

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

INDIVIDUAL WETLAND PERMIT

In the matter of:

VTrans, c/o Glenn Gingras
One National Life Drive
Montpelier, VT 05633

Application for the replacement of an existing culvert with associated clearing, wing wall construction and channel work with proposed impacts to 4,337 square feet of wetland and 16,420 square feet of buffer zone.

374 Hinesburg Road, South Burlington

File #: 2015-673
DEC ID #: EJ16-0131

Date of Decision: October 31, 2016
Decision: **Approved**
Expiration Date: October 31, 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 May 27, 2016 from VTrans, c/o Glenn Gingras (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in South Burlington, 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 #2015-673 and the supporting materials submitted with the permit application including site plans titled
- “EPSC Plans: ANR Impact Sheet”, designed by Green International, dated 3/24/2016, last revised 4/12/16

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 South Burlington 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 the existing culvert with a new 14'W X 8' H concrete box culvert with a length of 122'10" 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.
- 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.
- L. The permittee shall retain an environmental compliance monitor to weekly inspect preparation and construction related activities taking place in the Class II wetland and buffer zone to assure compliance with the conditions of this permit. An onsite preconstruction meeting shall be scheduled with the Agency Wetlands Program prior to project commencement.
- M. A preconstruction meeting will be scheduled with the monitor and Agency Wetlands Program prior to project commencement. The permittee shall contact the Agency two weeks in advance of the proposed preconstruction meeting date. The monitor will immediately notify the Agency of any non-permitted disturbance to the wetland

or buffer zone. A site inspection with the Agency Wetlands Program will be scheduled within 20 days of the completion of construction and installation.

- N. Temporary impacts to wetlands and buffer zones shall be fully restored as depicted in the site plans titled "Landscaping Plan Sheet" (6 sheets), designed by Green International Affiliates, dated 10/4/16 approved by the Agency Wetlands Program.
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 VTrans, c/o Glenn Gingras for Vermont Wetland Permit on May 27, 2016.
2. The wetland and adjacent 50-foot buffer zone are located just north of the intersection of Kennedy Drive and VT Route 116, where Potash Brook flows under VT 116. The wetlands are adjacent to Potash Brook and are on both east and west sides of VT 116.
3. Tina Heath, District Wetlands Ecologist, conducted a site visit to the subject property with Glenn Gingras on 11/17/2015.
4. The subject wetland is contiguous to an area 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 a 43-acre wetland complex associated with the stormwater-impaired Potash Brook and run adjacent to the stream. The wetland complex is composed of 20% forested, 40% scrub-shrub, and 40% emergent wetland. It receives its hydrology from Potash Brook through seasonal flooding and ground water seeps. The wetland remains saturated throughout most of the year. Hydrology Indicators of Saturation (A3), Sediment Deposits (B2), Water-stained Leaves (B9) Drainage Patterns (B10), and Geomorphic Position (D2) were recorded. Dominant plants include basswood, red maple, white pine, buckthorn, speckled alder, jewelweed, creeping jenny, reed canary grass, and nettles. Soils are mapped as Limerick Silt Loam and the soil profile met Hydric Indicator F3, Depleted Matrix. 1
6. The proposed project is described in detail in Sections 17 and 18 of the permit application. The project consists of the **replacement of an existing culvert with associated clearing, wing wall construction and channel work.**
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:	1,992 sq.ft.		
Temporary:	2,345 sq.ft.	Temporary:	3,097 sq.ft.
Other Permanent: :	0 sq.ft.	Permanent: :	13,323 sq.ft.
Total Wetland Impact	4,337 sq.ft.	Total Buffer Zone Impact:	16,420 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), fish habitat (VWR § 5.3), wildlife (VWR § 5.4), threatened and endangered species

- habitat (VWR § 5.6), and erosion control through binding and stabilizing the soil (VWR § 5.10).
9. The following functions are either not present or are present at such a minimal level as to not be protected functions: exemplary wetland natural community (VWR § 5.5), education and research in natural sciences (VWR § 5.7), recreational value and economic benefits (VWR § 5.8), and open space and aesthetics (VWR § 5.9).
 10. The subject wetland is significant for the water storage for flood water and storm runoff function as demonstrated in Section 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 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 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.
 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 rare, threatened and endangered species function as demonstrated in Section 12 of the permit application. Based on the factors described in Section 12.2 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 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.
 16. Under 10 V.S.A. § 913 and VWR § 9.5, the Secretary may authorize activities in a Class II wetland or in its buffer zone if the Secretary determines that it complies with the VWR and will have no undue adverse effect on the protected functions and values. Based on the permit application, the site visit(s) by Agency staff, and the foregoing findings and analysis, the Secretary has determined that the proposed project will have no undue adverse effects on the protected functions and values of the subject Class II wetlands.
 17. Pursuant to VWR § 9.5(b), the permittee has demonstrated that the proposed activity in the subject wetland cannot practicably be located outside the wetland or on another site owned, controlled, or available to satisfy the basic project purpose. All practicable measures have been taken in this proposal to avoid adverse impacts on protected functions, as described in the application.

The permittee has demonstrated that impacts to the wetland could not be avoided due to the existing culvert needing to be replaced for public safety reasons. Other alternative options were considered, and the permitted plan demonstrates the least amount of disturbance to the wetlands. Further, the project footprint was significantly reduced to decrease overall impacts. Temporary wetland and buffer impacts will be fully restored, and the new culvert will allow for better stream dynamics, hydrology, and aquatic organism passage.

18. No public comments were received during the public comment period.

Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

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

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

ABS/LVPL/TMH