

**VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
INDIVIDUAL WETLAND PERMIT AND DETERMINATION**

In the matter of:

Town of Hardwick
PO Box 523
Hardwick, VT 05843

Application for the construction of a commercial distribution and manufacturing business accelerator building with stormwater utilities with proposed impacts to 2,619 square feet of wetland and 22,968 square feet of buffer zone.

281 VT Route 15W, Hardwick

File #: 2018-533
DEC ID #: SJ19-0067

Date of Decision: August 14, 2019
Permit Decision: **Approved**
Wetland Determination: **Class II**
Permit Expiration: August 14, 2024

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 Secretary may, upon a petition or on his or her own motion, determine whether any wetland is a Class II wetland or a Class III wetland, pursuant to 10 V.S.A. § 914 and the Vermont Wetland Rules, Vt. Code R. 12 004 056 (VWR). The Secretary may establish the necessary width of a buffer zone of any Class II wetland as part of any wetland determination pursuant to the Rules.

As required under 10 V.S.A. § 914 and Section 8 of the VWR, this wetland determination is based on an evaluation of the functions and values of the subject wetland as described in Section 5 of the VWR. Public notice of this wetland determination has been given in accordance with Section 8.3 of the VWR.

The Vermont Agency of Natural Resources (Agency) received an application and petition (application) dated April 18, 2019 from Town of Hardwick (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland and associated buffer zone located in Hardwick, 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 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 operated, and maintained as set forth in the permit application #2018-533 and the supporting materials submitted with the permit application including site plans titled, “Hardwick Yellow Barn Business Accelerator Wetland Impact” by Coe + Coe Architecture dated 4/16/19 and “Yellow Barn Wetland Impact Section” by Coe + Coe Architecture dated 3/12/19. 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 Hardwick 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. **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.
 - D. 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.
 - E. 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.
 - F. 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.

- G. 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.
 - H. The permittee shall retain an environmental compliance monitor *to inspect the construction site and report weekly to the Vermont wetlands program of progress*. An onsite preconstruction meeting shall be scheduled with the Agency Wetlands Program prior to project commencement.
 - I. 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.
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.

DETERMINATION DECISION

1. Based on the Findings listed below, the Secretary has determined that the wetland under consideration is a Class II wetland.
2. Activity in a Class II wetland or its associated buffer zone is prohibited unless it is an allowed use under the VWR, or unless it is authorized by a permit, conditional use determination or order issued by the Secretary. The Secretary may impose any permit conditions as necessary to achieve the purposes of the VWR. Section 9.1 of the VWR. This Determination does not relieve the petitioner or any other person of the responsibility to comply with all other applicable federal, state or local laws. The attached mapping of the wetland shall be added to the Vermont Significant Wetlands Inventory.
3. Within 15 days of the date of this decision, the applicant, any person entitled to notice under Section 8.3(a) of the VWR, or any person who filed written comments regarding the permit application may request in writing reconsideration by the Secretary. Section 8.4 of the VWR. Such a request shall specify all action(s) for which reconsideration is sought and shall provide an explanation of the reason(s) why the request is filed. Where a request for reconsideration has been properly filed, additional evidence may be submitted concerning the functions and values of the wetland, and concerning any other material issue as deemed appropriate by the Secretary. The Secretary may appoint a designee, who shall be at the Division Director level or higher, to render a decision on the request for reconsideration. The Secretary's written reconsideration decision shall be issued as expeditiously as possible under the circumstances, and shall be distributed in accordance with §8.3(c) of the Wetland Rules. If the Secretary fails to act on a request for reconsideration within 20 days of its filing, the request shall be deemed to be denied. The Secretary's written reconsideration decision shall constitute a final act or decision of the Secretary, subject to appeal pursuant to 10 V.S.A. § 8504 and Section 10 of these Rules.
4. No request for reconsideration may be filed concerning or resulting from a request for reconsideration. If the Secretary fails to act on a request for reconsideration within 20 days of its filing, the request shall be deemed to be denied.
5. Filing a timely request for reconsideration with the Secretary tolls the 30-day period for filing an appeal with the Environmental Court. The full time for appeal shall commence to run and shall be computed from the date of the issuance of the Secretary's decision on the reconsideration request.

GENERAL CONDITIONS

The following conditions shall apply to both the wetlands permit and determination:

- 7. Appeals.** 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, an aggrieved person shall not appeal this permit to the Environmental Division of the Vermont Superior Court unless the person submitted to the Secretary a written comment during the applicable public comment period or an oral comment at the public meeting conducted by the Secretary. Absent a determination of the Environmental judge to the contrary, an aggrieved person may only appeal issues related to the person's comments to the Secretary as prescribed by 10 V.S.A. § 8504(d)(2). 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 permit application and determination petition from Town of Hardwick for a Vermont Wetland Permit and wetland determination on April 18, 2019.
2. The wetland and adjacent 50-foot buffer zone are located west of #281 VT Route 15 in Hardwick between Route 15, a railbed and the Lamoille River.
3. Julie Follensbee District Wetlands Ecologist conducted a site visit to the subject property with Michael Lew-Smith of Arrowwood and Eric Remick on 6/21/2018. Julie Follensbee conducted several follow up site visits with the project team in 2018.
4. The 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).
5. The wetland in question is a shallow emergent marsh and shrub swamp associated with a tributary of the Lamoille River and is described in detail in Sections 4 and 5 of the permit application. The wetland is saturated with minor ponding and soils are silt loams. Dominant vegetation includes common rush, panicle aster, fowl bluegrass, yellowfruit sedge, wool grass, Meadow Buttercup and speckled alder.

6. The project is described in detail in Sections 17 and 18 of the permit application. The project consists of the construction of a commercial distribution and manufacturing business accelerator building with stormwater utilities.
7. 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:	497 sq.ft.		
Temporary:	2,122 sq.ft.	Temporary:	9,188 sq.ft.
Other Permanent:	0 sq.ft.	Permanent:	22,968 sq.ft.
Total Wetland Impact	2,619 sq.ft.	Total Buffer Zone Impact:	22,968 sq.ft.

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), 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), 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 wetland is significant for 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 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 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.

15. 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 project will have no undue adverse effects on the protected functions and values of the Class II wetland.
16. Pursuant to VWR § 9.5(b), the permittee has demonstrated that the activity in the 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.

In summary, the proposed building footprint has been significantly reduced from the original proposal from 40,000 square feet to just over 26,000 square feet. The access drive has been relocated to the upland side of the building. Approximately half of the wetland and buffer zone impact is temporary for construction access and will be fully restored following construction completion. Most of the permanent buffer zone impact is occurring on previously filled and managed buffer zone.

The applicant has identified 19,802 square feet of mowed buffer zone on the west side of the wetland between the Lamoille River that will be no longer managed. This buffer protection and enhancement zone will be demarcated by a split rail fence and will be allowed to naturally revegetate.

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

Emily Boedecker, Commissioner
Department of Environmental Conservation

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

Dated at Montpelier, Vermont
this fourteenth day of August 2019

EB/LVPL/JEF









VSWI Map Change: Project #2018.533.D

Cartographer: T.W. Cassese

Date: April 23, 2019

Legend

-  2018-533.D Draft Determination Map
-  Mapped VSWI Class II Wetland
-  State Highway
-  Class 3 Town Road
-  Class 4 Town Road
-  Private Road

Wetland Attributes

TYPE_1	CLASS	DELIN_DATE	NOTES	ACRES
PEM1	2	6/11/2018	2018-533.D	0.914522