

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

INDIVIDUAL WETLAND PERMIT

In the matter of:

Christian Otto
3100 Massengale Lane
Webster, TX 77598

Application for the construction of an access road to a proposed camp with proposed impacts to 546 square feet of wetland and 3,136 square feet of buffer zone.

Fletcher Quarry Road, Woodbury

File #: 2015-495
DEC ID #: BR16-0184

Date of Decision: November 9, 2016
Decision: **Approved**
Expiration Date: November 9, 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 August 19, 2016 from Christian Otto (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Woodbury, 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 #2015-495 and the supporting

materials submitted with the permit application including site plans titled “Representative Site Plan”, prepared by Gilman & Briggs Environmental, date August 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 Woodbury 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. 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 Christian Otto for Vermont Wetland Permit on August 19, 2016.
2. The wetland and adjacent 50-foot buffer zone are located on the southeast side of Buck Lake. Access to the area in question is off an existing quarry road, accessible from Fletcher Quarry Road.
3. Shannon Morrison District Wetlands Ecologist, conducted a site visit to the subject property with Errol Briggs of Gilman and Briggs and David McMath, consulting forester on 5/12/2016.
4. The subject wetland meets the presumptions listed in VWR § 4.6, the wetland is of the same type and threshold size as those mapped on the VSWI maps or greater than 0.5 acres (VWR §4.6a), 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 is approximately 5.5 acres of emergent, forested and shrub wetland adjacent to Buck Lake. The portion closest to the lake is influenced by beaver, and further up on the hill hydrology is driven by surface runoff and groundwater discharge. Vegetation consists of sedge, willow, and cattails in the project area, and soils are a mucky peat.
6. The proposed project is described in detail in Sections 17 and 18 of the permit application. The project consists of construction of an access road to a proposed camp. Most of the access utilizes an existing road. The proposed road crosses a short section of wetland prior to getting to the upland portion of the property.
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:	546 sq.ft.		
Temporary:	0 sq.ft.	Temporary:	0 sq.ft.
Other Permanent: :	0 sq.ft.	Permanent: :	3136 sq.ft.
Total Wetland Impact	546 sq.ft.	Total Buffer Zone Impact:	3,136 sq.ft.

8. The protected functions of the wetland complex include the following: surface and groundwater protection (VWR § 5.2), fish habitat (VWR § 5.3), wildlife (VWR § 5.4), 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: water storage for flood water and storm runoff (VWR § 5.1), exemplary wetland natural community (VWR § 5.5), threatened and endangered species habitat (VWR § 5.6).
10. 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.
11. The wetland is significant for the fish habitat function as described in Section 9 of the permit application. Based on the factors described in Section 9.2 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 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 is significant for the education and research in natural sciences function as demonstrated in Section 13 of the permit application. Based on the factors described in Section 13.2 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 recreational value and economic benefits function as demonstrated in Section 14 of the permit application. Based on the factors described in Section 14.2 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 open space and aesthetics as demonstrated in Section 15 of the permit application. Based on the factors described in Section 15.2 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 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.
17. 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.
18. 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 points of access were examined, the present alignment is that with the least impact to wetlands. The proposed roadway will be about 25 feet farther from the wetland than the existing road/ATV trail and the applicant will allow the disturbed areas closest to the wetland to revert to natural cover. The road relocation will account for 1700 square feet of buffer zone restoration.

19. One public comment was received from Noel Dodge of Vermont Fish and Wildlife (VTFW), dated October 10, 2016. The comment is attached to the permit. In summary, VTFW expressed concern regarding the use of the wetland for soft mast forage in the spring, and the use of the existing road as a travel corridor and how the project may affect that use. He asked that the silt fencing be removed as soon as it is not needed to eliminate a barrier to wildlife passage for both larger animals and amphibians. He included comments from Alison Thomas, Education Coordinator for VTFW, regarding access adjacent Buck Lake Conservation Camp.

The applicant, Christian Otto, responded to the comments in a letter dated October 19, 2016, which is also attached. He has agreed to the recommendations on silt fencing, responded to comments regarding the road placement, and added some information about limiting ATV access to the property. He also expressed the willingness to collaborate with Buck Lake Conservation Camp regarding Access.

The comments did not result in any additional or changed conditions to the permit. Since the scope of the permitted activity is limited to the wetland crossing, and that is deemed low impact enough not to affect wildlife access between the uplands and wetlands by both the Vermont Wetlands Program and VT Fish and Wildlife, the proposed activity will not result in undue adverse impacts to functions and values.

Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

by: _____
Laura Lapierre, Program Manager
Wetlands Program
Watershed Management Division

Dated at Montpelier, Vermont
this ninth day of November, 2016

ABS/LVPL/SLM

October 10, 2016

Via E-mail

Re: Woodbury, Wetland Individual Permit Notice for Project 2015-495 (Re-Notice)

The department has reviewed the permit application 2015-496 from Christian Otto and found no directly unduly adverse impacts from the proposed permit scope, however, as an abutting landowner we do have a number of concerns worth mentioning.

In regard to wildlife habitat; the wetland in question is directly connected to the larger wetland complex at the back of Buck Lake Wildlife Management Area. It is part of the basin which feeds the lake along with the headwaters of Buck Lake Brook, providing feeding areas as well as breeding and foraging sites for waterfowl and other birds. Loons have nested in this area of the lake for many years. The relatively remote and diverse nature of this area of Vermont combined with the protections afforded by state ownership of the forest surrounding the lake, save this one lot, makes this area a refuge for many species of wildlife.

I requested a site visit with Bret Ladago of our fisheries division to get a better sense of the exact location of the project and the nature of the surrounding area. We conducted the site visit with Christian Otto's forester David McMath on October 10th, 2016. While onsite and in the immediate vicinity of the project location I observed fresh moose tracks and sign of direct moose use of the wetland immediately below the location of the proposed crossing. The wetland at this location likely provides some value to moose as a spring and summer feeding area. In addition, there are documented mast stands used by bear to the east, off of Mr. Otto's property. I believe the wetland complex north of the project location, adjacent to Buck lake, could provide spring soft mast forage areas for black bear. The location of these two food sources on opposite sides of the access road increases the likelihood that bears and other wildlife were previously, and will in the future, use the area as a travel corridor. From a land use planning and habitat fragmentation standpoint the location of the proposed camp, access road and wetland crossing are not ideal, however, within the scope of the wetland permit the impact is not undue.

The area as a whole is likely home to a wide variety of amphibians and reptiles which may or may not have crossed the areas now cleared for the road. In particular, I am concerned that any amphibians migrating to or from the wetland complex on Mr. Otto's property will be blocked by the large ditches associated with the road construction. In relation to the scope of the wetland permit, I would ask that where silt fence is required as part of the project that it be minimal in nature and designed to allow for animal passage via gaps where possible. Once no longer needed, silt fence should be removed or modified to eliminate barrier effects to animals of low stature.



Alison Thomas, the departments Education coordinator, provides the following comments regarding the Educational component of the associated wetland and its relation to the educational curriculum of Buck Lake Conservation Camp, located on the north side of the lake.

The wetlands across from the camps' waterfront located on what is now Mr. Ottos property are one of the few options for quality wetland exploration that campers and staff have at Buck Lake Green Mountain Conservation Camp. The small wetland area near our waterfront provides little plant or animal diversity for teaching functions and values of a wetland ecosystem. There is one other place we can access for studying wetlands, but it is completely off of the trail system and too distant from camp facilities. As such, we rarely go there due to the safety issues associated being so far from camp and road access.

Although we've never owned the property where we study wetlands, we've always had permission to do so and hope that continues into the future. Access to this area has always greatly enhanced the aquatic ecology component of camp (30% of the curriculum) by providing a real, hands-on experience for the campers.

Based on the map and sketch of the road, it doesn't look like the wetlands near the lake where we've been bringing campers would be directly impacted. As long as this is the case, I see no issue with the proposed wetland crossing. I hope Mr. Otto will be amenable to the camps continued use of the wetland for educational purposes.

Sincerely,



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

Cc: Alison Thomas – Education Coordinator VT FWD
John Austin – Land & Habitat Program Manager VT FWD



Ms. Shannon Morrison
District Wetlands Ecologist
Vermont Department of Environmental Conservation
Watershed Management Division
1 National Life Drive, Main 2
Montpelier, VT 05620-3522

Wednesday October 19, 2016.

Dear Ms. Morrison,

Thank you for forwarding the comments from Mr. Noel Dodge of the Vermont Fish and Wildlife Department, Mr. Bret Ladago of the Fisheries Division, and Ms. Alison Thomas, the Education Coordinator, regarding the Wetland Individual Permit Notice for Project 2015-495.

I was attracted to the property abutting Buck Lake specifically for its proximity to the State Wildlife Management area, its diversity of wildlife and ecosystems, and its remoteness and peacefulness. I am neither a hunter nor am I an ATV or motor boat enthusiast. My intended use of the property is as a nature preserve with minimal development so that my family and I may enjoy this tranquil setting and our love of non-motorized outdoor activity.

The sensitive nature of the area was clear to me when I first learned of the property; however, it had been promoted as a location to build a waterfront camp. It became apparent to me that this was unlikely because of the sensitive nature of the area, and adjoining wetlands, and the fact that waterfront construction would spoil the untouched nature of the lake. Consequently, prior to purchasing, I hired the well-known environmental consulting firm of Arthur Gillman and Errol Briggs to help me better understand the nature of the area and the impacts of any disturbance. Having accompanied Mr. Briggs during one of his site visits and after reviewing his reports, I decided to locate a potential camp site well away from the waterfront, 460 feet to the east of the Lake. Furthermore, to avoid disruption of the undisturbed nature of the lake, my intention is to exceed current shoreline guidelines and maintain the large stand of trees between the proposed campsite and the beaver pond to prevent undue exposure of the camp.

In regards to the private road construction, the forester I have employed-Mr. David McMath, Mr. Briggs, and the road contractor and I, deliberated at length over the road's location, surveying the property extensively over multiple visits to avoid impacts to the wetlands. We would have preferred to locate the road further south, however, the presence of significant rock outcroppings would have entailed large amounts of blasting, which was not a desirable option. Therefore, the current 39 foot crossing of class II wetlands was the best compromise we were able to determine, which is located a distance of 625 feet from the edge of the beaver pond, and 660 feet from the edge of Buck Lake. In addition, we have diverted the road plan away from this area as directly as possible following the class II wetlands crossing.

Regarding Mr. Ladago's observations, to my delight, I too have noticed moose tracks during my recent spring and summer visit to the property, and I am happy, yet not surprised, to learn that black bear are present, as I have observed ideal denning sites east of the property. In regards to the silt fencing, I am amenable to Mr. Ladago's suggestions, and can work with Errol Briggs and the road contractor to minimize fencing impacts; and, if and where silt fencing is required, provide passage for amphibians and reptiles. In addition, if there are means to minimize the impact of ditching on wildlife- I am open to recommendations- in addition, I will consult with Mr. Briggs on this matter.

In regards to Ms. Alison Thomas' comments, I should note that I actually sought her counsel in the summer of 2015, prior to purchasing the property, to determine how active the Buck Lake Green Mountain Conservation Camp is with its activities. During our phone conversation I also raised questions regarding ATV use in the area, concerns over hunting, the rifle range, and property theft. We discussed the educational use of the wetlands adjacent to the property, and I stated to Ms. Thomas my support for the Conservation Camp and its access of the wetlands and the need to cross the property to reach them should I become the owner. I am aware of the path that is used, and I fully support the camp's continued use of the wetlands and the path required to do so. My only requirement is that if and when a camp is established, that campers NOT deviate east of the footpath along the beaver pond since the edge of the proposed camp would be located 125 feet east of the footpath, through the trees, on top of a bluff that is 40 feet above the footpath. I do not want people in the camp. Otherwise, I fully support educational conservation activity throughout the property and I am happy to provide my contact details so that we may maintain communication on an as needed basis.

Furthermore, in an attempt to prevent ATV activity on the property and near the lake in particular, due to extensive rutting causing poor water drainage, I have had a commercial grade 16' security barrier gate installed where the right of way access ends and the proposed road begins on the property (0.50 mile south of the lake). Unfortunately, it appears the contractor did not locate the gate properly, and I have learned that ATVs are continuing to access the property. My goal is to relocate the gate to the intended location- which is more effective, and to identify other ATV access points and render them ineffective.

Please do not hesitate to contact me if you have further questions?

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Otto', with a long horizontal flourish extending to the right.

Christian Otto, M.D., MMSc.

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