

**VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

INDIVIDUAL WETLAND PERMIT

In the matter of:

VT Agency of Transportation
One National Life Dr, Davis Building
Montpelier, VT 05633

Application for the construction of a drainage pipe outlet for treated stormwater from a new bridge over the Connecticut River with proposed impacts to 2,500 square feet of wetland and 2,613 square feet of buffer zone.

Route 142, Brattleboro

File #: 2018-639
DEC ID #: NS19-0298

Date of Decision: October 16, 2019
Permit Decision: **Approved**
Permit Expiration: October 16, 2024

Any activity in a Class I or Class II wetland or its associated buffer zone is prohibited unless it is an allowed use under the Vermont Wetland Rules (VWR) or unless it receives a permit allowing such activity. 10 V.S.A. § 913. Applicants for an individual permit for a proposed activity in any Class I or Class II wetland or its buffer zone must demonstrate that the proposed activity complies with the VWR and will have no undue adverse effects on protected functions and values. VWR § 9.5(a).

The Vermont Agency of Natural Resources (Agency) received an application signed August 28, 2019 from VT Agency of Transportation (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Brattleboro, Vermont. The Agency gave notice of the application in accordance with the VWR. The Agency considered all comments received during the public comment period during review of the application and issuance of this permit.

DECISION AND PERMIT CONDITIONS

1. Based on the Findings contained in this permit below, the Secretary has determined that the proposed project will comply with 10 V.S.A. chapter 37 and the VWR and will have no undue adverse effect on protected functions and values of the wetland. The permittee has demonstrated that the project will have no undue adverse effects on the protected functions and values of the significant wetland and associated buffer zone, provided the project is conducted in accordance with the following conditions:

- A. All activities in the wetland and buffer zone shall be completed, operated, and maintained as set forth in the permit application #2018-639 and the supporting materials submitted with the permit application including site plans titled “Vermont Wetland Plans”, particularly the “Wetland Impact Summary Sheet” dated 5/2019, prepared by New Hampshire DOT. No material or substantial changes shall be made to the project without the prior written approval of the Vermont Wetlands Program. Project changes, including transfer of property ownership prior to commencement of a project, may require a permit amendment and additional public notice.
- B. Prior to commencement of the approved project, the permittee shall notify the Vermont Wetlands Program electronically in writing of the date the project will commence.
- C. **Prohibitions:** No additional activities are allowed in the wetland and associated buffer zone without the approval of the Secretary unless such activities are allowed uses under VWR § 6. No draining, dredging, filling, grading, or alterations of the water flow is allowed. No cutting, clearing, or removal of vegetation within the wetland and buffer zone is allowed with the exception of the proposed project area as approved by this permit.
- D. This permit expires five years from the date of issuance. If the permittee has not completed all construction activities covered by this permit before the expiration date and wishes to continue construction, the permittee must request a permit extension or apply for a new permit. Any request for an extension must be received by the Agency at least 30 days prior to the end of the five year period in order to prevent the expiration of the permit. A request for extension may be considered a minor modification at the discretion of the Secretary. Pursuant to VWR § 9.1, projects may not be extended beyond ten years of the issuance date.
- E. Wetland boundary delineations are valid for five years. The delineations will need to be re-evaluated by a qualified wetland consultant if the project is not constructed during the five-year period and a request for an extension is submitted.
- F. Within 30 days of completion of the work approved by this permit, the permittee shall supply the Vermont Wetlands Program with a letter certifying that the project was constructed in compliance with the conditions of this permit.
- G. If a stormwater construction permit is obtained for this project, the erosion prevention and control requirements of that permit shall be followed. At minimum, the permittee shall comply with the following: A continuous line of silt fence shall be properly installed by the permittee immediately upgradient of the snow fence or tape prior to any construction and shall be regularly maintained. Care shall be taken to ensure that silt fence is installed on the contour and not in areas of concentrated flow such as stream channels or ditches. Sediment shall be cleaned out before and after any significant storm event or when sediment has reached less than half the height of the fence. Removed sediments shall be disposed of in a stable, upland area outside the 50-foot buffer zone at least 100 feet from waters of the state and stabilized immediately with seed and mulch at a minimum. All other disturbed soils shall be seeded and

mulched within 48 hours of final grading. All sediment barriers and construction fencing shall be removed following the successful establishment of vegetation.

- H. All contractors' equipment shall be cleaned so as to contain no observable soil or vegetation prior to work in wetlands and buffer zones to prevent the spread of invasive species. The permittee shall monitor the portion of the wetland in question annually during early July for five years following construction for the nuisance plant species purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*). All nuisance plants found shall be pulled by hand and disposed of by burial or burning in a non-wetland location. If hand pulling is not feasible, a state approved invasive species control plan is required.
2. The Secretary maintains continuing jurisdiction over this project and may at any time order that remedial measures be taken if it appears that undue adverse impacts to the protected functions and values of the wetland or buffer are occurring or will occur.
 3. This permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, and local laws, regulations, and permits.
 4. The permittee shall allow the Secretary or the Secretary's representatives, at reasonable times and upon presentation of credentials, to enter upon and inspect the permitted property for the purpose of ascertaining compliance with this permit, the VWR, and the Vermont Water Quality Standards, and to have access to and copy all records required to be prepared pursuant to this permit.
 5. The Agency accepts no legal responsibility for any damage direct or indirect of whatever nature and by whomever suffered arising out of the approved project. This permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to public or private property, or any invasion of personal rights, or any infringement of federal, state, or local laws or regulations. This permit does not obviate the necessity of obtaining such federal, state, or local permits or approvals as may be required by law. Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under other laws.
 6. Within 15 days of the date of the decision, the permittee, any person entitled to notice under VWR § 9.2, or any person who filed written comments regarding the permit application may request in writing reconsideration of the decision by the Secretary in accordance with VWR § 9.6.
 7. **Appeals.** Any person with an interest in this matter may appeal this decision pursuant to 10 V.S.A. § 917. Pursuant to 10 V.S.A. chapter 220, an aggrieved person shall not appeal this permit to the Environmental Division of the Vermont Superior Court 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). Any appeal of this decision must be filed with the clerk of the

Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or their attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned; the name of the permittee; and any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401 (Tel. # 802-951-1740).

FINDINGS

1. The Agency received a complete permit application from VT Agency of Transportation for a Vermont Wetland Permit on August 28, 2019.
2. The wetland and adjacent 50-foot buffer zone are located along the Connecticut River generally north of the junction of Royal Rd and Rt 142/Vernon Street.
3. Rebecca Chalmers District Wetlands Ecologist, conducted a site visit to the subject property with Christine Perron on 8/8/2018.
4. The wetland is identified as a palustrine wetland on the Vermont Significant Wetlands Inventory maps and therefore designated as a Class II wetland under VWR § 4.6.
5. The wetland in question is described in detail in Sections 4 and 5 of the permit application. The wetland is largely a marsh with surface water hydrology, muck soils and vegetation dominated in areas by broad leaf cattail.
6. The proposed project is described in detail in Sections 17 and 18 of the permit application. The project consists of **construction of a drainage pipe outlet for treated stormwater from a new bridge over the Connecticut River.**
7. Proposed impacts to the wetland and buffer zone, summarized in Section 19 of the permit application, are as follows:

Wetland Alteration:		Buffer Zone Alteration:	
Wetland Fill:	0 sq.ft.		
Temporary:	2,500 sq.ft.	Temporary:	2,613 sq.ft.
Other Permanent:	0 sq.ft.	Permanent:	0 sq.ft.
Total Wetland Impact	2,500 sq.ft.	Total Buffer Zone Impact:	2,613 sq.ft.

8. The protected functions of the wetland include the following: water storage for flood water and storm runoff (VWR § 5.1), surface and groundwater protection (VWR § 5.2), fish

- habitat (VWR § 5.3), wildlife (VWR § 5.4), threatened and endangered species habitat (VWR § 5.6), and erosion control through binding and stabilizing the soil (VWR § 5.10).
9. The following functions are either not present or are present at such a minimal level as to not be protected functions: exemplary wetland natural community (VWR § 5.5), education and research in natural sciences (VWR § 5.7), recreational value and economic benefits (VWR § 5.8), and open space and aesthetics (VWR § 5.9).
 10. The wetland is significant for water storage for flood water and storm runoff function as demonstrated in Section 7 of the permit application. Based on the factors described in Section 7.2 of the application, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
 11. The wetland is significant for the surface and ground water protection function as described in Section 8 of the permit application. Based on the factors described in Section 8.2 of the application, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
 12. The wetland is significant for the fish habitat function because the wetland contains shallow marsh associated with a river and thus provides spawning, nursery, feeding and cover habitat for fish. Based on the factors described above, and as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
 13. The wetland is significant for the wildlife habitat function as described in Section 10 of the permit application. Based on the factors described in Section 10.2 of the application, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
 14. The wetland is significant for the rare, threatened and endangered species function as demonstrated in Section 12 of the permit application. Based on the factors described in Section 12.2 of the application, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
 15. The wetland is significant for the erosion control function demonstrated in Section 16 of the permit application. Based on the factors described in Section 16.2 of the application, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
 16. Under 10 V.S.A. § 913 and VWR § 9.5, the Secretary may authorize activities in a Class II wetland or in its buffer zone if the Secretary determines that it complies with the VWR and will have no undue adverse effect on the protected functions and values. Based on the permit application, the site visit(s) by Agency staff, and the foregoing findings and analysis, the Secretary has determined that the proposed project will have no undue adverse effects on the protected functions and values of the Class II wetland.
 17. Pursuant to VWR § 9.5(b), the permittee has demonstrated that the proposed activity in the wetland cannot practicably be located outside the wetland or on another site owned, controlled, or available to satisfy the basic project purpose. All practicable measures have been taken in this proposal to avoid adverse impacts on protected functions, as described in the application.

In summary, the majority of the project (bridge and stormwater system) is outside the wetland and buffer, and the outlet pipe for stormwater is the only project component in the wetland.

18. No public comments were received during the public comment period.

Emily Boedecker, Commissioner
Department of Environmental Conservation

by: _____
Laura Lapierre, Program Manager
Wetlands Program
Watershed Management Division

Dated at Montpelier, Vermont
this sixteenth day of October 2019

EB/LVPL/RC