

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
141 NW Barstow St., Room 180
Waukesha, WI, 53188

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
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05/06/2022

Garth Chambers
Paloma Geneva National LLC
1221 Geneva National Av S
Lake Geneva, WI 53147
[sent electronically]

IP-SE-2021-65-02924

RE: Application to place new pier structures on Lake Como in the Town of GENEVA, Walworth County

Dear Mr. Chambers:

The Department of Natural Resources has completed its review of your application for a permit to install new pier structures on Lake Como primarily located in the NE 1/4, NW 1/4, Section 32, Township 02, Range 17E, Town of GENEVA, Walworth County. You will be pleased to know your application is approved.

I am attaching a copy of your permit, which lists the many important conditions that must be followed to protect water quality and habitat. **A copy of the permit must be posted for reference at the project site.** Please read your permit conditions carefully so that you are fully aware of what is expected of you.

Before you start your project, you must first obtain any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers. You are responsible for contacting these local and federal authorities to determine if they require permits or approvals for your project. These local and federal authorities are responsible for determining if your project complies with their requirements.

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please call me at (262) 354-4569 or you can reach me by email at luke.roffler@wisconsin.gov.

Sincerely,

Luke Roffler
Compliance Team Coordinator

Email CC:
U.S. Army Corps of Engineers
County Zoning Administrator
WDNR Conservation Warden
WDNR Water Resources
WDNR Fisheries Management
WDNR Wildlife Management
Axley Brynerson

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

**PIER PERMIT
IP-SE-2021-65-02924**

Application of Garth Chambers (Paloma Geneva National) is hereby granted under Sections 30.12 and 30.208, Wisconsin Statutes, a permit to place new pier structures on Lake Como primarily located in the NE 1/4, NW 1/4, Section 32, Township 02, Range 17E, Town of GENEVA, Walworth County, subject to the following conditions:

PERMIT

- 1. No piers may be installed until a deed restriction has been finalized with the Walworth County Register of Deeds which expressly prohibits future development of piers, wharves, and moorings along the frontage for parcels JG 3200001 and JG 3200002. Final language for the deed restriction must be provided to and approved by the Department prior to construction of the proposed piers.**
2. You must notify Luke Roffler at phone (262) 354-4569 or email luke.roffler@wisconsin.gov before starting construction and again not more than 5 days after the project is complete.
3. You must complete the project as described **on or before 05/06/2027**. If you will not complete the project by this date, you must submit a written request for an extension prior to expiration of the initial time limit specified in the permit. Your request must identify the requested extension date. The Department shall extend the time limit for an individual permit or contract for no longer than an additional 5 years if you request the extension before the initial time limit expires. You may not begin or continue construction after the original permit expiration date unless the Department extends the permit in writing or grants a new permit.
4. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit for good cause, including if the project is not completed according to the terms of the permit or if the Department determines the activity is detrimental to the public interest.
- 7. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway,** for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
- 9. You must submit a series of photographs to the Department, within one week of completing work on the site.** The photographs must be taken from different vantage points and depict all work authorized by this permit.
10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes, or this permit.
11. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures (such as silt fence and straw bales) must meet or exceed the technical standards of ch. NR 151, Wis. Adm. Code. The technical standards are found at: http://dnr.wi.gov/topic/stormwater/standards/const_standards.html.
12. All equipment used for the project including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.

The following steps must be taken every time you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.

1. **Inspect and remove** aquatic plants, animals, and mud from your equipment.
2. **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps.
3. **Dispose** of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
4. **Wash your equipment** with hot (>140° F) and/or high-pressure water,
- OR -
Allow your equipment to **dry thoroughly for 5 days.**

SPECIFIC PIER CONDITIONS:

13. Electrical, fueling, and waste handling facilities must comply with applicable safety and environmental protection regulations. The proposed project does not include any fueling infrastructure. **The addition of any such facilities in the future will require additional state review and approval.**
14. No mooring buoys beyond those expressly authorized by this permit are allowed without an amendment of this permit.
15. The pier must allow the free movement of water (using a post or pile driven design) and must not entrap vegetation.
16. The pier must not enclose any portion of the navigable waterway.
17. This permit authorizes future maintenance to the piers; however, no change can be made to the type of materials, number of slips, or pier configuration without written approval from the Department or amendment of this permit.
18. This pier must not interfere with the rights of other riparians.
19. You must not cover the piers or slips or allow any buildings or other structures to be placed or constructed on the piers.
20. You must provide adequate upland access, including parking, for the general public consistent with the number of slips offered for rental to the general public.
21. Piers and pilings are limited are limited to colors which are not visually intrusive as viewed against the shoreline.
22. Lighting for safety or to facilitate docking may be included and should be down focused, non-intermittent white or yellow light.
23. Flotation devices must be securely attached to the pier and maintained in a serviceable condition.
24. Roofs, walls, and advertising signs may not be included on the piers. A sign of reasonable dimensions to identify the property is permissible on the upland area only.
25. The project must comply with NR 102, Wis. Adm. Code to meet Wisconsin water quality standards and the protection of water quality.
26. The project must comply with NR 151, Wis. Adm. Code's performance standards. Best Management practices to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state must be implemented.

FINDINGS OF FACT

1. Garth Chambers (Paloma Geneva National), 1221 Geneva National Av S, Lake Geneva, WI 53147, filed an application with this Department on 07/23/2021, under sections Sections 30.12 and 30.208, Wisconsin Statutes, to place new pier structures

on Lake Como primarily located in the NE 1/4, NW 1/4, Section 32, Township 02, Range 17E, Town of GENEVA, Walworth County.

2. The applicant proposes constructing new pier structures along the shoreline of Lake Como in Walworth County. The revised proposal includes ten new pier structures, each 100' in length with 5' wide mainstems and 3' wide lateral stems. The structures will be built with semi-transparent decking to allow sunlight transmission beneath the structures. Each pier structure will include ten slips, for a total of 100 new slips. Each slip will be 11' wide x 24' long, with the first slips located in approximately 35" of water. The pier structures will be spaced approximately 50' apart and will be designed to be ADA compliant. The applicant will also finalize a deed restriction for approximately 4,700 linear feet of wetland frontage to the west of the project site, which will prohibit future development of piers, wharves, or moorings to protect sensitive wetland and aquatic habitat.

3. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.

4. Lake Como is a navigable water (and no bulkhead exists at the project site).

5. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.

6. The applicant is a riparian landowner with approximately 6,700 linear feet of shoreline frontage along Lake Como in Walworth County.

7. The project site is located within a designated sensitive area (Sensitive Area 3) under NR 107.05.3(i)(1) and was originally identified and mapped by Department staff on June 1, 1989.

8. The proposed project will not impact wetlands if constructed in accordance with this permit.

9. The Department of Natural Resources has determined that the agency's review of the proposed project constitutes an integrated analysis action under s. NR 150.20(2), Wis. Adm. Code. The Department has considered the impacts on the human environment, alternatives to the proposed projects and has provided opportunities for public disclosure and comment. The Department has completed all procedural requirements of s. 1.11(2)(c), Wis. Stats., and NR 150, Wis. Adm. Code for this project.

10. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 30.12 and 30.208, Wisconsin Statutes and Chapters NR 102, 103, and 326 of the Wisconsin Administrative Code.

11. The notice of pending application and public hearing was published on the Department's website on March 4, 2022 and was published in Lake Geneva Regional News on March 16, 2022.

12. A public hearing was held on April 4, 2022 remotely via Zoom. During the hearing, 41 individuals provided verbal testimony. In addition, written public comments were received during the hearing and during the open public comment period for this application and those comments can be summarized as follows:

The proposed pier project would add 100 new slips and boats to a lake primarily populated by single-stem piers. The addition of so many boats will cause impacts to water quality, aesthetics, recreational safety and aquatic habitat. The project site is located in a designated sensitive area, which should be protected from development projects. The Town of Geneva's ordinances which apply to this area are restrictive and this pier proposal does not conform to them. The previous landowner transferred their right to build a pier as part of a land sale to a neighbor.

13. Feedback on the project proposal was obtained from Department resource managers following field visits and during multiple project discussions and is summarized below in point 16.

14. Riparian property owners have an established riparian right to place structures for navigational purposes, qualified by the structure's impact on the navigation, the public interest in navigable waters and the common law doctrine of reasonable use.

DNR has established reasonable use guidelines which are based on linear feet of frontage owned. Based on the amount of shoreline owned by the applicant, the standard presumption of reasonable use for this property would accommodate 135 total boat slips.

15. The structure will not materially obstruct navigation because the 100' long piers will be constructed in the slow-no-wake zone and end short of the traffic lane at 200' from the shore (established by Town of Geneva Ordinance No. 4).

16. The structure or deposit will not be detrimental to the public interest in aquatic habitat, water quality, public recreation or natural scenic beauty.

- a) The project as proposed is designed to reduce shading of aquatic plant communities, avoid high quality wetland and aquatic habitat, and limit the area of direct impact to a condensed portion of the applicant's frontage.
 - 1. The applicant proposes installation of ten new pier structures along the golf course frontage, which is largely devoid of trees and shrubs and is lined with riprap. Department resource managers assessed the site in the field and found that substrate in front of the golf course frontage is a mix of hardpan, gravel, cobble and marl. Aquatic plants are largely absent (other than invasive Eurasian watermilfoil) due to plant harvester activity.
 - 2. Department resource managers also conducted site visits to assess the wetland frontage owned by Paloma Geneva National and west of the project site, which features frontage composed of soft marl and silt. Eurasian watermilfoil is the dominant plant species close to shore, but native plants dominate away from shore, including large leaf pondweed, sago pondweed, and spatterdock. The nearshore and terrestrial habitat along this frontage is diverse, including emergent plants, trees, shrubs, several fallen trees, etc. Native wetland species are common across this frontage, likely providing breeding habitat for many wildlife species. This area west of the project site provides the only natural shoreline on the west end of the lake.
 - 3. The applicant has agreed to file for a deed restriction protecting the wetland frontage from future development of piers, wharves and moorings.
 - 4. Several other key revisions to the original project proposal will further limit the impact of the pier structures. These include reducing the number of slips from 120 to 100, constructing the pier structures with semi-transparent decking to reduce shading of aquatic plants, reducing pier mainstems from 6' to 5' to further limit shading, removing the shallowest slips from each structure to reduce turbidity from boating activity, and spacing pier structures 50' apart to limit the total area of impact.
 - 5. The high quality wetland and aquatic habitat to the west of the project site is protected from high speed boating activity by a slow no wake zone established by Town of Geneva Ordinance No. 4 (Lake Como Use Ordinance).
- b) The slips will be constructed in a condensed manner (ten slips per structure and 50' of spacing between structures) to limit the area of direct project impact.
 - 1. The pier structures will be placed along existing golf course frontage, which features a manipulated and armored shoreline.
 - 2. Condensing new slips onto ten structures and reducing the amount of spacing between the structures serves to limit the total area of impact, ecologically and aesthetically.
 - 3. Nearshore impacts from boats using the new piers (wake, turbidity, fueling, etc.) will be contained to a smaller area by condensing the project site. No fueling facilities or infrastructure are proposed as part of the project plan. Any addition of such facilities in the future will require additional state review and approval.
 - 4. Multi-slip pier structures are largely absent from Lake Como, but are eligible for approval under 30.12, Wisconsin Statutes, pending a review of reasonable use and a site-specific assessment of impacts to the public trust and navigation.
- c) The project meets the standard reasonable use presumption for number of slips and users of the slips will be held to boating regulations established in Chapter 30, Subchapter V, Wisconsin Statutes and Town of Geneva Ordinance No. 4 (Lake Como Use Ordinance).
 - 1. The number of slips permitted at a project site is based on the linear frontage of contiguous shoreline owned by the applicant and a site-specific assessment of project impacts.

2. The Department does not set a “carrying capacity” for waterways (e.g., number of slips per surface water acre, number of boats per surface water acre, etc.). Rather, the Department limits the number of slips based on reasonable use (frontage owned and site-specific impacts).
 3. The Department does not have jurisdiction to limit boat size, type, speed, no wake zones and hours, etc. These items are subject to the jurisdiction of local municipalities (i.e., Town of Geneva). A review of Town of Geneva Ordinance No. 4 (Lake Como Use Ordinance) indicates some restrictions are already in place (speed limits, slow no wake zones, etc.). These existing restrictions help to protect the resource, aesthetics of the lake, and recreational safety.
- d) Questions regarding Geneva National’s original development plan, assurances to not seek pier placement approval from the Town, and/or whether pier rights were later transferred to a neighbor as part of a land sale are not relevant to the Department’s review of this permit application, absent any legally-binding documentation (e.g., a deed restriction).
1. The applicant is a riparian landowner with sufficient frontage for the number of slips proposed.
 2. Provided a proposed pier project meets statutory standards and does not interfere with the rights of other riparians, local disputes regarding pier placement and pier rights are not considered under Section 30.12, Wisconsin Statutes and must be settled directly between the affected parties.

17. The structure will not materially reduce the flood flow capacity of a stream because the project site is not located in a regulated floodplain and will not restrict free movement of water underneath the pier.

CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.
2. The Department has determined the project meets the standards for approval under Section 30.12, Wisconsin Statutes.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30 day period for filing a petition for judicial review.

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and sections NR 2.03, 2.05, and 310.18, Wis. Admin. Code, and if the petitioner is not the applicant the petition must include the following information:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed permit or contract is allowed to proceed.
2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the project, as proposed, may result in a violation of Chapter 30, Wis. Stats.;

3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at the Waukesha Service Center, Wisconsin on 05/06/2022.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

For the Secretary

By: 

Luke Roffler

Compliance Team Coordinator