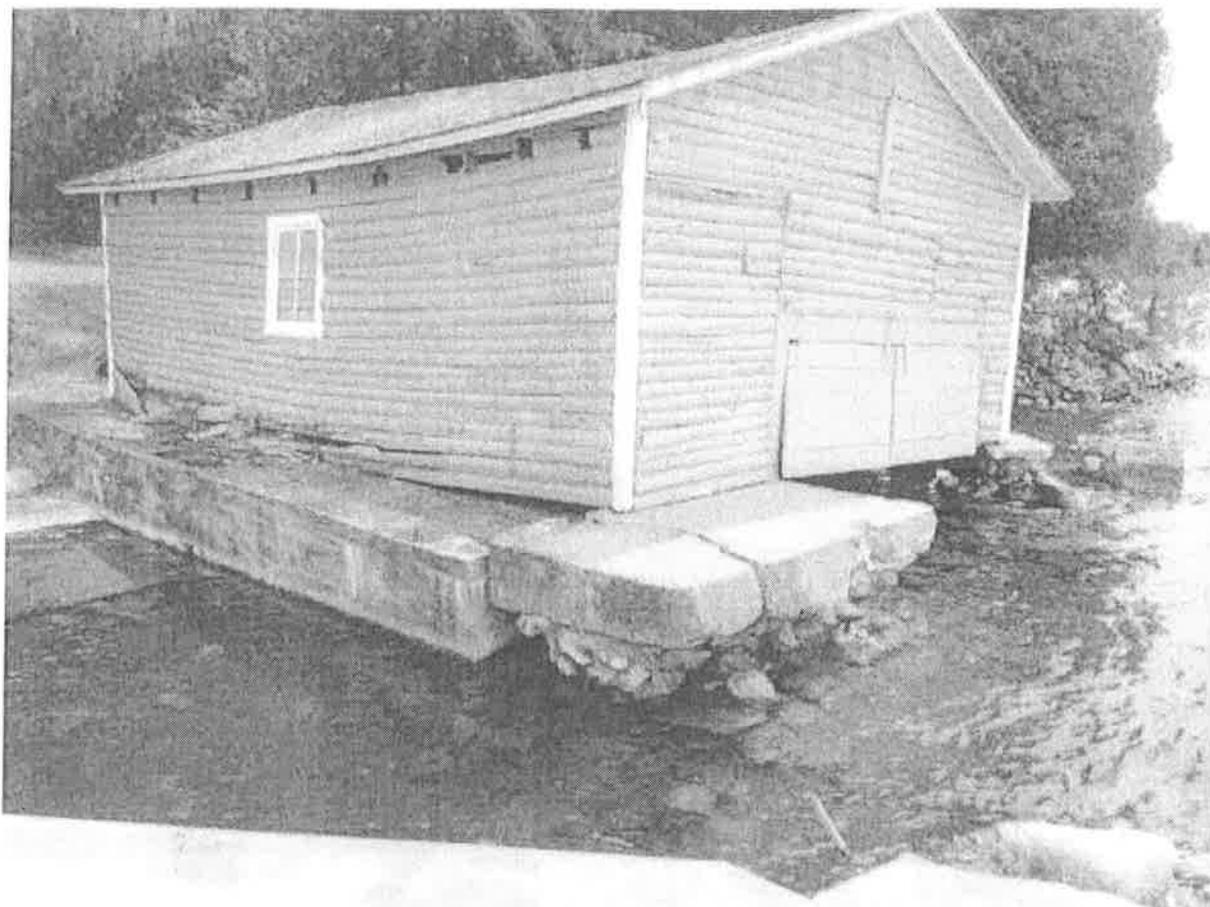
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100 HIGH PINES
100 HIGH PINES

Vermont.gov

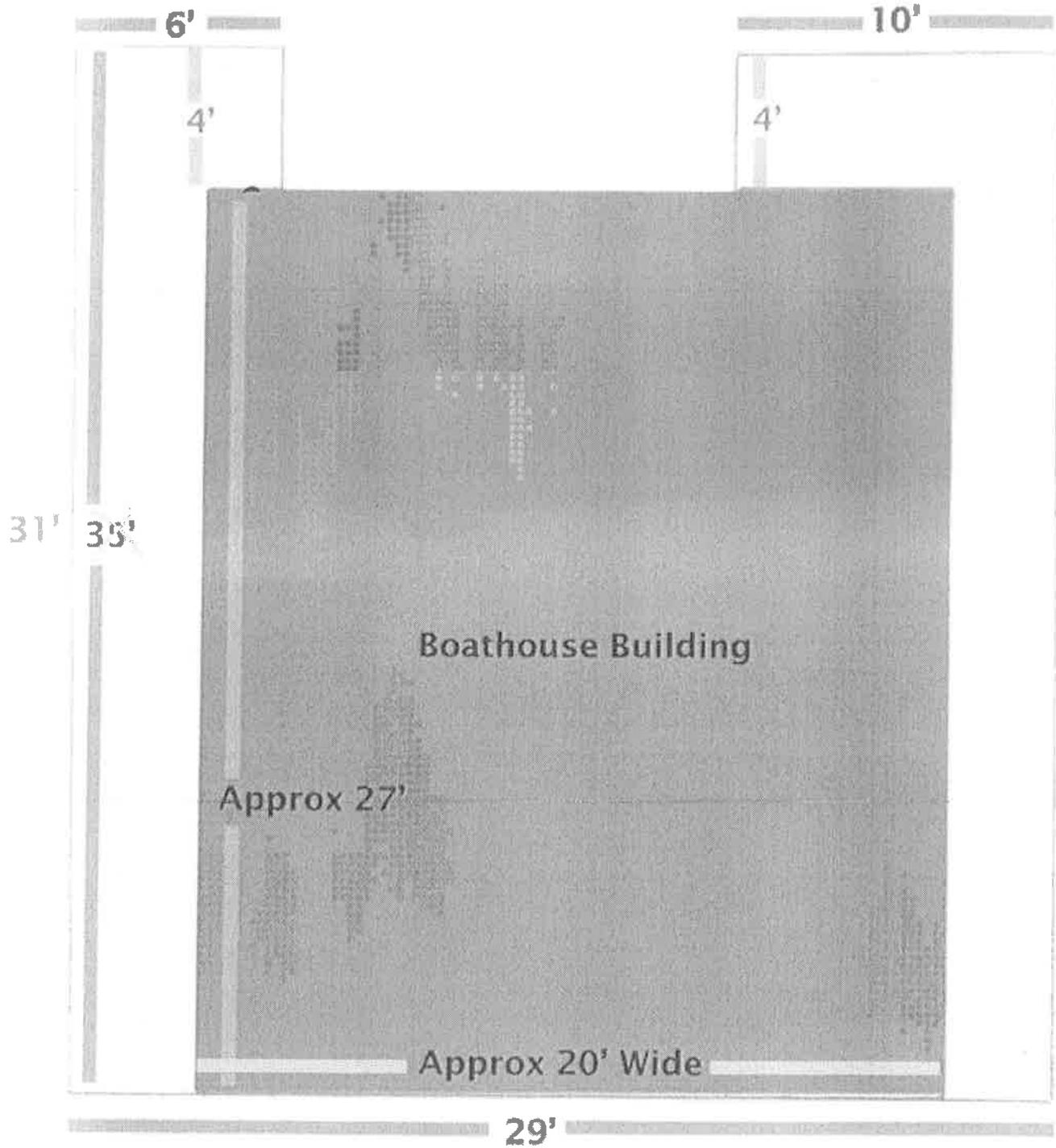
100

A screenshot of a web-based map application. The interface includes a search bar, a "Quick Tools" button, and a vertical toolbar with zoom (+/-) and full-screen icons. The map area shows a wooded region with several labels that read "100 HIGH PINES". The top of the page features the "VERMONT Natural Resources Atlas" logo and the "Vermont Agency of Natural Resources" name. The "Vermont.gov" logo is in the top right corner. A small "100" is visible in the bottom left corner of the map area.



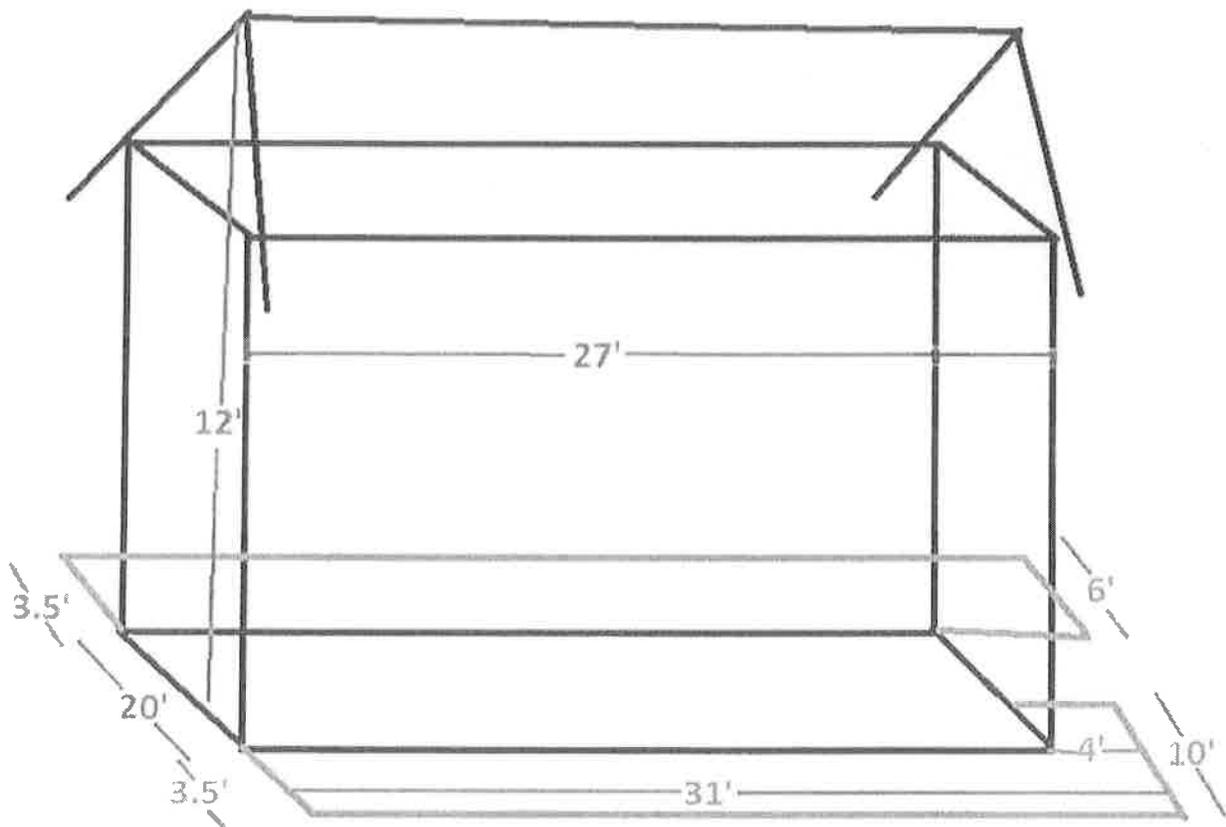
Side view of boathouse, showing detached section of concrete foundation

Boathouse



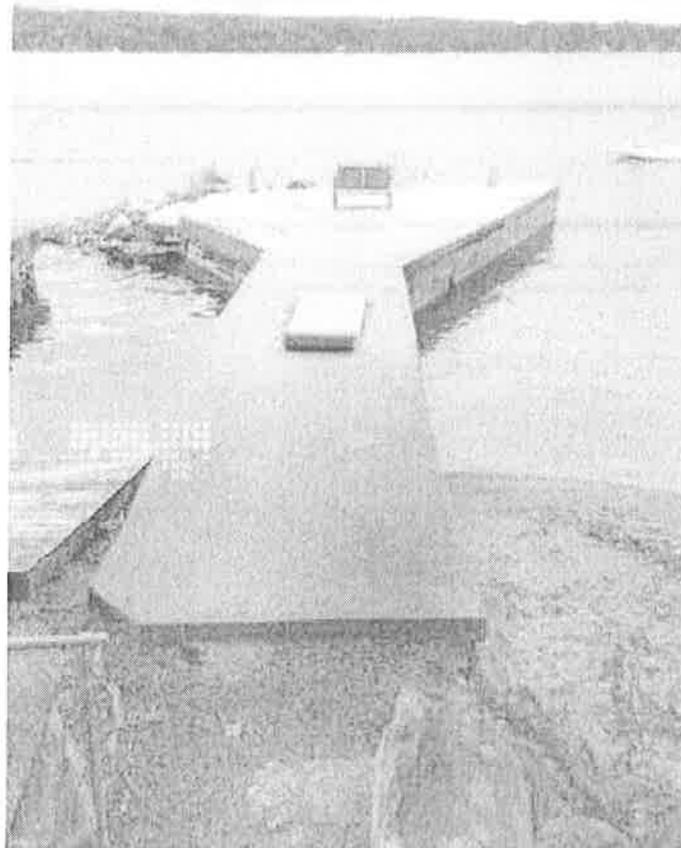
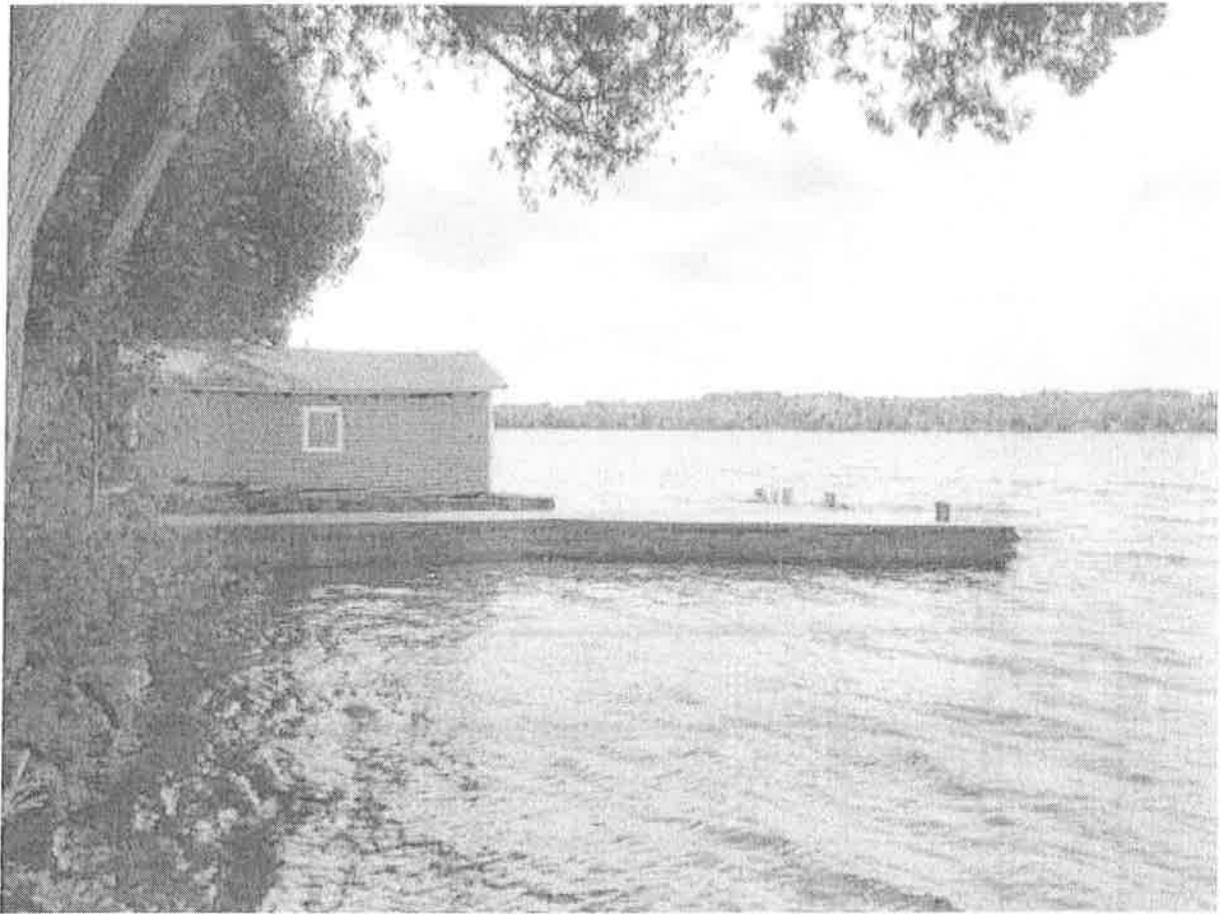
measurements of existing structure revised;
~5 feet of the entire boathouse is up on shore: foundation extends 26 ft beyond MWL and upper building extends 22 ft beyond MWL;

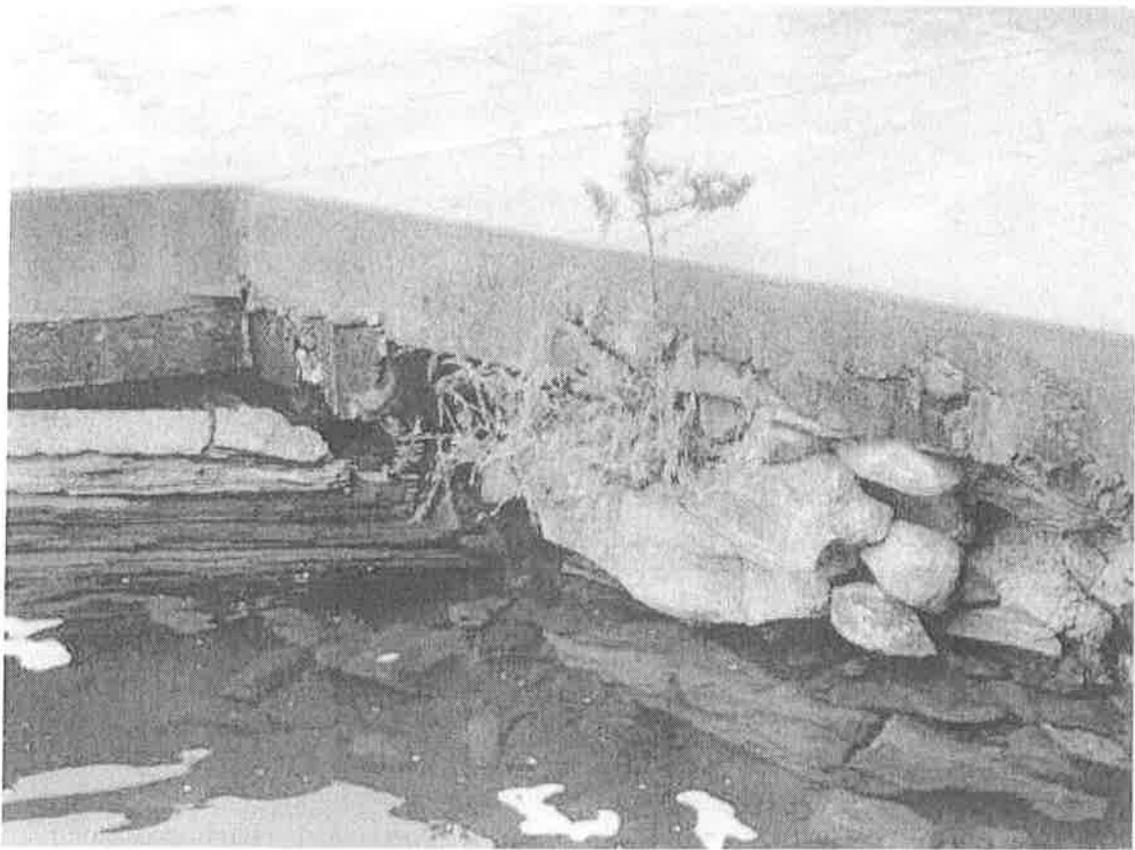
PROPOSED BOATHOUSE
- LLM, email 12/26/2021



replacement boathouse to be in the same footprint as the existing boathouse;
~5 feet of the entire boathouse is up on shore: foundation extends 26 ft beyond MWL and upper building extends 22 ft beyond MWL;

- LLM, email 12/14 and 12/22/2021





Damaged area of the left side of the pier dock



Left front corner, showing where the crib section adjoins the concrete section



Right front corner, showing where the crib section adjoins the concrete section



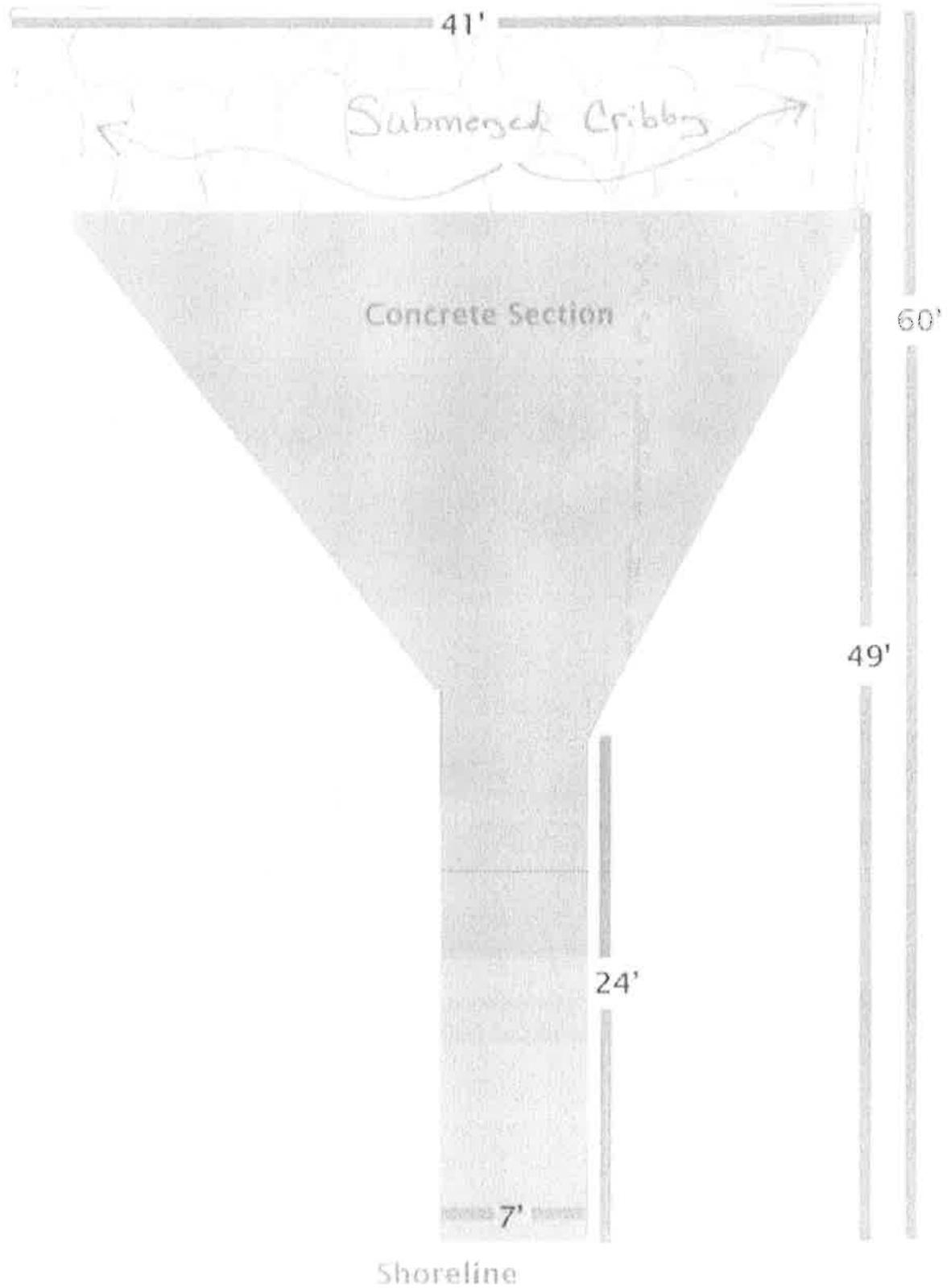
Left side; sagging crib section of the dock blocks passage between dock and boathouse



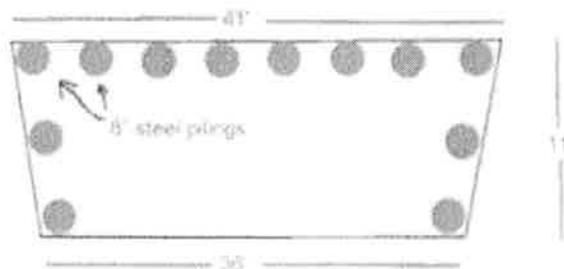
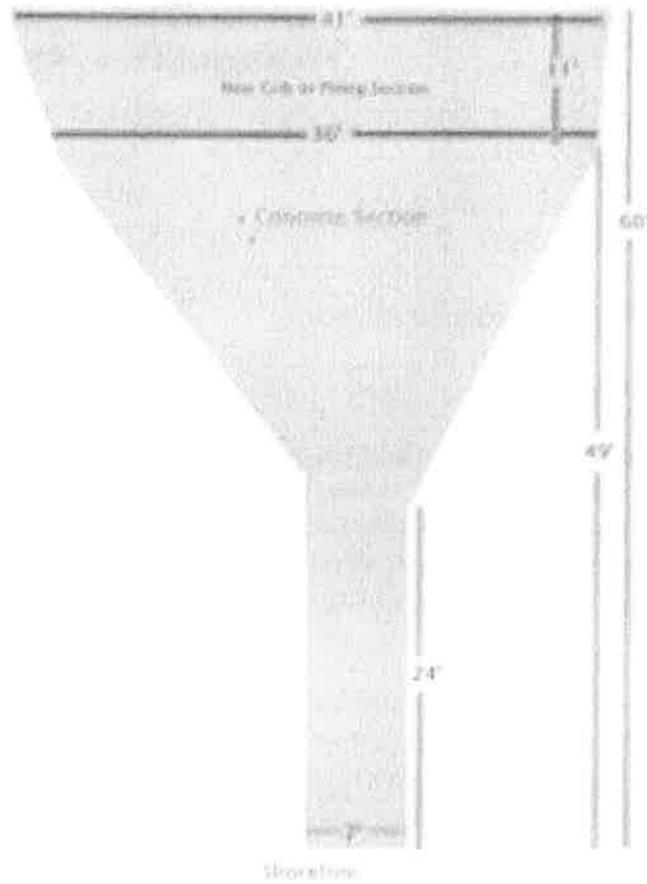
The full length of the crib section of the pier dock, looking—parallel to the shore—from the end of the right side to the end of the left side of the pier dock

ADDENDUM C - PIER DOCK

EXISTING PIER



PROPOSED PIER



timber platform supported by 8-in steel pilings measuring the same dimensions as the existing timber cribbing/rock ballast section - LLM, email 12/13/2021

Robert Perron
401 Lauredon Ave.
Greensboro Bend, VT 05842
(802) 533-2073

November 6, 2021

Vermont Dept. of Environmental Conservation
Watershed Management
1 National Life Drive, Davis 3
Montpelier, VT 05620-3522

Re: Nicely Permit Application

To whom it may concern:

I was born and raised in Greensboro, Vermont, and I have spent many hours fishing for trout on Caspian Lake. One of my favorite fishing spots is the Nicely dock, which goes out a fair distance into the lake. I do not remember a year when I did not catch at least one very large lake trout while fishing from the dock.

The dock is a good place to fish because it allows people to reach some deeper water without a boat. I also like to set my minnow trap inside the Nicelys' boathouse. There are always plenty of minnows in the water inside the boathouse, hiding from the larger fish.

The Nicelys have always made me feel welcome to fish from the dock.

I understand that the Nicelys are planning to repair the dock, particularly the section at the end that has lots of loose rocks. I would certainly be in favor of the repairs. The rock section is kind of dangerous. Many of the rocks are loose and some are quite slippery, making it dangerous to walk on them. Also, there are lots of open spaces in that section that tin cans and plastic containers can fall into.

I hope this is helpful.

Sincerely,



Robert Perron

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



Permittee Information	
Permittee(s): Linda B. Nicely	Project Description: Boathouse Reconstruction and Pier Repair
Co-Permittee(s): Andrew A. Nicely	Parcel SPAN: 264-083-10673
Waterbody: Caspian Lake	Parcel Address: 135 High Pines Road, Greensboro
Permit Number: 3620-LEP	Coordinates: 44.58267, -72.30014

a. Specific Conditions

Based upon the findings contained in this permit, it is the decision of the Department of Environmental Conservation (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.

The boathouse reconstruction and pier repair 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:

1. The project shall be completed in the approved location and up to the maximum extent of the approved encroachment in accordance with the configuration as identified on the pages titled "Proposed Boathouse" and "Proposed Pier" in the Approved Application, or as approved by the Department. The encroachments shall not be enlarged, extended, or added to without first obtaining additional authorization.
2. The encroachments shall not deteriorate to a point that they adversely affect the public good, as determined by the Secretary in accordance with 29 V.S.A. § 405(b), or discharges any waste, substance, or material into waters of the State.
3. Construction shall be completed in accordance with the following timeline:
 - A. Construction activities authorized by this permit shall occur between July 1st and March 15th only, unless otherwise approved by the Department. Construction activities include the establishment of erosion prevention and sediment control measures below mean water level, the removal of or establishment of the permitted encroachment, or any part of the project that results in a lakebed disturbing activity.
 - B. Construction activities shall not occur if the presence of ice within the project work area prohibits the use of sediment control measures. If construction activities have already commenced and ice forms within the project work area so that sediment control measures cannot be properly maintained to control erosion, construction activities shall stop, and the project work area shall be stabilized.
 - C. If construction of the permitted project has not been completed by March 15th, construction activities shall stop and the project work area shall be stabilized, unless otherwise approved by the Department.
4. Any individual or entity other than the permittee that is engaging in the permitted jurisdictional activity shall notify the Department to obtain co-permittee status prior to any such work. Notification of the

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



addition or termination of co-permittee status shall occur using a form provided by the Department. A co-permittee shall be subject to all terms and conditions in this permit.

5. A turbidity curtain, silt fence, cofferdam, or Department approved equivalent barrier (barriers), shall be used during construction activities as a sediment control measure in accordance with the following:
 - A. Barriers shall be installed around the project work area prior to the removal of or establishment of the encroachment to prevent turbidity (mobilized sediments generated during construction activities) and construction debris from moving past the barrier into the waterbody. If turbidity or construction debris is observed in the waterbody past the barrier, work shall stop immediately and shall not recommence until the source of the turbidity or construction debris is identified and corrected.
 - B. Barriers 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.
 - C. Barriers installed in water shall extend above the surface of the water and be secured to the lakebed.
 - D. Barriers shall not be installed in a way that blocks navigation.
6. There shall be no alteration of the lakebed beyond the approved project area. Large rocks, boulders, or large woody debris present in the project area shall not be removed from the waterbody.
7. For any use of fluid concrete required to complete the project:
 - A. Fluid concrete shall be placed only in sealed forms, contained by a cofferdam, or used as described in the Approved Application. Caution shall be exercised during construction to prevent concrete spillage.
 - B. Turbid water pumped from concrete forms shall be discharged to a containment area. No turbid water shall be discharged directly to a waterbody.
 - C. Concrete wash water shall not be discharged directly to the waterbody, to upland areas, rivers/streams, wetlands, or to stormwater/drainage conveyance. Concrete wash water shall be discharged only to an impermeable containment area and disposed of properly, in accordance with applicable local, state, and federal regulations. It shall be the responsibility of the permittee to ensure concrete equipment operators are aware of and abide by this permit condition.
8. Unless specified in the Approved Application, the reconstructed boathouse structure shall:
 - A. not exceed one story;
 - B. be constructed no greater in height, width, or length than the existing boathouse including existing foundation/footing; and
 - C. be constructed no further lakeward beyond mean water level than the existing boathouse.
9. The permittee shall exercise caution around any existing water intake pipes, dry hydrants, and utility cables if present, and clearly mark such structures during construction activities. The permittee shall take all necessary and appropriate measures to avoid damaging or impairing these structures.

10. The permittee shall promptly and safely relocate all aquatic animals (e.g., turtles, mussels, fish) found prior to and during project implementation from the project area to an area immediately outside of the project area within the same waterbody.
11. Repairs shall not exceed a 6-inch concrete cap on any surface of the existing concrete pier.

b. Standard Conditions

1. Permit modification. Permit modifications shall be reviewed in accordance with 10 V.S.A. Chapter 170 and any rules adopted thereunder.
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 activities 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 (e.g., sandbags, barriers) 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,

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



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. Pursuant to 10 V.S.A. Chapter 220 and the Vermont Rules for Environmental Court Proceedings, 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. An aggrieved person shall not appeal this permit unless the person submitted to the Secretary a written comment during the applicable public comment period or an oral comment at the public meeting conducted by the Secretary. Absent a determination of the Environmental judge to the contrary, an aggrieved person may only appeal issues related to the person's comments to the Secretary as prescribed by 10 V.S.A. § 8504(d)(2). 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

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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: Caspian Lake in Greensboro 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 December 2, 2021, the Department received an application from Linda B. Nicely (permittee) and Andrew A. Nicely (co-permittee), under the provisions of 29 V.S.A. Chapter 11. It was reviewed in accordance with the Department of Environmental Conservation's Permit Application Review Guidance, adopted March 14, 2019.
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: This project has two components; the reconstruction of an existing boathouse, and the repair and partial reconstruction of an existing pier. Both structures are deteriorating into the lake as a result of ice push and age.
The existing boathouse, estimated to have been built in the 1920s, consists of a single-story wooden building on a failing concrete foundation. The upper wooden building is approximately 12 feet tall x 20 feet wide x 27 feet long, and it sits on 2 concrete foundation arms measuring 6-10 feet wide and 31 feet long. The upper wooden building extends 22 feet beyond mean water level and the concrete foundation arms extend 26 feet beyond mean water level. Working from shore, heavy equipment will remove the existing boathouse and concrete foundation; approximately 3,400 cubic feet of rock ballast, concrete, and timber will be removed and disposed of offsite. In the same footprint as the existing boathouse, a new timber-framed boathouse will be constructed on a timber platform supported by galvanized steel piles. The reconstructed building will measure 12 feet tall x 20 feet wide x 27 feet long. In place of the previously existing concrete foundation, 16 (sixteen) 8-inch galvanized steel piles will support the timber platform. Once completed, the reconstructed boathouse will extend 26 feet beyond mean water level.
The existing pier, constructed prior to Lake Encroachment regulations, is 60 feet long and extends 55 feet beyond mean water level. The first 49 linear feet of pier consists of poured concrete, and the remaining 11 feet of pier consists of a failed wooden crib filled with rock ballast. The Y-shaped pier is 7 feet wide at the shoreline and expands to 41 feet wide at the end furthest beyond mean water level. The 49-foot-long concrete section of the existing pier will be repaired with a 6-inch cap of rebar-reinforced fluid concrete. The failed wooden crib and rock ballast section at the furthest end of the pier will be removed from the lake. Approximately 2,800 cubic feet of rock ballast and timber cribbing will be removed from beyond mean water level. The wooden crib and rock ballast section will be replaced with a timber platform supported by 12 (twelve) 8-inch galvanized steel piles, similar to the reconstructed boathouse. The timber platform will be in the same footprint as the existing wooden crib and rock ballast section, and measure approximately 11 feet long, 36 feet wide at the end abutting the concrete section of the pier, and 41 feet wide at the end furthest beyond mean water level. Once completed, the repaired pier will measure 60 feet long.

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To the extent feasible, the project will be completed with all heavy equipment operating from shore. If portions of the project cannot be completed safely from shore, the applicants plan to access the area from a barge moored at the end of the existing concrete pier. A cofferdam will be installed and maintained around the pier during the use of fluid concrete.

6. **Project Purpose:** The purpose of the project is to prevent a deteriorating boathouse and pier from falling into the lake.
7. **Effect of Encroachment – Whether Excessive for Stated Purpose:** The project is a 1-for-1 replacement of a boathouse and pier within their existing footprints, in a manner that will result in a reduction of fill beyond mean water level. Upon completion of the project, there is no proposed installation or use of bubblers, aerators, or de-icers to prevent the accumulation of ice around the encroachment during winter months. The project is not excessive for the stated purpose.
8. **Effect of Encroachment – Less Intrusive Feasible Alternatives:** The applicants considered replacing the existing concrete boathouse foundation with timber cribbing filled with rock. The applicants also considered replacing the failed timber cribbing section of the existing pier with new poured concrete or precast concrete blocks. Each of these alternatives would involve the addition of new fill beyond mean water level and substantial lakebed disturbance. To achieve the project purpose, this project is considered a less intrusive feasible alternative.
9. **Effect of Encroachment – Measures to Reduce Impacts on Public Resources:** Heavy machinery will work from shore only. If portions of the project cannot be completed safely from shore, the applicants plan to access the area from a barge moored at the end of the existing concrete pier. To avoid impacts to spring fish spawning, the project will not be initiated prior to July 1 within the calendar year. To contain impacts to water quality, a geotextile turbidity curtain will be installed and maintained around the entire project area to contain any increased turbidity. A cofferdam will be installed and maintained around the pier during the use of fluid concrete for repairs. Upon completion of the project, there is no proposed installation or use of bubblers, aerators, or de-icers to prevent the accumulation of ice around the encroachment during winter months.
10. **Placement of Fill:** The project is a 1-for-1 replacement of a boathouse and pier within their existing footprints, in a manner that will result in a reduction of fill beyond mean water level. The project will result in the total removal of 6,200 cubic feet of concrete, rock ballast, and timber cribbing from beyond mean water level. Approximately 28 galvanized steel pilings, measuring 8 inches in diameter, will be installed in the lake bed beyond mean water level to support the replacement boathouse and pier.
11. **Effects on Water Quality - 29 V.S.A. § 405(b):** A turbidity curtain will be installed in the water around the project site to contain turbidity. A cofferdam will be installed and maintained around the pier during the use of fluid concrete for repairs. Heavy equipment will work from shore, and if portions of the project cannot be safely completed from shore, the applicants plan to access the area from a barge. The project will result in the construction of a vertical wall beyond mean water level. Vertical walls reflect incoming wave energy back into the waterbody, which increases the probability of erosion and sediment scour at adjacent shoreline locations and elsewhere within the waterbody. However, the project is a 1-for-1 replacement of an existing vertical wall where impacts on water quality are not likely to exceed that which currently exists. Impacts to water quality will be temporary and limited to the immediate project area during construction. It is not anticipated that this project will have an adverse effect on water quality.

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12. Effects on Fish and Wildlife Habitat - 29 V.S.A. § 405(b): To avoid impacts to spring fish spawning, the project will not be initiated prior to July 1 within the calendar year. The project will result in the construction of a vertical wall beyond mean water level. Vertical walls reduce connectivity between aquatic and terrestrial ecosystems and therefore have a negative impact on fish and wildlife habitat. However, the project is a 1-for-1 replacement of an existing vertical wall where impacts on fish and wildlife habitat are not likely to exceed that which currently exists. It is not anticipated that this project will have an adverse effect on fish and wildlife habitat.
13. Effects on Aquatic and Shoreline Vegetation - 29 V.S.A. § 405(b): No removal of aquatic or shoreline vegetation is proposed to complete the project. It is not anticipated that this project will have an adverse effect on aquatic and shoreline vegetation.
14. Effects on Navigation and Other Recreational and Public Uses, Including Fishing and Swimming - 29 V.S.A. § 405(b): Portions of the existing boathouse and pier have already deteriorated into the lake, posing a hazard to navigation. The proposed reconstruction and repairs will remove these obstacles from beyond mean water level. Impacts to navigation and other recreational and public uses are anticipated to be temporary and limited to the project area during construction of the project. The project is a 1-for-1 replacement of a boathouse and pier within their existing footprints, in a manner that will result in a reduction of fill beyond mean water level. During the winter months, there is no proposed installation or use of bubblers, aerators, or de-icers to prevent the accumulation of ice around the reconstructed and repaired encroachments as that would result in negative impacts to public use of the ice. Upon completion of the construction of the project, it is anticipated that this project will have a positive effect on navigation and other recreational public uses.
15. Consistency with the Natural Surroundings - 29 V.S.A. § 405(b): The surrounding shoreline includes a concrete retaining wall, sandy beach, and a berm secured by native shrubs, trees, and rocks. The project is considered consistent with the existing 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 fill required to complete the project is the minimum necessary to achieve the purpose of the project. The project is not anticipated to result in adverse cumulative impacts.
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, ice fishing, navigation, and boating-related recreation. The impacts of the project on public trust uses include temporary impacts on navigating and recreational uses such as fishing and swimming, which will be limited to the immediate project work area during construction. The boathouse reconstruction and pier repair project provides public benefits in the form of removal of unnecessary fill from public waters

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and long-term stabilization of existing structures to prevent collapse into public waters. 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. 596-91, 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 permittee and co-permittee 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). The permittee shall establish the permitted encroachment within 5 years of the effective date of this permit, or this permit shall expire.

Should the permitted encroachment be established prior to the expiration stated above; this permit shall expire 30 years from the effective date of this permit. At least 90 days prior to the expiration of this permit, a permit application shall be submitted to the Department to continue to encroach. The Department shall review the project area and determine if any site restoration or removal of the encroachment will be required. A renewal decision shall be based on the relevant statutory criteria and Department rules, procedures, and policies prevailing at that time.

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.

Peter Walke, Commissioner
Department of Environmental Conservation

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