

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

INDIVIDUAL WETLAND PERMIT

In the matter of:

Pop the Trunk, LLC c/o David J. Shlansky
360 Main Street
Vergennes, VT 05491

Application for the construction of a single family home, an access drive, and trenching for a septic system with proposed impacts to 14,470 square feet of wetland and 5,191 square feet of buffer zone.

912 Lake Road, Charlotte

File #: 2015-679
DEC ID #: EJ16-0035

Date of Decision: April 20, 2016
Decision: **Approved**
Expiration Date: April 20, 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 8, 2016 from Pop the Trunk, LLC c/o David J. Shlansky (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Charlotte, 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 #2015-679 and the supporting materials submitted with the permit application including site plans titled "Site Plan", drawn by Trudell Consulting Engineers, Dated 3/8/2013 and Last Revised 11/30/15. 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 Charlotte 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.
- 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. 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.
- F. 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.
- 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. The In-Lieu Fee shall be paid before the start of construction.
 - L. A permanent demarcation of housing limits shall be in the form of a split rail fence and shall be installed in accordance with the site plans prior to home occupancy..
 - M. The remaining on-site Class II wetlands shall no longer be managed (no mowing) and allowed to naturalize.
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. 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 application from Pop the Trunk, LLC c/o David J. Shlansky for Vermont Wetland Permit on February 8, 2016.
2. The wetland and adjacent 50-foot buffer zone are located approximately 700 feet north of Lake Road. A large wet clayplain forest is immediately north of the subject wetland, and Lake Champlain is approximately 0.5 miles to the west.
3. Julie Foley, District Wetlands Ecologist, conducted a site visit to the subject property with Karina Dailey on 7/20/2011. A follow-up site visit with Alan Quackenbush, Wetlands Program Manager and Karina Dailey occurred on 11/08/2011.
4. The subject wetland is contiguous to a palustrine wetland identified 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 associated with a complex over 10 acres in size and is composed of 50% emergent wetland, 40% scrub shrub wetland, and 30% forested wetland. Parts of the subject wetland serve as a riparian corridor for an unnamed tributary to Holmes Creek, while other sections blend into a significant natural community known as a Wet Sand-Over-Clay Forest that is immediately north of the subject wetland. It receives its hydrology from ground water discharge, surface water, and seasonal flooding along Holmes Creek. Hydrology Indicators such as a high water table, surface water, and saturation were observed. Dominant plant species include *Cornus stolonifera* (red osier dogwood), *Fraxinus pennsylvanica* (green ash), *Ulmus Americana* (American elm), *Phalaris*

arundinacea (reed canary grass), and *Agrostis stolonifera* (creeping bent grass). Soils were noted as Vergennes clay and Covington silty clay with a depleted matrix.

6. The proposed project is described in detail in Sections 10 and 11 of the permit application. The project consists of the construction of a single family home, an access drive, and trenching for a septic system.
7. Proposed impacts to the wetland and buffer zone, summarized in Section 12 of the permit application, are as follows:

Wetland Alteration:		Buffer Zone Alteration:	
Wetland Fill:	10,648 sq.ft.		
Temporary:	3,822 sq.ft.	Temporary:	0 sq.ft.
Other Permanent: :	0 sq.ft.	Permanent: :	5,191 sq.ft.
Total Wetland Impact	14,470 sq.ft.	Total Buffer Zone Impact:	5,191 sq.ft.

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), wildlife and migratory bird habitat (VWR § 5.4), exemplary wetland natural community (VWR § 5.5), 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: fish habitat (VWR § 5.3), 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 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 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.
13. The wetland complex is not identified as significant for the exemplary wetland natural community function as demonstrated in Section 14 of the permit application, completed by the applicant. However, the Wetland Ecologist states that the wetland complex is mapped as a Wet-Sand-Over-Clay Forest which is a significant wetland natural community. Since the subject wetland is not mapped as a significant wetland natural community and

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 complex is not identified as significant for the rare, threatened and endangered species function as demonstrated in Section 14 of the permit application, completed by the applicant. However, the Wetland Ecologist states that the wetland complex hosts a rare plant species that is mapped by the Vermont Natural Heritage Program. Since the subject wetland is absent of this function and 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 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.
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 subject Class II wetlands.
17. 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.

The permittee has minimized impacts to the Class II wetlands to the most practicable extent and the wetland boundaries will be permanently memorialized from future encroachments. Further, vegetation management of the remaining wetlands on the property will be discontinued, which has kept the wetlands in an altered state. This will allow the wetlands to naturalize and regenerate back into a wet clayplain forest.

18. 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 twentieth day of April, 2016

AS/LVPL/TMH