

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

INDIVIDUAL WETLAND PERMIT

In the matter of:

Steve and Tim Kayhart; Kayhart Brothers Dairy, LLC
7429 VT Route 17W
Addison, VT 05419

Application for the improvement of existing farm road to access new milking center and to better support on-going farm activities with proposed impacts to 4,419 square feet of wetland and 13,667 square feet of buffer zone.

7429 VT Route 17W, Addison

File #: 2014-353
DEC ID #: RU16-0233

Date of Decision: December 22, 2016
Decision: **Approved**
Expiration Date: December 22, 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 October 17, 2016 from Steve and Tim Kayhart; Kayhart Brothers Dairy, LLC (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Addison, 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 #2014-353 and the supporting materials submitted with the permit application including:
- Site Plan showing a portion of lands of Kayhart Brothers Farm, LLC [Plan View]; LaRose Surveys, PC; July 2015, Rev. 10/12/2016;
 - Site Plan showing a portion of lands of Kayhart Brothers Farm, LLC [Cross Section View]; LaRose Surveys, PC; July 2015, Rev. 10/12/2016;
 - Plan View Site Expansion Kayhart Brothers Dairy, LLC; A. Weiss Engineering, PLLC, Date: 10/2016;
 - Kayhart Brothers Dairy Wetland Map, Normandeau Associates; 9/26/2016; and
 - Buffer Tree Clearing Restoration Plan, Normandeau Associates; 10/2016.

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 Addison 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. 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. The method of replacing and upgrading an existing culvert with a new 70-foot-long 48-inch culvert that will be partially embedded to provide aquatic organism and hydraulic passage through the area shall be that which presents the least disturbance of stream flow and prevents any discharge of sediment downstream. Stream flow at all times shall be diverted from the work area. The contractor's equipment shall be clean and well maintained, free of fuel, hydraulic, and gear oil leaks, especially if such equipment is to be used in or adjacent to the water. There shall be absolutely no discharge of uncured concrete to the stream flow. Pumping from excavation areas shall be discharged to an overland area or settling basin such that the effluent shall be essentially clarified before reentering the stream flow. All areas of stream bank disturbed during construction shall be suitably reshaped and stabilized with stone fill or a vegetative planting prior to completion of the project. Additionally, the extent of stream bank disturbance shall be strictly limited, and all existing vegetation maintained to the greatest degree practicable. The permittee shall contact the Stream Alteration Engineer prior to commencing construction to arrange a pre-construction conference. Stream work shall be limited to the period June 1 to October 1 unless otherwise approved by the River and Streams Program. Culvert invert elevations shall be installed six inches below the stream bed level.
- K. 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. 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 Steve and Tim Kayhart; Kayhart Brothers Dairy, LLC for Vermont Wetland Permit on October 17, 2016.

2. The wetland and adjacent 50-foot buffer zone are located approximately 1,350 linear feet east of 7429 VT Route 17W in Addison, VT. The wetland(s) are confined to a ravine that runs north/south and is crossed by an existing farm road with an 18-inch culvert. The existing farm buildings are located to the west of the ravine and fields are located to the east. Two Class III wetlands are located in the fields to the east.
3. Julie Follansbee (Foley), District Wetlands Ecologist, conducted a site visit to the subject property with Steve & Tim Kayhart, landowners on October 7, 2014.
4. The subject wetland meets the presumptions listed in VWR § 4.6, contiguous to a wetland identified as a palustrine wetland on the Vermont Significant Wetlands Inventory maps, and the Secretary has determined based on an evaluation of the functions and values of the subject wetland that it is a significant wetland and therefore is designated as a Class II wetland.
5. The wetland in question is described in detail in Sections 4 and 5 of the permit application. The wetland complex is approximately 6 acres in size, running north/south within the ravine. It is composed of ~ 50% forested (mostly to the north) and 40% emergent with 10% scrub-shrub habitat components. The subject wetland is located in the lower (southern) half of the greater wetland complex.

The subject wetland is naturally vegetated and a mix of palustrine emergent and forested areas with some smaller inclusions of scrub-shrub cover-types. The wetland is not actively used or disturbed directly except at the immediate edges of the existing farm road. The dominant wetland community type is palustrine emergent (PEM1) across the subject wetland (70-80%) with approximately 20% palustrine forested (broad-leaved deciduous; PFO1) and less than 10% palustrine scrub-shrub (PSS1). Dominant plant species include: reed canary grass (*Phalaris arundinacea*), sedges (*Carex sp.*), New England aster (*Symphyotrichum novae-angliae*), vervain (likely *Verbena hastata*) and stinging nettle (*Urtica dioica*). Red osier dogwood (*Cornus alba*) was the principal shrub within the PSS portions of the wetland and small green ash (*Fraxinus pennsylvanica*) were the most common tree-size woody species around the edges of the wetland. Soils as observed were hydric and met either the F2 (Loamy Gleyed Matrix) or the F3 (Depleted Matrix) indicators. In general, the hydrology indicators observed throughout the wetland during the delineation included surface water, high water table, and saturation, along with water marks and drainage patterns. Saturation and some inundation is also visible on aerial photography.

6. The proposed project is described in detail in Sections 17 and 18 of the permit application. The project consists of the improvement of existing farm road to access new milking center and to better support on-going farm activities.

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:	1,905 sq.ft.		
Temporary:	2,514 sq.ft.	Temporary:	4,283 sq.ft.
Other Permanent: :	0 sq.ft.	Permanent: :	9,384 sq.ft.
Total Wetland Impact	4,419 sq.ft.	Total Buffer Zone Impact:	13,667 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 (VWR § 5.4), and erosion control through binding and stabilizing the soil (VWR § 5.10).
9. The following functions of the wetland complex are either not present or are present at such a minimal level as to not be protected functions: fish habitat (VWR § 5.3), exemplary wetland natural community (VWR § 5.5), threatened and endangered species habitat (VWR § 5.6), education and research in natural science (VWR § 5.7), recreational value and economic benefits (VWR § 5.8), and open space and aesthetics (VWR § 5.9).
10. The wetland complex is significant for the 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 complex 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 complex is significant for the wildlife and migratory bird 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.
13. The wetland complex 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.
14. 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.

15. 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.

Several alternatives designs were incorporated to avoid/minimize impacts to the wetland and 50-ft buffer including: 1) the footprint of the up-graded farm road was shifted to parallel and overlap with the existing farm road thus reducing the impact area and limiting impacts to within a few feet of the existing road; 2) the proposed elevation of the up-graded farm road was reduced as much as possible thereby resulting in a narrower overall footprint; 3) oversized culvert was chosen to facilitate hydrologic passage and ecologic passage; 4) finished width of proposed farm road was reduced as much as possible also reducing the width of the impact area. In addition, as requested by VTDEC, Kayhart Brothers Dairy, LLC will complete a voluntary buffer enhancement project to help maintain soil stability in the areas adjacent to the proposed farm road upgrade where additional tree clearing has been proposed. The restoration will consist of the planting of native shrub species and additional seeding of areas disturbed during construction and/or tree clearing activities. Enhancement species will be planted in the first growing season following tree removal and thorough erosion control (thick mulching) will be employed and maintained leading up to and following buffer enhancement work.

16. 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 twenty-second day of December, 2016

ABS/LVPL/ZC