



PUBLIC NOTICE

US Army Corps
of Engineers

New York District, CENAN-OP-R
Upstate Regulatory Field Office
1 Buffington Street, Bldg. 10, 3rd Floor
Watervliet, New York 12189-4000

In replying refer to:

Public Notice Number: NAN-2010-00862-UBR

Issue Date: August 5, 2010

Expiration Date: September 4, 2010

To Whom It May Concern:

This public notice announces a proposal by the New York District, Corps of Engineers to re-issue a Regional General Permit (RGP), with modifications, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). This Regional General Permit currently authorizes the construction of rock-filled timber crib piers in waterways located in eight upstate New York counties, including Clinton, Essex, Franklin, Fulton, Hamilton, Saratoga, Warren, and Washington. Collectively, these counties make up New York State Department of Environmental Conservation's Region 5. At this time, we are proposing to modify this Regional General Permit to include the construction of concrete-filled caisson (concrete caisson) supported piers.

The Corps of Engineers is authorized to issue general permits when such issuance is found not to be contrary to the general public interest. Title 33 of the Code of Federal Regulations (CFR), Part 323.2(h), provides definitions of general permits and authority to issue them on a regional basis for categories of activities when: 1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or 2) the general permit would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State, or local agency, provided that it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

Attached is a copy of the regional general permit proposed to be re-issued, which incorporates the aforementioned modification. The current RGP can be found on our website at <http://www.nan.usace.army.mil/business/buslinks/regulat/index.php>. You will note that, due to the proposed modification of the permit, several additional special conditions have been added. If the general permit is re-issued with the modification, individual applications falling in the category described above will be reviewed on a case-by-case basis, and those meeting the conditions described in the permit will be authorized without further recourse to the provisions of Title 33 CFR Part 325, which describes the processing of Department of the Army, Regional General Permits. The District Engineer, however, may exercise discretionary authority and require an applicant to apply for a standard individual permit in the usual format. The general permit may be revoked if it is determined at any time that the cumulative effects of the activities could have significant adverse impacts, or are otherwise contrary to the public interest.

The New York District has evaluated the performance of this general permit to date and has made a provisional determination that the proposed activities comply with the requirements for reissuance of the rock-filled timber crib pier general permit. There have been no substantial individual or cumulative adverse environmental impacts associated with the authorization of Permit No. 11GP2 or its predecessors Nos. 11GP1, GP No. 11, GP No. 9, and GP No. 6, in the time since GP No. 6 was originally issued in 1980.

If the RGP conditions are met, the specified activity can take place without the need for an individual or general permit (33 CFR 325.5 (c) (2)). Due to the similarity of rock-filled timber crib supported piers and concrete-filled caisson supported piers, we propose to include the construction of concrete caisson supported piers in the re-issued RGP. The RGP, if issued as proposed, would have duration of five years, at which

time it would be extended, modified, or revoked following an evaluation of its performance.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

ALL COMMENTS REGARDING THE PERMIT APPLICATION MUST BE PREPARED IN WRITING AND MAILED TO THE ATTENTION OF KEVIN BRUCE AT THE ABOVE ADDRESS, OR SENT VIA ELECTRONIC MAIL TO kevin.j.bruce@usace.army.mil, TO REACH THIS OFFICE BY THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to the activity. Comments provided will become a part of the public record for this action.

Any person may request, in writing, before this public notice expires, that a public hearing be held to collect information necessary to consider this application. Requests for public hearings shall state, with particularity, the reasons why a public hearing should be held. It should be noted that information submitted by mail is considered just as carefully in the permit decision process and bears the same weight as that furnished at a public hearing.

Our preliminary determination is that the activity for which authorization is sought herein is not likely to affect any Federally endangered or threatened species or their critical habitat because this permit shall not apply to activities which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior to be critical habitat under the Endangered Species Act of 1973, as amended. When necessary, pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), consultation with the U.S. Fish and Wildlife Service would occur to determine an individual project's effects on threatened and endangered species and their critical habitat, and to species of concern to their office.

Our preliminary determination is that the activities for which authorization is sought herein would have no effect on resources that are eligible for, or included in, the National Register of Historic Places because this permit would not apply to activities that have an adverse effect on cultural resources that are listed in or eligible for inclusion in the National Register of Historic Places. When necessary, in accordance with Section 106 of the National Historic Preservation Act of 1966 and its implementing regulations, consultation with the State Historic Preservation Officer would occur to determine an individual project's effects on these resources.

Our preliminary determination is that proposed activities would not have an adverse impact on waterways that are a component of the National Wild and Scenic Rivers System or areas listed in the Nationwide Rivers Inventory, Final List of Rivers of New York, published by the U.S. Department of the Interior. Activities located in these waterways would be evaluated on a case-by-case basis, which would include coordination with the National Park Service.

Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 (b) of the Clean Water Act and the applicant will obtain a water quality certificate or waiver from the appropriate state agency in accordance with Section 401 of the Clean Water Act prior to a permit decision.

In order for us to better serve you, please complete our Customer Service Survey located at:

<http://www.nan.usace.army.mil/business/buslinks/regulat/survey.htm>

It is requested that you communicate the foregoing information concerning the activity to any persons known by you to be interested and who did not receive a copy of this notice. If you have any questions concerning this application, you may contact Kevin Bruce of this office at (518) 266-6358.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>



Richard L. Tomer
Chief, Regulatory Branch

Enclosures

1. Proposed Regional General Permit
2. Location map and drawings (sheets 1-3)

New York State
Department of Environmental Conservation

Geographic
Regions

New York District - Regions 1, 2, 3, 4, 5

Buffalo District - Regions 6, 7, 8, 9

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Sheet 1 of 3

Map and Drawing

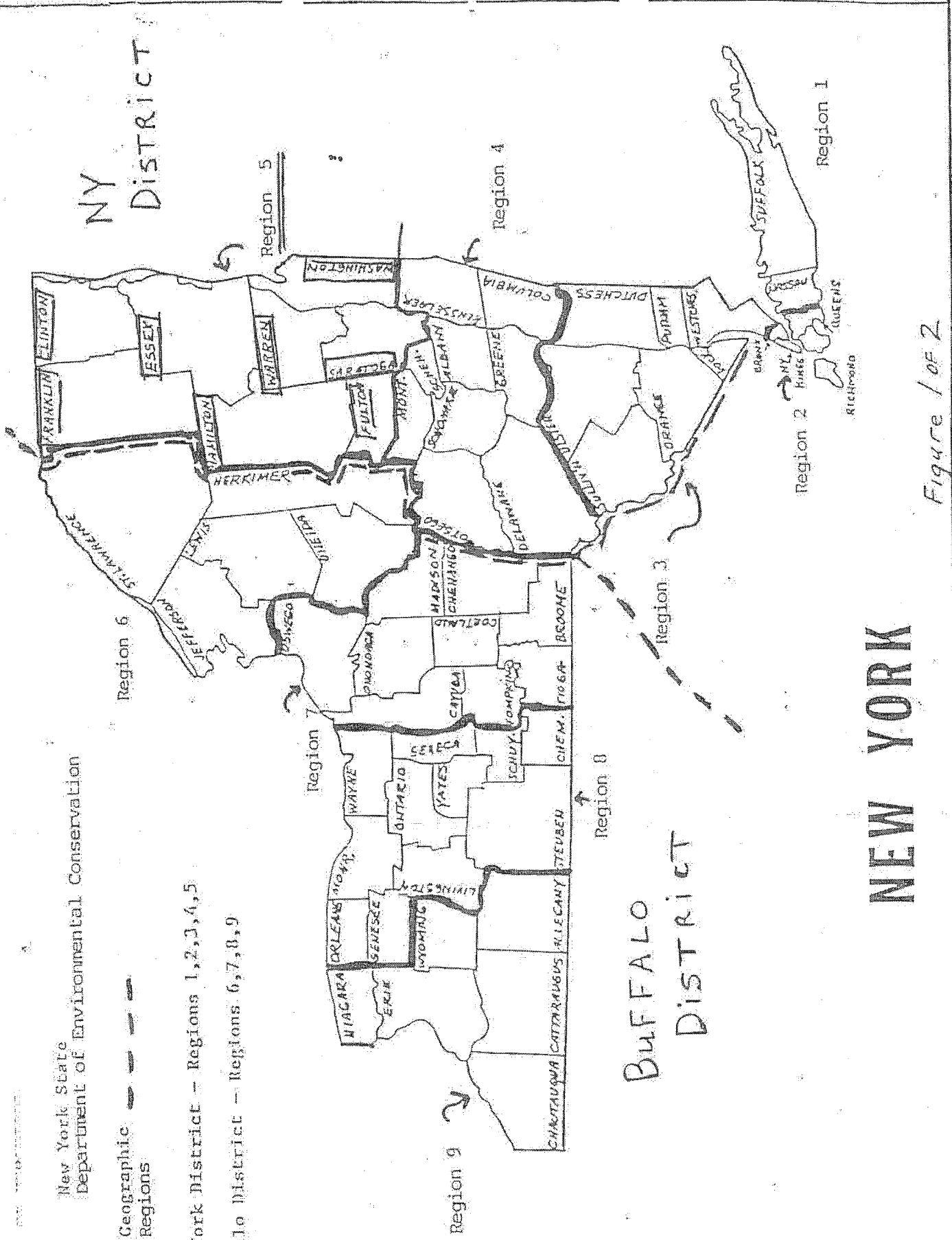


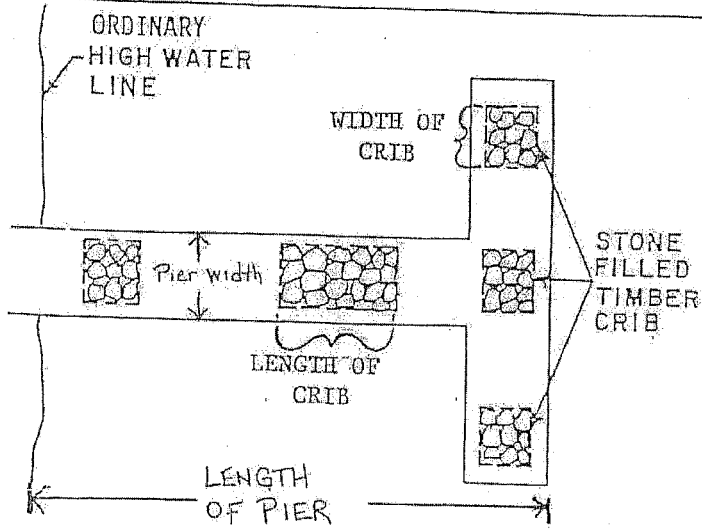
Figure 1 of 2

NEW YORK

BUFFALO DISTRICT

NY DISTRICT

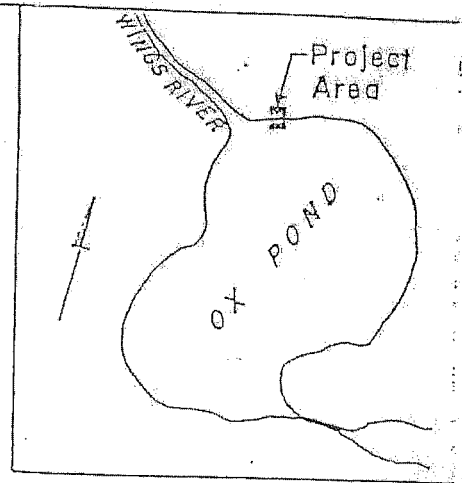
GENERAL PERMIT - TIMBER CRIB AND CONCRETE FILLED
CAISSON PIER - SAMPLE DRAWING.



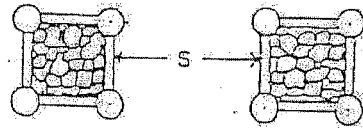
PLAN VIEW

Maximum length of timber crib: 12 feet

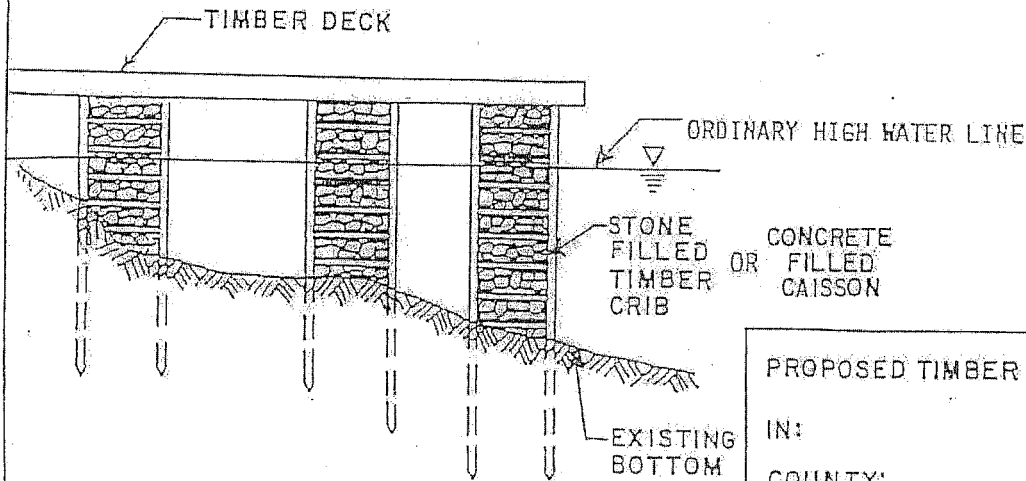
Maximum width of timber crib: 8 feet



VICINITY MAP



SPACING OF CRIBS (S):



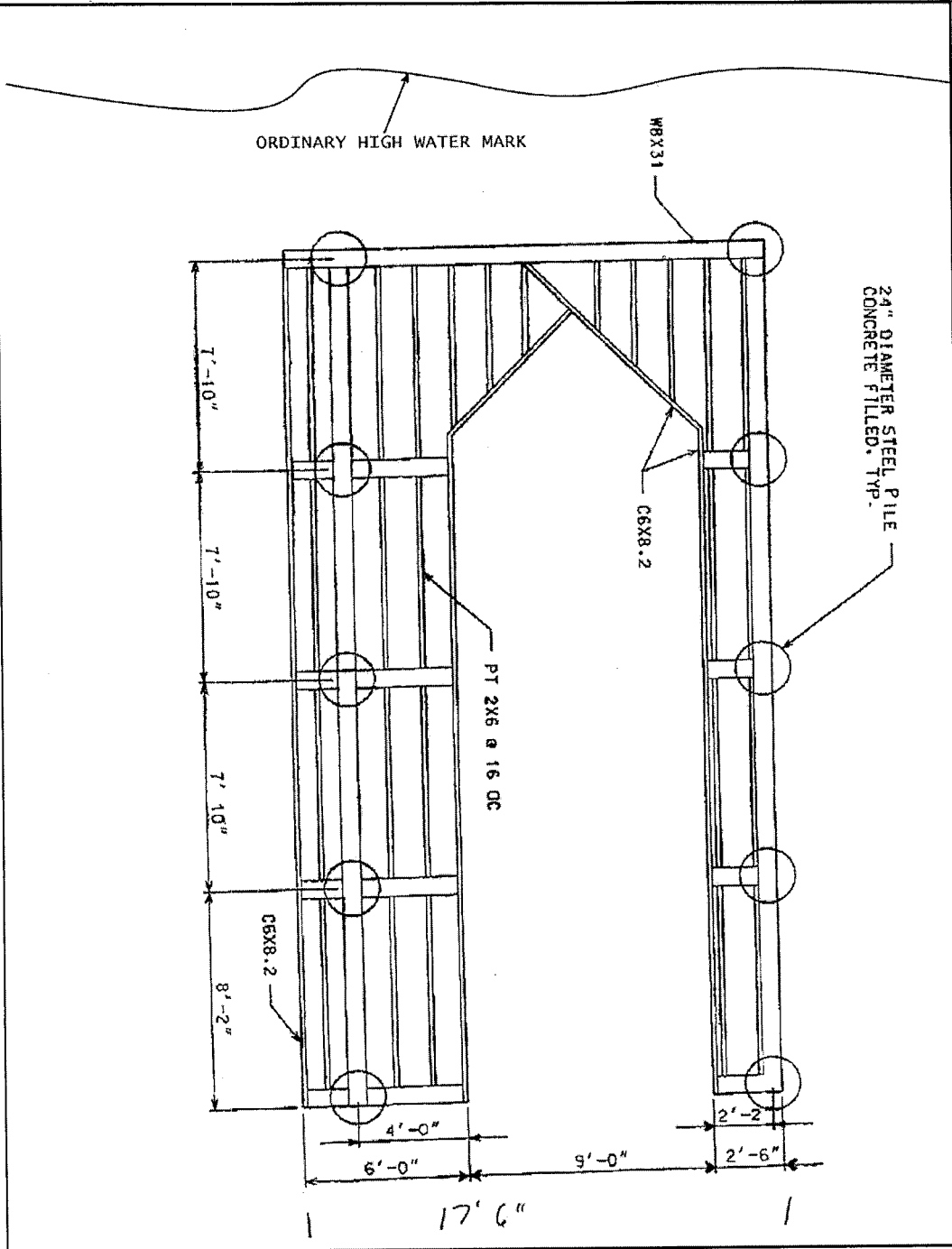
SECTION VIEW

PURPOSE OF WORK:
QUANTITY & QUALITY OF FILL MATERIAL:

PROPOSED TIMBER CRIB PIER

IN:
COUNTY:
STATE:
APPLICATION BY:
DATE:

General Permit - Timber Crib and Concrete-Filled Caisson Pier
 Concrete-Filled Caisson Sample Drawing



Proposed Concrete-Filled Caisson Pier

In:
 County:
 State:
 Application By:
 Date:

THIS IS NOT AN AUTHORIZATION TO DO WORK.
PROJECT-SPECIFIC REVIEW BY THIS OFFICE IS REQUIRED

DEPARTMENT OF THE ARMY PERMIT

Permittee: NAN-2010-00862

Permit No.: 11GP3

Issuing Office: New York District Corps of Engineers

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Construction of rock-filled timber crib piers and concrete-filled caisson supported piers.

Project Location: IN: Waterways located in the following counties of New York State: Clinton, Essex, Franklin, Fulton, Hamilton, Saratoga, Warren, and Washington.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on _____.
If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

PERMITTEE: 11GP3
PERMIT NO.: NAN-2010-00862

Special Conditions:

SEE ATTACHED SHEETS FOR SPECIAL CONDITIONS "A" THROUGH "V"

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(x) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403).

(x) Section 404 of the Clean Water Act (33 U.S. Code 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the

PERMITTEE: 11GP3
PERMIT NO.: NAN-2010-00862

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)

(DATE)

John R. Boulé II
Colonel, U.S. Army
District Engineer

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below. A copy of the permit signed by the transferee should be sent to this office.

(TRANSFEREE)

(DATE)

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT CORPS OF ENGINEERS
REGIONAL GENERAL PERMIT (NYD-11GP3)
AUTHORIZING TIMBER CRIB AND CONCRETE
CAISSON SUPPORTED PIER CONSTRUCTION

THIS IS NOT AN AUTHORIZATION TO DO WORK. PROJECT SPECIFIC REVIEW BY THIS OFFICE IS REQUIRED.

This general permit authorizes the construction of rock-filled timber crib piers and concrete-filled caisson supported piers in waterways located within the following counties in New York State: Clinton, Essex, Franklin, Fulton, Hamilton, Saratoga, Warren, and Washington. It is issued by approval of the Secretary of the Army, acting through the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

Activities authorized by this general permit do not require further authorization under the provisions contained in Title 33 of the Code of Federal Regulations, Parts 320 through 332, which is the Department of Defense regulation entitled "Corps of Engineers, Department of the Army: Regulatory Programs of the Corps of Engineers; Final Rule", published in the Federal Register on November 13, 1986, unless the District Engineer determines, on a case by case basis, that additional processing is in the public interest.

DEFINITIONS:

The following definitions will apply:

Navigable Waters of the United States: Those waters of the United States that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for uses to transport interstate or foreign commerce (33 CFR, Part 329.4). The construction of any structure in or over any navigable water of the United States, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is regulated by the U.S. Army Corps of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Special Aquatic Sites: Include wetlands, vegetated shallows, riffle and pool complexes, mudflats, coral reefs, and Sanctuaries and Refuges as they are defined at 40 CFR 230.40 through 230.45.

Waters of the United States: All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters including interstate wetlands; all other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs,

prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce... (see 33 CFR, Part 328.3 for complete definition). The discharge of dredged or fill material into waters of the United States is regulated by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

- A. This Regional General Permit only authorizes the construction of timber crib piers or concrete caisson supported piers in lakes and ponds, including natural or man-made lakes and ponds that are a component of a river system. This general permit does not authorize the construction of timber crib piers or concrete caisson supported piers in streams, free flowing river segments, and canals.
- B. Piers constructed under this permit may extend a distance equal to 20% of the width of the waterway, up to a maximum of 60 feet offshore of the ordinary high water line (OHWL) of the waterway. The waterway width is measured from the OHWL perpendicular to the centerline of the waterway.
- C. The maximum top surface area of a pier, including all fingers, platforms, etc., shall not exceed 1,200 square feet. The configuration of the piers may vary in plan (i.e. straight, T, U, L, or F shaped). The pier shall not exceed 8 feet in width.
- D. The size of an individual crib shall not exceed 12 feet in length and 8 feet in width. The total length of all the cribs must not exceed 50% of the total length of each pier. In Lake George and Lake Champlain, the minimum distance between cribs shall be no less than 8 feet. For all other waterways, the minimum distance between cribs shall be no less than 4 feet.
- E. The first crib waterward of the OHWL must be constructed a minimum distance of 6 feet waterward of the OHWL to allow for free circulation of water. A variance in this restriction may be granted, on a case by case basis, where it can be demonstrated that the integrity of the structure would be compromised if a crib is not placed within this area and this office determines that any resultant impacts would be no more than minimal.
- F. Timber crib piers may cross wetlands and vegetated shallows provided that the cribs are not placed within them. The pier segment crossing the wetland or vegetated shallow may be pile supported when necessary, and must not exceed 4 feet in width. The underside of the pier must also be a minimum of 4 feet above the ground surface. Discretionary authority will be exercised if it is determined that a proposal would adversely impact the functions and values of either of these aquatic resources. This permit does not authorize the construction of timber crib piers in the other listed special aquatic sites (see definitions).

- G. Individual caissons may not exceed 24 inches in diameter and shall be spaced a minimum of 6 feet apart. No more than 18 individual concrete caissons shall be constructed.
- H. This permit authorizes the placement of boathouses on the timber crib piers and concrete caissons provided their surface area does not exceed a total of 1,600 square feet. Variances may be granted on a case by case basis provided the perspective permittee demonstrates the need for the larger boathouse and this office determines, in consultation with the appropriate Federal and State resource agencies, that the impacts associated with the boathouse, would be minimal. The placement of boathouses or other ancillary structures is not authorized for piers located in special aquatic sites and in Lake Champlain. This permit does not authorize the placement of other enclosed buildings (including residences), fuel storage tanks, fuel dispensing, or sanitary pump out facilities waterward of the OHWL.
- I. Crib supports must be timber filled with stone. The sides of the timber crib may not be sealed, and must have openings amounting to at least 40% of the peripheral areas of the crib. All stone used for fill must be clean and durable. The stone must be large enough that it will not pass through the crib openings. No stone for use in construction may come from the bed of the waterway. The stone fill and timber cribs shall be designed to be protected against failure by undermining and by washing out of the underlying materials through openings in the stone fill.
- J. Untreated timber may be used for the construction of timber crib piers. Any pressure treated timber used for in-water activities must be treated with a preservative and treatment process approved (stamped or otherwise marked as approved) by the American Wood Preservative Association. Timber treated with creosote or Pentachlorophenol must be aged in the open air for at least three months prior to in-water use. Chromated Copper Arsenate (CCA) pressure treated wood must be clean and free of CCA surface deposits. Timber with surface deposits must be washed for at least 5 minutes under running water prior to use. Any wood debris, such as sawdust or wash water, must not enter any waterbody, including wetlands.
- K. Minor dredging or excavation, not to exceed 20 cubic yards, will be authorized by this permit provided it is the minimum necessary for crib placement. All material must be deposited in uplands and suitably stabilized so that it cannot re-enter any waters of the United States, including wetlands.
- L. Heavy equipment, including bulldozers, backhoes, pay loaders, etc., shall not be driven in the water.
- M. The timber crib piers and concrete caissons must be designed to be stable against the forces exerted by flowing water, ice and wave action. Permittees should be aware that timber crib piers are subject to damage by wave wash from passing vessels and should take proper steps to

secure their piers and the boats moored to them. The United States shall not be liable for any damages associated with these structures.

- N. Timber crib and concrete caisson piers authorized by this permit shall be built in a manner such that any adverse impact on fish and wildlife resources, natural environmental values, and water quality are minimal. If any portion of the pier is abandoned or falls into disuse or neglect, they must be completely removed to the natural bottom by the owners of the upland property.
- O. Piers must maintain a clearance of at least 10 feet from the adjacent properties on each side. This clearance is measured from the point where the common boundary terminates at the OHWL. A variance may be granted, on a case by case basis, if it is demonstrated in writing that the affected adjacent property owner has no objection to the placement of the pier closer to their property.
- P. If, upon inspection, an activity authorized by this general permit is not being constructed, or has not been constructed, or is not being maintained, at a particular location in accordance with these conditions, or to the satisfaction of the District Engineer, the authorization of the activity at such location may be revoked, and an individual application for the work at such location may be required.
- Q. Within navigable waters of the United States, the permittee shall understand and agree that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions cause thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- R. Each individual project proposed under this general permit shall receive a Water Quality Certification (or modification or waiver thereof) approved by the New York State Department of Environmental Conservation or Lake George Park Commission, as appropriate, prior to the initiation of the activities authorized by this permit.
- S. This permit shall not apply to activities, which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior to be critical habitat under the Endangered Species Act of 1973, as amended. Permittees shall notify the New York District if any listed species or

designated critical habitat might be affected or is in the vicinity of the project, and shall not commence work until authorized by the U.S. Army Corps of Engineers. When necessary, consultation with the U.S. Fish and Wildlife Service will occur to determine an individual project's effects on threatened and endangered species and their critical habitat, and to species concern to their office, to ensure the requirements to this special condition are satisfied. This consultation may result in the inclusion of additional special conditions to project specific authorizations. Additional information on threatened and endangered species, and their critical habitat, may be obtained from:

U.S. Fish and Wildlife Service
3817 Luker Road
Cortland, New York 13045
(607) 753 – 9334

- T. This permit shall not apply to activities that have an adverse effect on cultural resources that are listed in or eligible for inclusion in the National Register of Historic Places. When necessary, consultation with the State Historic Preservation Officer will occur to determine an individual project's effects on these resources.

- U. This permit shall not apply to activities that have an adverse effect on components of the National Wild and Scenic Rivers System, or areas listed in the Nationwide Rivers Inventory, Final List of Rivers of New York as published by the U.S. Department of the interior. Activities located in these areas will be evaluated on a case-by-case basis, which will include coordination with the National Park Service.

- V. Authorization under this permit will not be valid for an individual project, and work may not commence, until written concurrence has been received in response to the following information submitted to the New York District Corps of Engineers sufficient to determine the project's applicability under this General Permit:
 - 1. A completed application form (Eng. Form 4345 and NAN Form 201, or NYSDEC/USACE Joint Application Form)
 - 2. Project Location Map
 - 3. Plan and section view project drawings, which generally follow the format of the same drawings attached to this general permit. The plans should include the following
 - a. The proposed pier shown in reference to the ordinary high and ordinary low water lines of the waterway.
 - b. The dimensions of each pier section, the timber cribs or caissons, and the spacing between the cribs or caissons.

CENAN-OP-RU

Subject: New York District General Permit 11GP3 For Rock-filled Timber Crib Piers and Concrete-filled Caisson Supported Piers

- c. The length of the shoreline owned on the property and the distance between the pier and adjacent properties;
4. Quantity and quality of the stone fill material; quantity of concrete; and
5. Recent color photographs of the project site which outline where the proposed activities would occur.