

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

INDIVIDUAL WETLAND PERMIT

In the matter of:

Michael and Kristin Brosky
402 Middle Road
Plainfield, VT 05667

Application for the construction of a driveway with proposed impacts to 293 square feet of wetland and 4,044 square feet of buffer zone.

402 Middle Road, Plainfield

File #: 2016-289
DEC ID #: BR16-0235

Date of Decision: November 10, 2016
Decision: **Approved**
Expiration Date: November 10, 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 13, 2016 from Michael and Kristin Brosky (permittees) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Plainfield, 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 #2016-289 and the supporting

materials submitted with the permit application including site plans titled: “R280-wetland-1 Final for submission to VT, Regen Surveying,” prepared by Kevin J. Yerdon L.S., dated 8/25/2016, last revised August 25, 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 driveway crossing structure shall be constructed with stone fill. Stone fill shall be of at least five (5) inches or greater, over filter fabric in the driveway base over the wetland soil, with another layer of filter fabric over the stone fill, and finally the finished material. A perforated HDPE pipe or a culvert of at least 12 inches will facilitate water movement in the crushed stone layer. No ditching on either side of the crossing shall occur that may channelize water, or concentrate flow.
- C. The permittee shall record this permit in the land records of the Town of Plainfield 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.
- D. 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.
- E. **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.
- 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. The permittee shall monitor the portion of the wetland in question annually during early July for five years following construction for nuisance plant species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*). All new populations of 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 Michael and Kristin Brosky for Vermont Wetland Permit on September 13, 2016.
2. The wetland and adjacent 50-foot buffer zone are located to the west of 402 Middle Road in Plainfield, Vermont.
3. Shannon Morrison District Wetlands Ecologist, conducted a site visit to the subject property with Michael Brosky and Patricia Greene-Swift of Gilman and Briggs Environmental on 6/9/2016.
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 3.5 acres in size and is an old field dominated by reed canary grass and spotted touch-me-nots. Cabot silt loams underlay the wetland, and the soils are saturated for much of the growing season. The wetland is hayed periodically and is also used for horse pasture.
6. The proposed project is described in detail in Sections 17 and 18 of the permit application. The project consists of the construction of a driveway. The driveway will cross the wetland in the narrowest location in order to reach an upland area for a house site.

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:	293 sq.ft.		
Temporary:	0 sq.ft.	Temporary:	0 sq.ft.
Other Permanent: :	0 sq.ft.	Permanent: :	4044 sq.ft.
Total Wetland Impact	293 sq.ft.	Total Buffer Zone Impact:	4,044 sq.ft.

8. The protected functions of the wetland include the following: water storage for flood water and storm runoff (VWR § 5.1), and surface and groundwater protection (VWR § 5.2).
9. 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), wildlife habitat (VWR § 5.4), 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), open space and aesthetics (VWR § 5.9), and erosion control through binding and stabilizing the soil (VWR § 5.10).
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 applicant has located the proposed driveway to cross the narrowest section of wetland. The area of buffer zone to impacted is also old field. A portion of driveway is located along a rough farm road used to access the back field.
13. One public comment was received from Dennis Blair in an e-mail dated October 19, 2016. The comment it attached to this permit. In summary Mr. Blair is concerned about alterations in hydrology as a result of the project that may affect his property. The applicants compiled a response submitted by Patricia Green-Swift in an e-mail dated November 3, 2016.

The driveway is constructed along an existing farm path. Currently water seeps over old logs laid down to get farm equipment across. The crossing is in a narrow section of what is a seepy wetland that does not contain channelized flow that drains onto the adjacent property. Condition B was added to the permit at the suggestion of the consultant to ensure the current hydrology is maintained with the crossing. But the permit is conditioned to maintain existing wetland hydrology, so the project is not expected to have undue adverse impacts on the functions and values the wetland provides.

Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

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

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

ABS/LVPL/SLM

From: Dennis Blair <plainfieldk2@hotmail.com>
Sent: Wednesday, October 19, 2016 9:18 PM
To: ANR - WSMD Wetlands
Cc: A Dennis Blair
Subject: Permit 2016-289

The permit application refers to not obstructing the sheet flow of water. Sheet flow is defined as surface water, I have expressed a concern regarding subsurface water flow once the driveway is established and used. I feel this may be like building a dam, maybe the water will find its way around, under or over, I don't know? I don't have an engineering degree but I do have a concern as my pond, vernal pool and my own wetland area receive its water from this area. Can I be assured that once the driveway is put to use, in the winter, with the freezing affects placed on the area and in the summer, the affects of compaction of this area will not adversely affect the natural flow to my property?

Is this an engineered crossing design that considers this or is it left to the discretion of the contractor performing this work?

Do the depths of the soil types have any impact to the design? Will that be considered?

With that being said if my property was adversely affected who would be responsible?

How can I be assured it could be remediated?

Are these fair questions to ask, or am I being overly concerned?

Wetlands are sensitive areas, and I have treated mine with respect, I have enjoyed the wildlife it brings to my property.

I am not sure how these permits are handled, so naturally I have a few questions. I don't want to stand in the way of a neighbor looking to use his property, but I don't want to be on the receiving end of negative impacts. I thank you in advance for your time, and look forward to your answers.

Dennis Blair
Abutting land owner shown as A on the plot map.

Gilman & Briggs Environmental

1 Conti Circle, Suite 5, Barre, VT 05641

Ph: (802) 479-7480; FAX: (802) 476-7018

gbenvironmental@earthlink.net

Laura Woods, Environmental Technician
ANR, WMD
1 National Life Drive, Main 2
Montpelier, VT 05620-3522

Dear Laura,

Please consider this a formal response to the concerns of Dennis Blair (abutting landowner A) regarding the Brosky Wetland Permit Application #2016-289.

Mr. Blair's concerns and questions regarding water flows (both sheet and subsurface) being affected by the driveway crossing of the wetland in its planned location are of course reasonable question to ask. However, having been on this site and visually examined the wetland on his (Mr. Blair's) side of the fence, I believe there will be no issue to his wetland and constructed pond in the wetland on his property.

At the time I performed a wetland delineation on the Brosky parcel, I observed no standing water evident in the area of the proposed driveway, nor during two separate site visits to Mike and Kristin Brosky's parcel (June 1st and 9th of 2016). The soil was saturated in patches where the low swale crosses the proposed driveway location, an area that is presently a farm road that access the Brosky's proposed home location. Water seepage in the wetland was noted as present on both sides of parcel boundary, and is evident throughout the wetland, which is very likely due to bedrock fractures and shallow to bedrock soil in this location of Plainfield.

Water seepage in the sloped wetland is evident on both the Brosky and Blair properties using remote screening with Google Earth and the VT ANR Interest Locator. Saturation to surface is prominent on both parcels, and does not appear to be reliant singularly on water flow from the proposed driveway crossing location.

However, to help insure that sheet flow/subsurface water can continue to flow beyond the construction of this project, I have recommended that the driveway crossing structure be constructed with stone fill. Stone fill should be of at least five (5) inches or greater, over filter fabric in the driveway base over the wetland soil, with another layer of filter fabric over the stone fill, and finally the finished material. This information is based on previous driveway crossing designs submitted with wetland permits. Also, perforated HDPE pipe or a culvert will facilitate water movement in the crushed stone layer, and is commonly used in driveway projects.

While I am not an engineer, an education that included hydrology, geology, and wetland ecology, flora, soils, and biology was helpful in understanding this situation. That said, the contractor constructing the driveway will need to devise appropriate grades and depths of stone fill so that the driveway not only maintains sheet flow, but also has the bearing capacity for vehicles of many different weights, in an easily traversable and safe driveway structure.

Sincerely,

Patricia Greene-Swift
Gilman & Briggs Environmental