

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

**INDIVIDUAL WETLAND PERMIT**

In the matter of:

Thomas Kelly  
21 Philemon Whale Lane  
Sudbury, MA 01776

**Application for the construction of a driveway to serve three single family homes with proposed impacts to 733 square feet of wetland and 4,622 square feet of buffer zone.**

East Hill Road, Troy

File #: 2016-347  
DEC ID #: SJ16-0101

Date of Decision: December 22, 2016  
Decision: **Approved**  
Expiration Date: December 22, 2021

Any activity in a Class I or Class II wetland or its associated buffer zone is prohibited unless it is an allowed use under the Vermont Wetland Rules (VWR) or unless it receives a permit allowing such activity. 10 V.S.A. § 913. Applicants for an individual permit for a proposed activity in any Class I or Class II wetland or its buffer zone must demonstrate that the proposed activity complies with the VWR and will have no undue adverse effects on protected functions and values. VWR § 9.5(a).

The Vermont Agency of Natural Resources (Agency) received an application dated July 8, 2016 from Thomas Kelly (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Troy, 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 #2016-347 and the supporting

materials submitted with the permit application including site plans titled “Emory Thomas & Stella Richards and Thomas and Kimberly Kelly, East Hill Road, Troy, VT,” prepared by All Systems Septic Design, last revised 7-18-2016. 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 Troy 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 the commencement of the approved project, the permittee shall submit a site plan showing the limits of clearing and disturbance for each proposed house site and for the driveways. Except where specifically permitted, these limits shall be located outside of any wetland buffer zone, and shall consider the requests by Fish and Wildlife in terms of limiting the clearing for building envelopes to under a half acre. Physical demarcations of the limits of disturbance shall be memorialized on the ground, through methods such as tree blazing or landscape features prior to construction.
- D. Each deed for the subject properties shall reference the deer yard using the following language: “Each landowner/house owner is hereby put on notice that this development is in the immediate vicinity of a deer wintering area. Domestic dog activity seriously jeopardizes this critical habitat and the existence of the deer in this area. A person who owns a dog that is not leashed, kenneled or otherwise under the owner's immediate control is subject to the penalties of 10 V.S.A. section 4748 (Dogs Pursuing Deer) and section 4514 (Possession of Flesh of Game).”
- E. 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.
- F. **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.
- G. 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.

- H. 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.
- I. 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.
- J. A continuous line of orange snow fence or flagging tape shall be installed along the limits of disturbance prior to the start of construction.
- K. 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.
- L. **OPTION FOR STREAM ALTERATIONS:** The method of construction of the bridges proposed over streams 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, where in-stream work is necessary. 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.
- M. 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](http://www.vermontjudiciary.org). The address for the Environmental Division is: 32 Cherry Street, 2<sup>nd</sup> Floor, Suite 303, Burlington, VT 05401 (Tel. # 802-951-1740).

## FINDINGS

1. The Agency received a complete application from Thomas Kelly for Vermont Wetland Permit on July 8, 2016.
2. The wetland and adjacent 50-foot buffer zone are located north of Searles Road, on west side of East Hill Road in Troy, Vermont.
3. Shannon Morrison District Wetlands Ecologist, conducted a site visit to the subject property with Matt Houghton of All Systems Septic Design on 8/6/2015.
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 complex consists of wet meadow, forested coniferous swamp, emergent wetland and seep. In the area of the new driveway, the wetland is primarily coniferous swamp and seeps dominated by Eastern hemlock and sensitive fern. Two small streams flow through the project site into the emergent wetland to the east. Wetland soils are dominated by Cabot silt loams.
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 to serve three single family homes. A portion of a road was previously built through the widest portion of the wetland, prior to the 2010 Vermont Wetland Rule change that brought the wetland under the jurisdiction of the Rules. This road will be restored to offset impacts proposed in this application. Both streams will be crossed using bridges.
7. Proposed impacts to the wetland and buffer zone, summarized in Section 19 of the permit application, are as follows:

<b>Wetland Alteration:</b>		<b>Buffer Zone Alteration:</b>	
Wetland Fill:	488 sq.ft.	Temporary:	136 sq.ft.
Temporary:	245 sq.ft.	Permanent: :	4,486 sq.ft.
Other Permanent: :	0 sq.ft.	<b>Total Buffer Zone Impact:</b>	<b>4,622 sq.ft.</b>
<b>Total Wetland Impact</b>	<b>733 sq.ft.</b>		

8. The protected functions of the wetland 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), 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: exemplary wetland natural community (VWR § 5.5), threatened and endangered species habitat (VWR § 5.6), and education and research in natural science (VWR § 5.7),).
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 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.

Access to the house sites originally was further east utilizing an existing area of old fill in a wetland area. The development of this into a full time access road would have required substantially impacts between road widening and access to upland portions of the site. The applicant will remove the old road fill in the wetland area to the east, which will result in 7500 square feet of wetland restoration, which will improve wildlife passage and flood storage. The fill will be used for the new road, so restoration and road building will occur simultaneously.

Moving the road further uphill from the location proposed in this permit was hampered by steep slopes. Impacts were further minimized by using bridges to span the streams.

19. One comment was received from Tim Appleton of Vermont Fish and Wildlife in regards to deer wintering habitat associated with the wetland and buffer zone. The comment is attached to the permit. Conditions C and D were added in response to these comments. Several of the suggestions for conditions are outside of the scope of the wetland permit, but the applicant is encouraged to work with Vermont Fish and Wildlife in order to protect the deer wintering habitat while developing this project.

Alyssa B. Schuren, Commissioner  
Department of Environmental Conservation

by: \_\_\_\_\_  
Laura Lapierre, Program Manager  
Wetlands Program  
Watershed Management Division

Dated at Montpelier, Vermont  
this twenty-second day of December, 2016

ABS/LVPL/SLM

**From:** Appleton, Tim  
**Sent:** Thursday, September 29, 2016 3:54 PM  
**To:** ANR - WSMD Wetlands  
**Cc:** Austin, John  
**Subject:** WIP 2016-347 Troy VT

The VT Fish and Wildlife Department has reviewed this application (2016-347) for impacts to fish and wildlife habitat. The application submittals indicate the presence of deer wintering habitat. The Department request the opportunity to evaluate the functionality of this habitat; get a better understanding of the amount of direct (physical removal of the habitat/tree clearing) impact proposed; and further discuss the ramifications, both direct and indirect, of the project with the landowner and their consultant with respect to the deer wintering habitat.

The project, as proposed, will involve clearing of softwood trees that would eliminate potential deer wintering habitat. Human related activities associated with the three house sites may further displace deer from adjacent habitat that is not directly impacted by the development of the house sites. In sum, the removal of habitat as well as the physical displacement of wintering deer trying to use adjacent intact habitat may represent an undue adverse impact to the wildlife function being provided by this wetland.

Timothy J. Appleton, Fish & Wildlife Specialist  
VT Fish & Wildlife Department  
5 Perry Street, Suite 40  
Barre, VT 05641-4266  
Phone: 802-476-0198 Fax: 802-476-0129  
[www.vtfishandwildlife.com](http://www.vtfishandwildlife.com)



**From:** Appleton, Tim  
**Sent:** Thursday, November 10, 2016 11:47 AM  
**To:** ANR - WSMD Wetlands; Morrison, Shannon  
**Cc:** Austin, John  
**Subject:** RE: Wetland Project #2016-347

On behalf of the VT Fish and Wildlife Department, I was able to conduct a site visit with Jeff Parsons on Oct 27, 2016 to assess current use of the property by wintering deer. I observed evidence of such in the form of repeated browsing, repeatedly-used trails and historic bark scarring. The level of use was limited and being performed at a low level. The development of the three seasonal residences should not represent an undue adverse impact to the wildlife function of the wetland and buffer provided that the wetland permit issued for this project include conditions to help mitigate this adverse impact as follows:

- 1) Building envelopes associated with all structures, lawn areas, water supplies and waste water systems be kept to an absolute minimum with an effort to avoid removal of coniferous/softwood tree species where possible and keeping all infrastructure as compact as possible. Based on the site plan developed by All Systems Septic Design and dated 12-1-15 and revised 7-18-16, it seems reasonable to limit building envelopes for each house site to approximately 1/2 of one acre or 22,000 sq. ft.
- 2) Outside of the building envelopes, no softwood tree removal shall be harvested or otherwise removed without the prior review and approval of the VT Fish & Wildlife Dept. unless recommended in a forest/habitat management plan approved by VT Fish & Wildlife.
- 3) Domestic dogs represent a serious threat to wintering deer when they are allowed to roam freely in the absence of immediate control by their owners. All domestic dogs must be leashed, kenneled or otherwise under the owner's immediate control in order to avoid unnecessary stress to deer wintering in the adjacent habitat. The Department's boilerplate language regarding this issue follows:

Each landowner/house owner is hereby put on notice that this development is in the immediate vicinity of a deer wintering area. Domestic dog activity seriously jeopardizes this critical habitat and the existence of the deer in this area. A person who owns a dog that is not leashed, kenneled or otherwise under the owner's immediate control is subject to the penalties of 10 V.S.A. section 4748 (Dogs Pursuing Deer) and section 4514 (Possession of Flesh of Game).

- 4) Cross-country skiing, snowmobiling, and wintertime travel by off-road vehicles must be restricted to trails approved by the VT Fish & Wildlife Dept. Commercial ventures regarding these activities shall be prohibited.

These requested conditions are consistent with the Department's Guidelines For The Review & Mitigation Of Impacts To White-Tailed Deer Winter Habitat In Vermont, 1999.

Please contact me to discuss any issues of concern with the relevancy of these requested conditions with respect to the VT Wetland Rules.

Respectfully Submitted  
-Tim

Timothy J. Appleton, Fish & Wildlife Specialist VT Fish & Wildlife Department  
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Phone: 802-476-0198 Fax: 802-476-0129  
[www.vtfishandwildlife.com](http://www.vtfishandwildlife.com)

-----Original Message-----

From: Morrison, Shannon  
Sent: Monday, October 10, 2016 10:13 AM  
To: [thomasbkelly@gmail.com](mailto:thomasbkelly@gmail.com); Jeff Parsons <[jeff@arrowwoodvt.com](mailto:jeff@arrowwoodvt.com)>

Cc: Appleton, Tim <[Tim.Appleton@vermont.gov](mailto:Tim.Appleton@vermont.gov)>; Lapierre, Laura <[Laura.Lapierre@vermont.gov](mailto:Laura.Lapierre@vermont.gov)>; Woods, Laura <[Laura.Woods@vermont.gov](mailto:Laura.Woods@vermont.gov)>

Subject: Wetland Project #2016-347

Dear Thomas and Jeff, we received a comment from Vermont Fish and Wildlife regarding your permit application on East Hill Road in Troy. In order to issue the permit with positive findings that there are no undue adverse impacts to wildlife habitat, we would like you to coordinate with Tim Appleton from Fish and Wildlife on this issue. His comments and e-mail are attached.

Shannon Morrison, District Wetlands Ecologist

Our email addresses have changed (now @vermont.gov)

NEW: [shannon.morrison@vermont.gov](mailto:shannon.morrison@vermont.gov)

Please update your address book!

1 National Life Drive, Main 2  
Montpelier, VT 05620-3522  
802-490-6178 / [shannon.morrison@vermont.gov](mailto:shannon.morrison@vermont.gov)

Check out our new and improved webpage! <http://www.watershedmanagement.vt.gov/wetlands.htm>

In addition we will be moving to a new format to more efficiently process wetland inquiries. In the meantime, please use our web-based inquiry webpage to contact us at: [http://www.watershedmanagement.vt.gov/wetlands/html/wl\\_districts.htm](http://www.watershedmanagement.vt.gov/wetlands/html/wl_districts.htm).