

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

**INDIVIDUAL WETLAND PERMIT**

In the matter of:

John K. Pheeney  
216 River Road  
Essex Junction, Vermont 05452

**Application for the construction of a single-family residence with on-site sewer and water  
to impact 280 sq ft of wetland and 2,118 sf of buffer zone.**

183 Towers Road Extension, Essex

File #: 2011-141.01  
DEC ID #: EJ11-0246

Date of Decision: December 7, 2011  
Decision: **Approved**  
Expiration Date: December 7, 2021  
Amendment Date: October 31, 2016

10 V.S.A. §913 and Section 9.1 of the Vermont Wetland Rules provides that any activity in a Class 1 or Class II wetland or its associated buffer zone is prohibited unless it is an allowed use under the Wetland Rules or unless it receives a permit allowing such activity. Applicants for an individual permit for a proposed activity in any Class I or Class II wetland or its buffer zone have the burden of proof to show that the proposed activity complies with the Wetland Rules and will have no undue adverse impact on protected functions and values.

The Vermont Agency of Natural Resources (Agency) received an application dated August 3, 2011 from Lamoureux & Dickinson, representative for John Pheeney, for a Vermont Wetland Permit #2011-141 for a project involving activities in a wetland and associated buffer zone located in Essex, Vermont. Public notice of the application was given in accordance with the Vermont Wetland Rules. Any comments received during the public comment period were considered during review of the application and issuance of this permit. A permit extension request was received on September 19, 2016. This request has been publicly posted through October 20, 2016 and notice sent to all parties as required by Section 8.3 of the Vermont Wetland Rules. No public comments were received during this public comment period.

**DECISION AND PERMIT CONDITIONS**

1. Based on the Findings contained in this permit, the permit application, and information obtained during a site visit by Agency staff, the Secretary finds that the proposed activities will comply with the Vermont Wetlands Statute, 10 V.S.A. §901 et. seq. and the Vermont Wetland Rules. The applicant has demonstrated that the project will have no undue adverse effects on the protected functions and values of the subject significant wetland and

associated buffer zone, and adjacent wetland complex, 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 #2011-141 and the supporting materials listed in Section 13 of the permit application. No material or substantial changes shall be made to the project without the prior written approval of the Vermont Wetlands Section. Project changes may require a permit amendment and additional public notice.
- B. The applicant shall record this permit in the land records of the Town of St. Albans for all properties subject to the permit. Within 30 days of the date of issuance of this permit, the applicants shall supply the Vermont Wetlands Section with a copy of the recording of this permit.
- C. The applicant shall notify the Vermont Wetlands Section in writing or by email prior to the start of the approved project.
- 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 the Vermont Wetland Rules. 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 ten years of the original issuance date of this permit or this permit will expire. Projects may not be extended beyond ten years of the issuance date, in accordance with Section 9.1 of the Vermont Wetland Rules.
- 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 thirty (30) days of completion of the work approved by this permit, the permittee or their representative shall supply the Vermont Wetlands Section with a letter certifying that the project was constructed in compliance with the conditions of this permit.
- H. If a stormwater construction permit is obtained for this project, the erosion prevention and control requirements of that permit shall be followed. If a stormwater permit is not required, the permittee shall comply with the following: A continuous line of orange snow fence or flagging tape shall be installed along the limit of disturbance prior to the start of construction. A continuous line of silt fence shall be properly installed by the applicant immediately upgradient of the snow fence or tape prior to any construction and shall be regularly maintained. Care should 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 they have 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.

- I. 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 applicant 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 Agency 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 or will occur.
3. This permit does not relieve the applicant 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 his/her 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 Vermont Wetland Rules 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, by issuing this permit, 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 applicant, any person entitled to notice under Section 9.2 of the Vermont Wetland Rules, 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 Section 9.6 of the Rules.
7. Any person with an interest in this matter can 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 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 Court; 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 applicant; 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 Court is 2418 Airport Road, Suite 1, Barre, VT 05641 (Tel. # 802-828-1660).

## FINDINGS

1. A complete application was received from Lamoureux & Dickinson, representative for John Pheeny, for Vermont Wetland Permit 2011-141 on August 8, 2011. A permit extension request was received September 19, 2016.
2. The wetland and adjacent 50-foot buffer zone are located at 183 Towers Road Extension in Essex, Vermont.
3. Julie Foley, District Wetlands Ecologist, conducted a site visit to the subject property with Brian Tremback of Lamoureux & Dickinson, and John Pheeny, applicant, on May 17, 2011.
4. The subject wetland is contiguous to a palustrine wetland identified on the Vermont Significant Wetland Inventory maps and is therefore designated as a Class Two wetland in the Vermont Wetland Rules.
5. The wetland in question is described in detail in Section 7 and Section 8 of the permit application. An approximate 7-acre wetland complex of forested swamp, emergent wetland, and shrub swamp is contiguous to the subject wetland dominated by *Impatiens capensis* and *Carex scoparia*.
6. The proposed project is described in detail in Section 10 and 11 of the permit application. It involves the installation of a buried wastewater forcemain, and a temporary gravel access road for the construction of the wastewater system.

Proposed impacts to the wetland and buffer zone as proposed in Section 12 of the permit application are as follows:

Wetland Alteration:		Buffer Zone Alteration:	
Wetland Fill:	0 sq.ft.		
Temporary:	280 sq.ft.	Temporary:	2,118 sq.ft.
Other Permanent: :	0 sq.ft.	Permanent: :	0 sq.ft.
<b>Total Wetland Impact</b>	<b>280 sq.ft.</b>	<b>Total Buffer Zone Impact:</b>	<b>2,118 sq.ft.</b>

7. The protected functions of the subject wetland include the following: water storage for flood water and storm runoff (§5.1 of the Vermont Wetland Rules), surface and

groundwater protection (§5.2), wildlife and migratory bird habitat (§5.4), and erosion control through binding and stabilizing the soil (§5.10). The subject wetland provides surface and groundwater protection (§5.2), and erosion control through binding and stabilizing the soil (§5.10).

8. The following functions are either not present or are present at such a minimal level as to not be protected functions: fish habitat (§5.3), exemplary wetland natural community (§5.5), threatened and endangered species habitat (§5.6), education and research in natural science (§5.7), recreational value and economic benefits (§5.8), and open space and aesthetics (§5.9).
9. **Surface and Groundwater Protection.** 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.
10. **Erosion Control.** The wetland is significant for the erosion control function 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 the undue adverse impact of this function.
11. Under 10 V.S.A. §913 and Section 9 of the Vermont Wetland Rules, the Secretary may authorize activities in a significant wetland or in its adjacent buffer zone if the Secretary determines that it complies with the Wetland Rules and will have no undue adverse effect on the protected functions and values. The Secretary has determined that the proposed project, described in these Findings and in the permit application, will have no undue adverse impacts to the protected functions and values of the subject Class Two wetlands or the adjacent wetland complex.
12. The applicant has demonstrated 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.
13. If the project is constructed according to the permit application and the conditions of this permit, the permitted activity is not expected to result in any violations of the Vermont Water Quality Standards.

Alyssa B. Schuren, Commissioner  
Department of Environmental Conservation

by: \_\_\_\_\_  
Laura Lapierre  
Wetland Program Manager, Watershed Management Division

Dated at Montpelier, Vermont  
this thirty-first day of October, 2016

AS/LL/TH