

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

**INDIVIDUAL WETLAND PERMIT**

In the matter of:

Riverside Farm, LLC., c/o Eric Farrell  
Farrell Real Estate, PO Box 1335, Burlington, VT 05402

**Application for the redevelopment of an existing residential lot into a 12 unit residential building and single family home with proposed impacts to 508 square feet of wetland and 3,529 square feet of buffer zone.**

527 Heineberg Road, Colchester

File #: 2014-431

Date of Decision: April 12, 2016

DEC ID #: EJ15-0165

Decision: **Approved**

Expiration Date: April 12, 2021

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 dated February 11, 2016 from Riverside Farm, LLC., c/o Eric Farrell (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Colchester, 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 #2014-431 and the supporting

materials submitted with the permit application including site plans prepared by Civil Engineering Associates, Inc., titled;

“Wetland Impact Plan (Sheet W1.0)”; date: 6/15/15; last revision: 1/13/16

“Erosion Control Plan (Sheet C1.4)”; date: 6/16/15; last revision: 1/13/16

“Erosion Control Notes and Details (Sheet C2. 7)”; date: 6/20/14; last revision: 1/16/15.

And the planting plan developed by TJ Boyle Associates, LLC titled: “Planting Plan (Sheet L-102)”; date: 11/21/14; last revision: 1/19/16

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. The permittee shall record this permit in the land records of the Town of Colchester for all properties subject to the permit. Within 30 days of the date of issuance of this permit, the permittee shall supply the Vermont Wetlands Program with a copy of the recording of this permit.
- C. Prior to commencement of the approved project, the permittee shall notify the Vermont Wetlands Program digitally in writing of the date the project will commence.
- D. **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.
- E. All construction activities in the wetland and adjacent 50-foot buffer zone shall be completed within five years of the issuance date of this permit or this permit will expire. 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.
- F. The wetland boundary delineation is valid for five years. The delineation 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.
- G. 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.
- H. A continuous line of orange snow fence or flagging tape shall be installed along the limits of disturbance prior to the start of construction.

- I. 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.
  - J. 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.
  - K. A preconstruction meeting will be scheduled with the Agency Wetlands Program prior to project commencement. The permittee shall contact the Agency two weeks in advance of the proposed preconstruction meeting date. The Permittee will immediately notify the Agency of any non-permitted disturbance to the wetland or buffer zone
  - L. A site inspection with the Agency Wetlands Program will be scheduled within 20 days of the completion of construction and installation.
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. 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, 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](http://www.vermontjudiciary.org). The address for the Environmental Division is: 32 Cherry Street, 2<sup>nd</sup> Floor, Suite 303, Burlington, VT 05401 (Tel. # 802-951-1740).

## FINDINGS

1. The Agency received a complete application from Riverside Farm, LLC., c/o Eric Farrell for Vermont Wetland Permit on February 11, 2016.
2. The wetland and adjacent 50-foot buffer zone are located south and east of 527 Heineberg Road and north of the Winooski River
3. Julie Foley District Wetlands Ecologist, conducted a site visit to the subject property with Jeff Severson of Oakledge Environmental and Peter Smiar of CEA on 11/9/2015. Additionally, Danielle Owczarski District Wetlands Ecologist, conducted a site visit to the subject property with Jeff Severson of Oakledge Environmental and Peter Smiar of CEA on 12/12/2014.
4. The subject wetland is identified as a palustrine wetland on the Vermont Significant Wetlands Inventory maps and therefore is designated as a Class II wetland under VWR § 4.6.

5. The wetland in question is described in detail in Sections 7 and 8 of the permit application. The wetland is an approximately 80 acre floodplain forest wetland associated with the Winooski River.
6. The proposed project is described in detail in Sections 10 and 11 of the permit application. The project consists of redevelopment of an existing residential lot into a 12 unit residential building and single family home.
7. Proposed impacts to the wetland and buffer zone are limited to installation of underground utilities and grading. These are summarized in Section 12 of the permit application and are as follows:

<b>Wetland Alteration:</b>	<b>Buffer Zone Alteration:</b>		
Wetland Fill:	0 sq.ft.		
Temporary:	508 sq.ft.	Temporary:	1,701 sq.ft.
Other Permanent:	0 sq.ft.	Permanent:	1,828 sq.ft.
<b>Total Wetland Impact</b>	<b>508 sq.ft.</b>	<b>Total Buffer Zone Impact:</b>	<b>3,529 sq.ft.</b>

8. The protected functions of the wetland complex 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 and migratory bird habitat (VWR § 5.4), exemplary wetland natural community (VWR § 5.5), education and research in natural science (VWR § 5.7), recreational value and economic benefits (VWR § 5.8), open space and aesthetics (VWR § 5.9), 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: threatened and endangered species habitat (VWR § 5.6).
10. The subject wetland is significant for the water storage for flood water and storm runoff function as 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.
11. The wetland is significant for the surface and ground water protection function as described in Section 17 of the permit application. Based on the factors described in Section 17.2 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 as described in Section 18 of the permit application. Based on the factors described in Section 18.2 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.
13. The wetland is significant for the wildlife and migratory bird habitat function as described in Section 19 of the permit application. Based on the factors described in Section 19.2 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 exemplary wetland natural community function as demonstrated in Section 20 of the permit application. Based on the factors described in Section 20.2 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 education and research in natural sciences function as demonstrated in Section 22 of the permit application. Based on the factors described in Section 22.2 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. The wetland is significant for the recreational value and economic benefits function as demonstrated in Section 23 of the permit application. Based on the factors described in Section 23.2 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.
  17. The wetland is significant for the open space and aesthetics as demonstrated in Section 24 of the permit application. Based on the factors described in Section 24.2 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.
  18. The wetland is significant for the erosion control function demonstrated in Section 25 of the permit application. Based on the factors described in Section 25.2 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.
  19. 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 subject Class II wetlands.
  20. Pursuant to VWR § 9.5(b), the permittee has demonstrated that the proposed activity in the subject 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.
- Project impacts are limited to underground utilities, grading and a stair access to a primitive path. There will be no permanent wetland impacts and temporary wetland impacts are limited to mowed roadside. Wetland and buffer zone impacts have been significantly reduced from the originally submitted design. To minimize impacts from the grading and removal of three trees required on the eastern edge of the project within the buffer zone, ten native replacement trees will be planted consisting of shagbark hickory, red oak and hackberry.
21. No public comments were received during the public comment period.

Alyssa B. Schuren, Commissioner  
Department of Environmental Conservation

by: \_\_\_\_\_

Laura Lapierre, Program Manager  
Wetlands Program  
Watershed Management Division

Dated at Montpelier, Vermont  
this twelfth day of April, 2016

AS/LVPL/JEF