

## Flood Hazard Area & River Corridor Individual Permit

### 10 V.S.A. § 754

PERMIT #: FP-1-0029-2017-IND

Date: 2/8/2018

**Applicant:** Vermont Agency of Transportation

**Contact:** Robert Wildey (VHB)/Jeff Ramsey (VTrans)

**Phone:** 802-497-6164 (Robert Wildey)/802-828-1278 (Jeff Ramsey)

**Email:** rwildey@vhb.com, jeff.ramsey@vermont.gov

**Project Location:** Between Water Street and Merchants Row off Printers Alley; park area between Marbleworks and Main Street in the Town of Middlebury

**Flooding Source:** Otter Creek

**Project Description:** Overall project to lower the rail tracks that cross under Merchants Row and Main Street in Middlebury. Two areas of the project are subject to this permit: 1) Between Marbleworks & Main Street – temporary construction road for stormwater infrastructure work that will be converted to a 10' wide permanent access road for maintenance. 2) Between Water Street & Merchants Row – temporary access road along the top of bank along Otter Creek from approximately the Cross Street Bridge to the Battell Block parking area on Printers Alley.

Based upon the Findings contained in this permit, the Secretary has determined that the proposed project will comply with the Flood Hazard Area & River Corridor Rule (Environmental Protection Rule, Chapter 29) and is hereby approved under the following conditions and specifications.

### I. Findings

The Secretary of Natural Resources has determined that:

- (a) The project is located within the special flood hazard area (Zone AE), and the FEMA floodway. The project is also located within the river corridor.
- (b) This project is exempt from municipal regulation because it is a State-owned and operated institution or facility.
- (c) State regulation and permit authorizations for this project are preempted under Federal Interstate Commerce Commission Termination Act of 1995. Therefore, this authorization is limited only to FEMA's National Flood Insurance Program (NFIP) regulatory requirements.
- (d) This project authorization includes a temporary 16' construction road for stormwater infrastructure work, that will be converted to a 10' wide permanent access road for maintenance. The road will be located along the river bank between Marbleworks and Main street just downstream of the Frog Hollow Dam. Second phase of the work is for a temporary rail access road located along the Otter Creek top of bank adjacent to the existing rail track. The temporary access road runs from the parking

lot on Printers Alley behind the Battell Block to approximately the Cross Street Bridge. The lowered rail track will consist of a flood wall/berm to keep tracks from flooding up to and including the base flood. River Corridor Standards are preempted by Federal law and do not apply to this permit.

- (e) This project meets the Standards of the Flood Hazard Area & River Corridor Rule (Subchapter 4) that pertain to the NFIP, based on the following:
- (1) The updated hydraulic analysis of the Otter Creek Special Flood Hazard Area (SFHA) and floodway were run with the construction and proposed post-project conditions for both access roads. For both the construction and proposed post-project conditions, the updated model showed that there would be no increase in base flood elevations along the modeled stream reaches.
  - (2) The project will not adversely affect the public safety by increasing flood elevations, flood velocities, or decreasing flood storage volume.
  - (3) The project is designed to be reasonably safe from flooding as required by §29-401(c)(2) of the Rule.
  - (4) The project is designed to comply with the NFIP Floodplain Management Criteria in 44 C.F.R. § 60.3.

## II. Specific Conditions

- (a) No additional fill or encroachment within the SFHA or floodway is authorized beyond what had been included in the application materials. Specifically, this includes the modeled pre- and post-project conditions presented in the 4/25/17 Hydraulic Analysis Memorandum, the project site conditions and cross-sections found in the Vermont Agency of Transportation October 2017 *Early Work Package 2 Revised Final Plans*, and the project site conditions and cross-sections found in the October 2017 *Main Project Revised Preliminary Plans*.
- (b) The disturbed area for the stormwater system access road (Phase 1, located behind Marbleworks) will be restored to the proposed post-construction dimensions for the 10' wide permanent access road shown in the VAOT October 2017 *Early Work Package 2 Revised Final Plans*, and shall be stabilized at the completion of construction. The road shall be maintained to this post-project condition.
- (c) The temporary access road along the rail bed between the Cross Street bridge and the Battell Block shall be removed and restored to pre-construction grades.
- (d) The permittee must contact Rebecca Pfeiffer to schedule a pre-construction meeting on site before each phase of the authorized work begins.
- (e) The permittee must notify the Floodplain Manager by phone or email when construction begins, and when the project is complete.
- (f) As-built documentation prepared by a licensed land surveyor or professional engineer shall be submitted to the Floodplain Manager when the project is complete.

## III. General Conditions

- (a) **Access to property.** By conducting any activity authorized under this permit, the permittee agrees to allow Agency representatives access to the property covered by this permit, at reasonable times and upon presentation of credentials, for the purpose of ascertaining compliance with the Vermont Flood Hazard Area & River Corridor Rule and this permit. This permit does not grant the permittee the right to enter onto any property not owned by the permittee.
- (b) **Changes to authorized activity.** All activity shall be completed and maintained in accordance with the terms and conditions of this permit. The permittee shall notify the Secretary of any planned changes to the authorized activity prior to carrying out such changes. The Secretary may require the permittee to

submit additional information on the proposed change. The Secretary may require an amendment to this permit, which may require re-noticing of the project for public comment.

- (c) **Remedial measures.** The Secretary maintains continuing jurisdiction over an activity authorized under this permit and may at any time order remedial measures if it appears the activity is not in compliance with this permit.
- (d) **Compliance with other regulations.** This permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, and local laws, regulations, and permits.
- (e) **Legal responsibilities for damages.** The Secretary, by issuing permit, accepts no legal responsibility for any damage direct or indirect of whatever nature and by whomever suffered arising out of the approved activity.
- (f) **Revocation.** The Secretary may, after notice and opportunity for a hearing, revoke or suspend, in whole or in part, this permit for cause, including:
  - (1) Violation of the terms or conditions of this permit;
  - (2) Obtaining authorization by misrepresentation or failure to fully disclose all relevant facts;
  - (3) A change in any condition or new information that requires either a temporary or permanent reduction or elimination of the authorized activity.
- (g) **Duty to comply; enforcement.** The permittee shall comply with all terms and conditions of this permit. Any permit noncompliance constitutes a violation of the Flood Hazard Area & River Corridor Rule and may be cause for an enforcement action and/or revocation and reissuance, modification, or termination of this permit.
- (h) **Transfer of permit.** The permittee may transfer this permit by submitting a notice of transfer on a form provided by the Secretary. The notice shall be submitted at least 10 days prior to transfer and shall include at a minimum, the name and address of the new permittee, the name and address of the former permittee, the date of transfer, and a statement signed by the new permittee stating that he/she has read and is familiar with the terms and conditions of this permit and agrees to comply with it.
- (i) **Reopener.** If, after granting this permit, the Secretary determines, at his or her discretion, that there is evidence indicating that an authorized activity does not comply with the requirements of the Flood Hazard Area & River Corridor Rule, the Secretary may reopen and modify this permit to include different limitations and requirements.
- (j) **Limitations.** This permit conveys no vested rights or exclusive privileges. This permit conveys no title to land nor authorizes any injury to public or private property.
- (k) **Appeals.**
  - (1) **Renewable Energy Project.** If this decision relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248, any appeal of this decision must be filed with the Vermont Public Utility Commission pursuant to 10 V.S.A. § 8506. This section does not apply to a facility that is subject to 10 V.S.A. § 1004 (dams before the Federal Energy Regulatory Commission), 10 V.S.A. § 1006 (certification of hydroelectric projects), or 10 V.S.A. Chapter 43 (dams). Any appeal under this section must be filed with the Clerk of the Public Utility Commission within 30 days of the date of this decision; the appellant must file with the Clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in accordance with 10 V.S.A. § 8504(c)(2), and shall also serve a copy of the Notice of Appeal on the Vermont Department of Public Service. For further information, see the Rules and General Orders of the Public Utility Commission, available online at [www.puc.vermont.gov](http://www.puc.vermont.gov). The address for the Public Utility Commission is 112 State Street, Montpelier, Vermont, 05620-2701 (Tel. # 802-828-2358).

(2) **All Other Projects.** 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 the appellant's 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 and the name of the applicant or 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 St.; 2nd Floor, Suite 303; Burlington, VT 05401. Telephone # 802-951-1740.

If the development is constructed as described and according to the above conditions, there is no reason to expect an adverse impact on either the river corridor or flood hazard area.

This permit shall be effective on the date of signing and shall be valid for a period of five years.

Emily Boedecker, Commissioner  
Department of Environmental Conservation



By \_\_\_\_\_ dated 2/8/2018  
Rebecca Pfeiffer, Northwest Floodplain Manager  
Rivers Program  
Watershed Management Division

cc: Ann Webster, Middlebury Town Clerk

Abutters:

- Pamela & Dylan Smith – 168 S Pleasant St, Middlebury, VT 05753
- Brian Cadoret – 160 S Pleasant St, Middlebury, VT 05753
- AEJ Properties, LLC – c/o/ John Illick, 55 Community Drive, Suite 402, South Burlington, VT 05403
- Timothy Eaton – 11 Mountain Street, Bristol, VT 05443
- Smith Housing LTD Partnership – PO Box 415, Middlebury, VT 05753
- Town Hall Theater, LLC – PO Box 128, Middlebury, VT 05753
- Carl and Caetlin, LLC – 66 Merchants Row, Middlebury, VT 05753
- Grace Baptist Church – PO Box 1037, Middlebury, VT 05753
- J Andre & Elizabeth C. Bourdon – 28 Evergreen Lane, Middlebury, VT 05753
- Battell Block Partners, LLC – 747 Pine Street #501, Burlington, VT 05401
- Marbleworks Partnership – PO Box 567, Middlebury, VT 05753