VERMONT AGENCY OF NATURAL RESOURCES DEPARTMENT OF ENVIRONMENTAL CONSERVATION

INDIVIDUAL WETLAND PERMIT

In the matter of:

Jeffrey Atwood 2945 East Main Street Richmond, VT 05744

Application for the conversion of an existing single family home into two apartments and the construction of an additional 5 housing units with proposed impacts to 12,320 square feet of buffer zone.

3250 Waterbury-Stowe Road (Route 100), Waterbury

File #: 2015-479 Date of Decision: November 21, 2016

DEC ID #: BR15-0254 Decision: **Approved**

Expiration Date: November 21, 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 September 6, 2016 from Jeffrey Atwood (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Waterbury, 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 #2015-479 and the supporting materials submitted with the permit application including site plans titled: "C2-01 Site Plan" prepared by John Pitrowiski (TCE), dated 8/25/2015, last revised 3/1/2016; "C10-01 Wetland Impact Plan" prepared by John Pitrowiski (TCE), dated 3/10/2016; and, "Wetland Delineation Map," prepared by Lindsay Willson (TCE), dated 7/27/15. 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 Waterbury 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. Snow removal and storage shall not be over the eastern slope leading to the wetland. All snow shall be stored outside of the buffer zone located on the eastern and southern ends of the proposed driveway. A continuous line of fencing or landscaping features shall be placed on the eastern and southern end of the driveway to prevent moving snow into these areas.
- F. 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.
- G. 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.
- H. 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.

- I. A continuous line of orange snow fence or flagging tape shall be installed along the limits of disturbance prior to the start of construction.
- J. 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.
- 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.
- 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 Jeffrey Atwood for Vermont Wetland Permit on September 6, 2016.
- 2. The wetland and adjacent 50-foot buffer zone are located directly to the south of Howard Avenue, and the intersection of Route 100.
- 3. Shannon Morrison District Wetlands Ecologist, conducted a site visit to the subject property with Karina Dailey, Lindsay Wilson and John Pitrowiski of Trudell Environmental Services on 7/19/2015.
- 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 4 and 5 of the permit application. The wetland is over 10 acres in size, comprised of emergent, scrub shrub and forested wetlands associated with an unnamed tributary of the Waterbury Reservoir. In the project area the wetland is emergent, dominated by joe pye-weed, sensitive fern and spotted touchme-nots. Soils are Buxton silt loam, exhibiting a depleted matrix. The buffer zone previously contained a barn which was removed and is primarily mowed lawn.
- 6. The proposed project is described in detail in Sections 17 and 18 of the permit application. The project consists of the conversion of an existing single family home into two apartments and the construction of an additional 5 housing units. Project impacts are limited to the buffer zone and consist of regrading to construct a driveway, additional parking, and stormwater/erosion control measures to service the proposed development.
- 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:	0 sq.ft.	Temporary:	279 sq.ft.
Other Permanent: :	0 sq.ft.	Permanent: :	12,041 sq.ft.
Total Wetland Impact	0 sq.ft.	Total Buffer Zone Impact:	12,320 sq.ft.

- 9. 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).
- 10. 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), exemplary wetland natural community (VWR § 5.5), threatened and endangered species habitat (VWR § 5.6), 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).
- 11. The subject wetland 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.
- 12. 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.
- 13. The wetland 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.
- 14. 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.
- 15. 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.
- 16. 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.

Impacts are limited to the buffer zone. The proposed drive is located approximately 30 feet from the wetland, and stormwater impacts in the buffer are limited to either the opposite side of the

17. Two public comments were received during the public comment period and both comments are attached to the permit. A comment was received from Noel Dodge of Vermont Fish and Wildlife (VTFW) on November 1, 2016. This comment was an analysis of the project on Wood Turtle habitat, with confirmation that the project will not significantly alter this habitat, and a request that any turtle siting be reported to VTFW.

The second comment was received from Nancy Patterson in a letter dated November 2, 2016 (received on October 31, 2016). Ms. Patterson expressed concern over the size of the development, and specifically the effect of the septic on adjacent property and surface waters that lead to Waterbury Reservoir. A response to the Patterson comment was received from Karina Daily of Trudell Environmental Services dated November 1, 2016, and is also attached to the permit.

The scope of the permit is limited to impacts in the wetland and buffer zone, and the septic system as designed is located outside of this area. We rely on state mandated setbacks to surface water, and to the design approved in Waste Water Permit (#WW-5-6984-2) to ensure that there is no contamination to surface waters. The direct impacts to the buffer zone are limited to changing the grade and ensuring stormwater flow is treated before entering the wetland. Condition E of the permit has also been added to reduce direct impacts from snow being pushed over the edge of the buffer and into the wetland. The project, as conditioned in this permit is not expected to result in undue adverse impacts to wetland function and value.

Alyssa B. Schuren, Commissioner

From: Dodge, Noel

Sent: Tuesday, November 01, 2016 8:24 AM

To: ANR - WSMD Wetlands

Subject: DFW cmt Waterbury, Wetland Individual Permit Notice for Project 2015-479

Attachments: Wood Turtle factsheet.pdf

The Department of Fish and Wildlife concurs with the statement in the application that the nearby Wood turtle occurrence is likely associated with the larger Bryant brook and not necessarily the unnamed tributary which has the associated buffer impacts referenced in the site plan. However, Wood turtles move up and down drainages and can be up to 2000' from their home stream (stream that allows underwater hibernation). Maintaining riparian connectivity is important for wood turtle; they spend a good deal of their time away from the water for basking and foraging.

The steep slope of the bank where the buffer impacts are proposed likely acts as a physical barrier to Wood turtle movement and therefore it is likely that the proposed buffer impacts do not directly impact wood turtle habitat or travel areas as the associated wetland and stream have a sufficiently wide plane allowing for turtle passage up the drainage.

The department would like to note that section of Rt 100 directly west and southwest of the project area where the road kill turtle was found is identified in the Vermont Conservation Design data layers as a Highest Priority Crossing area. This area is centered on the stretch of the road due south of the project where the undeveloped forested blocks are contiguous on both sides of the road.

As a general note on the overall site plan it is unclear what the intent of the creation of the gravel right-of-way turnout on the western parcel will be, but clearly any construction on that side would be hard pressed to maintain riparian connectivity due to the topography and proximity to Bryant Brook.

The department requests that any turtle sightings made while the work is being performed be reported to the departments Nongame and Natural Heritage Program (Mark.Ferguson@vermont.gov).

I've also attached our Wood Turtle fact sheet for distribution.

Thank you.

-Noel Dodge



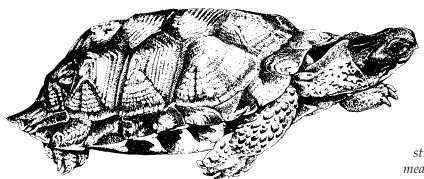
Noel Dodge, Wildlife Biologist Regulatory Review Biologist 802-689-0000 [mobile] noel.dodge@vermont.gov

Vermont Fish and Wildlife Department 5 Perry Street, Suite 40 Barre, VT 05641 www.vtfishandwildlife.com

Vermont's Wildlife Heritage

Nongame and Natural Heritage Program

SPECIES AT RISK



Wood Turtle

Clemmys insculpta

The wood turtle is a moderately sized turtle with reddish-orange skin on portions of its neck and legs and a roughly textured, or sculpted shell. The adult's shell is about 7 to 8 inches long. It spends the winter on stream bottoms and most breeding occurs in streams. Although it regularly returns to streams throughout year, it may travel up to 1000 feet from the stream while foraging for food in hardwood forests or meadows.

Turtles are an ancient group of animals, originating many millions of years ago. Wood turtles have likely been in Vermont for the past 10,000 years, following the retreat of the last glacier. In spite of their long history of success, wood turtles have not fared well recently in the face of human development and use of the landscape. The wood turtle is a species of conservation concern in the northeastern states, including Vermont, due to its region-wide decline.

Human activities are the main cause of the turtles' decline. While it is rare that any person intentionally harms a wood turtle, the cumulative effect of our activities does have a negative impact. Although it is illegal to collect wood turtles in Vermont, people do remove them from the wild. Collection results in population decline and loss. A Connecticut wood turtle population was studied before and after a water supply area was opened to limited permit hiking. Wood turtle collection was the likely

cause of this population disappearing after only ten years.

We also harm turtles by transforming their habitat into housing or commercial building lots, clearing away stream-bank vegetation, and inadvertently hitting them with mowing machines or cars.

Adult wood turtles may live 60 years, but egg and hatchling survival is extremely low. Survival of adult wood turtles is key to maintaining this species. Mature turtles are important because they manage to produce the few offspring that will carry the population into the future.

TURTLE TIME TABLE

Early April - First emergence from water to stream bank. Initially, turtles stay near stream, then gradually move farther away.

Early June - Initial movements to summer foraging areas which may be 1000 feet from stream. These areas

consist of meadows, wetlands and woods.

Mid June - Females with eggs move to nesting area. Some females will travel over one mile to nest. Return to foraging area within a few weeks

June through mid September -Turtles spend up to a month at a time foraging well away from stream, but return to the stream for short periods.

Late August through mid November - Breeding occurs in the stream, and also occurs to a lesser extent in the spring months.

November through April - Turtles stay underwater at wintering sites in streams where they absorb oxygen through their skin. Some movement may occur during this time, but the turtles are generally confined to protected pools.

(continued on back)

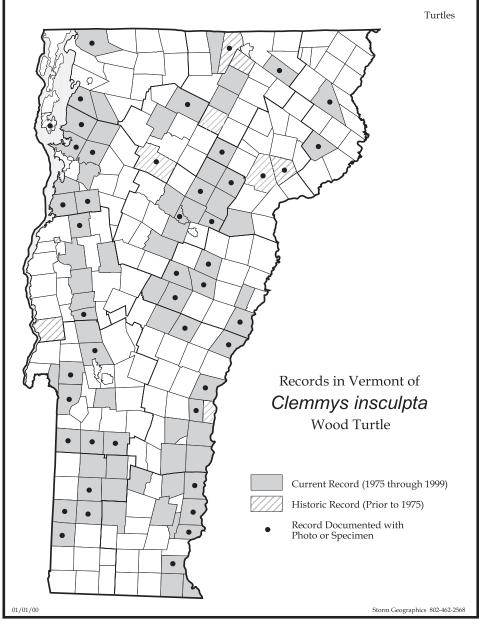
The Nongame and Natural Heritage Program (NNHP) is responsible for managing and enhancing Vermont's native plants, natural communities, and animals that are not hunted or fished (nongame species). A unit within the Vermont Department of Fish and Wildlife, the NNHP's mission includes the preservation of Vermont's rich and varied natural heritage for present and future generations.

THREATS

- ✓ Habitat loss and alteration
- ✓ Road mortality
- ✓ Impacts from mowing machines
- ✓ Commercial collection for pet trade
- ✓ Casual collection when encountered
- ✓ Isolation of populations
- ✓ Turtle and egg predators such as raccoons and skunks

WHAT YOU CAN DO

- ✓ Locate roads more than 1000 feet from large streams and rivers.
- ✓ Locate housing and commercial development away from streams, rivers, and wetlands.
- ✓ Maintain natural vegetation along waterways.
- ✓ Route recreation paths away from streams, never along the channel.
- ✓ Teach children to respect wildlife. Leave wildlife in the wild.
- ✓ Encourage friends and neighbors to protect stream corridors.
- ✓ Promote town plans and ordinances that protect naturally vegetated stream corridors and discourage stream alterations.
- ✓ If possible, avoid mowing meadows until late September.
- ✓ If mowing May-September set mowing bar to 5 inches.
- ✓ Learn more about the natural world.
- ✓ Report collection of turtles to your local game warden.
- ✓ Report unauthorized stream alterations to the Agency of Natural Resources (northeastern region: (802) 751-0129; central and northwestern region: (802)879-5631; southern region: (802) 786-5906).
- ✓ Contribute to the Nongame Wildlife Fund on your Vermont income tax form.
- ✓ Display a Vermont Conservation Plate on your car and watch out for turtles crossing the road!



Map courtesy of Vermont Reptile and Amphibian Atlas Project. For more information contact: Jim Andrews, Biology Department, Middlebury College, Middlebury, VT 05753.

For more information contact:

Vermont Fish and Wildlife Department Nongame and Natural Heritage Program 103 South Main Street, Waterbury, VT 05671-0501 (802) 241-3700 fwinformation@anr.state.vt.us

Wood Turtle recovery efforts in Vermont, including this fact sheet, are funded by contributions to the Nongame Wildlife Fund. Created by the legislature in 1986, the fund enables people to voluntarily contribute to programs on behalf of Vermont's nongame species. These tax-deductible gifts are used by the Nongame and Natural Heritage Program to inventory, monitor, and manage species and their habitats and to provide planning assistance and educational programs. Direct gifts are accepted, payable to:

Nongame Wildlife Fund Vermont Fish and Wildlife Dept. 103 S. Main St., Waterbury, VT 05671-0501 (802) 241-3700





Nancy W. Patterson P.O. Box 245 Waterbury, VT. 05676 October 31, 2016 RE: Project 2015-479

Hearing before the Planning Commission in Waterbury on Wednesday, Nov. 2, 2016

Laura Lapierre - Program Manager Watershed Management Division - Attn. Wetlands Program Dept. of Environmental Conservation One National Life Drive Main Building, 2nd Floor Montpelier, VT 05620-3522

Dear Ms. Lapierre,

Your "Notice of Application of Wetland Individual Permit: 2015-479" came to my attention last week. As I've been focused on preparation for the above-mentioned Hearing, I neglected to note the 11/1/2016 deadline. Via a phone call to your office I have been assured that this letter via e-mail will be accepted. As an adjacent property-owner I am also speaking for other contiguous neighbors in an expression of concern, bordering on alarm, regarding the possible environmental threat of extreme high-density housing and a pump-up septic system on a 2.1 acres site along Route 100.

Having received a copy of a Trudell Engineering "Notice of Overshadowing" on Sept. 3, 2015, I sent a reply outlining our concerns to Trudell and Mr. Atwood (land owner). We expressed objection to the overshadowing which threatened not only our property, including a presently-unused well, but the small brook below the property and ultimately Waterbury Reservoir. I received no reply from either. At the time I was not aware of the Department of Environmental Conservation or I would have forwarded a copy of that letter. (I will be happy to do so if you would find that letter of interest.)

That declared, we will present our concerns on Wednesday, November 2 at a Hearing at the Waterbury Municipal Center. If we are permitted, we want to question the possible ramifications of an even higher-density housing proposal submitted by Mr. Atwood and Mr. Petrowiski (developer) this year. On just two acres, with garaging dug into the drainage area, they propose five new housing units as well as the existing house, all of which would utilize a massive, pump-up septic system. We want to question the possibility of a septic malfunction considering the shared wetland on the east side, the Town waterline below and several brooks below it. The "overshadowing" diagram which not only depicts the overflow extending onto my property and toward the ravine and brook below but also ACROSS Rte. 100 (assumed via existing culverts.)

While some bolstering of that drainage area -- as it approaches the un-named brook/wetland on the east side of the property-- is indicated on the latest proposal, we question whether it would adequately protect from septic runoff. As see by the photo*, that brook which drains many acres and springs above it, could rise to unforeseen levels. It has in the past eroded the Howard Avenue roadway. As ground above it becomes saturated, we think it could convey sewage into Bryant Brook which drains directly into Waterbury Reservoir.

*photo taken by an adjacent neighbor after rains - not "Irene".

We thank you for the opportunity to point out our concerns. It is our hope that we can convince Atwood/Petrowiski that a scaled-down version of their plans would have less potential impact on a sensitive drainage area.

Sincerely yours,

Nancy W. Patterson (writing on behalf of neighbors James, Dalley and Abair





November 1, 2016

Vermont Department of Environmental Conservation Watershed Management 1 National Life Main Bldg., 2nd Fl. Montpelier, VT 05620

Subject: 3250 Waterbury Stowe Road, Waterbury - Vermont Wetland Permit Application - TCE Project # 07-126; DEC #2015-479

Dear Ms. Morrison:

On behalf of our client Jeffrey Atwood, Trudell Consulting Engineers (TCE) would like to provide the following response to Ms. Patterson's Letter (dated 10/31/2016). This comment was filed during the public comment period for the Vermont Wetland Permit Application #2015-479.

The project as proposed avoids Class II wetland impact. The buffer impact was recognized as necessary to best protect the wetland and meet the intent of the project (affordable housing in Waterbury). The buffer impacts proposed consist of two retaining walls and grading for the access drive to divert stormwater away from the wetland and provide enhanced erosion control to service the proposed development. A portion of this impact was already disturbed (old barn foundation) and the other area proposed for impact is a cleared lawn. It should also be noted that the entire project has received a wastewater permit from the State authorized under permit #WW-5-6984-2, which documents that there are no concerns with overshadowing or septic runoff related to this project.

We recognize that the wetlands that border this tributary to Bryant Brook provide water storage for flood water and storm runoff as well as various other wetland functions noted in the wetlands permit, but the proposed project has been designed to protect these recognized functions of the wetland by providing detention ponds, and splash pools in the buffer to detain and filter stormwater, and thereby reduce erosion.

We appreciate your review of the submitted information and as always don't hesitate to contact us if you need any additional information.

Regards,

Karina Dailey

Environmental Scientist, PWS

cc: Jeffrey Atwood