



**DEPARTMENT OF THE ARMY  
US ARMY CORPS OF ENGINEERS  
NEW ENGLAND DISTRICT  
696 VIRGINIA ROAD  
CONCORD MA 01742-2751**

February 4, 2014

Regulatory Division  
CENAE-R-PEA  
File Number: NAE-2005-350

Kara Buzanoski  
Department of Public Works  
188 Madaket Road  
Nantucket, Massachusetts 02554

Josh Posner, President  
Sconset Beach Preservation Fund  
P.O. Box 2279  
Nantucket Massachusetts 02584

Dear Ms. Buzanoski and Mr. Posner:

We understand work is being performed along Siasconset Beach at Baxter Road in Nantucket, Massachusetts. It appears that this project may involve activities that require a permit from the Corps of Engineers.

Section 10 of the Rivers and Harbors Act of 1899 requires a Department of the Army permit for all work in navigable waters of the United States. In New England, for purposes of Section 10, navigable waters of the United States are those subject to the ebb and flow of the tide and a few of the major waterways used to transport interstate or foreign commerce. Section 404 of the Clean Water Act requires a Department of the Army permit for discharges of dredged or fill material into all waters of the United States, including navigable waters, inland rivers, lakes, streams, and adjacent wetlands, as well as the excavation/grading within these waters/wetlands. On the coastline our jurisdiction extends landward to the high tide line (HTL) (i.e., the highest predictable tide) or to the landward limit of any wetlands, whichever is more extensive.

Some or all of the work undertaken at the area identified above appears to be within Corps of Engineers jurisdiction but we have no record that you obtained a Corps of Engineers permit. Please note that no additional work within our jurisdiction may be started or allowed to continue until you receive a permit signed by the District Engineer or his authorized representative. Any such future work without a permit could be considered a willful and knowing violation of Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act warranting legal action.

If we determine there has been a violation of Federal law, you may need to either restore the area to preconstruction conditions, or apply for and receive an After-The-Fact permit to retain or modify the work. On March 9, 1999, the Corps published final rules in the Federal Register, which established an administrative appeals process for certain regulatory decisions. Pursuant to Section 331.11(c) of those rules, a Tolling Agreement must be signed before we will accept any After-The-Fact permit application. Should you choose to apply for an After-The-Fact permit, you must sign and return a Tolling Agreement along with a completed application form, plans, and other supporting material. We recommend you contact us for information regarding a permit application.

You do not need to submit a formal application if your project meets all the terms and conditions of “Category 1” as defined in the attached federal permit known as the Massachusetts General Permit (GP) and appendices. However, you must ensure that your project complies with all of the terms and conditions of Category 1 of the GP and **you must also complete and return the Appendix C Category 1 Form to this office** before any work or filling is done in areas subject to Corps jurisdiction.

An application to our office is required if your project is in Category 2 or in the Individual Permit Category. See Page 3 of the GP for specific instructions on how to submit the necessary application. We also suggest you consult our web page, where you can find samples of the necessary plans at [www.nae.usace.army.mil/reg](http://www.nae.usace.army.mil/reg) under “Publications” and then “[Guide for Permit Applicants](#).” When preparing the plans, please ensure they are no larger than 11”x17.” All plans must be drawn to scale (not reduced) and all pertinent features and labeling must be legible and reproducible in black and white/grayscale.

Applications must include sufficient information for us to verify the extent of federal jurisdiction. This will include wetland delineation data sheets for work in wetlands. Wetlands must be identified and delineated in accordance with the Corps of Engineers Wetland Delineation Manual (<http://el.erdc.usace.army.mil/elpubs/pdf/wlman87.pdf>) and the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (<http://www.usace.army.mil/CECW/Documents/cecwo/reg/trel09-19.pdf>). Performing work or filling without first obtaining Corps authorization could result in substantial penalties.

Section 10 of the Rivers and Harbors Act of 1899 (RHA), 33 U.S.C. 403, prohibits the installation of any structure in or over navigable waters of the United States and the excavation from or depositing material into such waters unless the work has been properly authorized by a Department of the Army permit. Section 404 of the Clean Water Act, 33 U.S.C. 1344, prohibits the discharge of dredged or fill material into waters of the United States unless such discharge has been properly authorized by a Department of the Army permit. Violations of Section 10, a criminal statute, can result in imprisonment of up to one year, and/or fines of up to \$100,000 for individuals or \$200,000 for organizations by operation of the Alternative Fines Act, 18 U.S.C. § 3571. Violations of Section 404 can result in civil fines of up to \$37,500 per day for each violation. Injunctive relief, including restoration, is also available.

If you have any questions regarding this letter, please contact me at (978) 318-8703, (800) 343-4789, (800) 362-4367 within Massachusetts, or [kevin.r.kotelly@usace.army.mil](mailto:kevin.r.kotelly@usace.army.mil).

Sincerely,

  
Kevin R. Kotelly, P.E.  
Project Manager  
Regulatory Division

Attachments

Copy Furnished:

Jeff Carlson, Natural Resources Coordinator, 2 Bathing Beach Road, Nantucket, Massachusetts 02554, [jcarlson@nantucket-ma.gov](mailto:jcarlson@nantucket-ma.gov)

Ms. Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, Massachusetts 02347, [Elizabeth.kouloheras@state.ma.us](mailto:Elizabeth.kouloheras@state.ma.us)

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