

VERMONT AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

INDIVIDUAL WETLAND PERMIT

In the matter of:

Addison County Transit Resources  
Jim Moulton, Executive Director  
282 Boardman Street  
Middlebury, VT 05753

**Application for the construction of an Addison County Transit Resources (ACTR)  
bus maintenance and storage facility with proposed impacts to  
15,570 square feet of buffer zone.**

Approximately 1,300 feet south of the intersection of  
US Route 7 and Creek Road in Middlebury, VT.

File #: 2012-080  
DEC ID #: RU96-0528

Date of Decision: September 18, 2012  
Decision: Approved  
Expiration Date: September 18, 2017

10 V.S.A. §913 and Section 9.1 of the Vermont Wetland Rules provides that 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 Wetland Rules or unless it receives a permit allowing such activity. Applicants for an individual permit for a proposed activity in any Class I or Class II wetland or its buffer zone have the burden of proof to show that the proposed activity complies with the Wetland Rules and will have no undue adverse impact on protected functions and values.

The Vermont Agency of Natural Resources (Agency) received an application dated August 2, 2012 from ACTR for Vermont Wetland Permit #2012-080 for a project involving activities in a wetland and associated buffer zone located in Middlebury, Vermont. Public notice of the application was given in accordance with the Vermont Wetland Rules. Any comments received during the public comment period were considered during review of the application and issuance of this permit.

**DECISION AND PERMIT CONDITIONS**

1. Based on the Findings contained in this permit, the permit application, and information obtained during a site visit by Agency staff, the Secretary finds that the proposed activities will comply with the Vermont Wetlands Statute, 10 V.S.A. §901 et. seq. and the Vermont Wetland Rules. The applicant has demonstrated that the project will have no undue adverse effects on the protected functions and values of the subject significant wetland and

associated buffer zone, and adjacent wetland complex, 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 #2012-080 and the supporting materials listed in Section 13 of the permit application. No material or substantial changes shall be made to the project without the prior written approval of the Vermont Wetlands Section. Project changes may require a permit amendment and additional public notice.
- B. The applicant shall record this permit in the land records of the Town of Middlebury for all properties subject to the permit. Within 30 days of the date of issuance of this permit, the applicants shall supply the Vermont Wetlands Section with a copy of the recording of this permit.
- C. The applicant shall notify the Vermont Wetlands Section in writing or by email prior to the start of the approved project.
- 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 the Vermont Wetland Rules. 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. All construction activities in the wetland and adjacent 50-foot buffer zone shall be completed within five years of the date of this permit or this permit will expire. Any request for an extension must be received by the Department 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. Projects may not be extended beyond ten years of the issuance date, in accordance with Section 9.1 of the Vermont Wetland Rules.
- F. The wetland boundary delineation is valid for five years. The delineation 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 thirty (30) days of completion of the work approved by this permit, the permittee or their representative shall supply the Vermont Wetlands Section with a letter certifying that the project was constructed in compliance with the conditions of this permit.
- H. If a stormwater construction permit is obtained for this project, the erosion prevention and control requirements of that permit shall be followed. If a stormwater permit is not required, the permittee shall comply with the following: A continuous line of orange snow fence or flagging tape shall be installed along the limit of disturbance prior to the start of construction. A continuous line of silt fence shall be properly installed by the applicant immediately upgradient of the snow fence or tape prior to any construction and shall be regularly maintained. Care should 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 they have 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.

- I. 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 applicant 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 Agency 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 or will occur.
3. This permit does not relieve the applicant 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 his/her 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 Vermont Wetland Rules 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, by issuing this permit, 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 applicant, any person entitled to notice under Section 9.2 of the Vermont Wetland Rules, 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 Section 9.6 of the Rules.

7. Any person with an interest in this matter can 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 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 Court; 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 applicant; 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 Court is 2418 Airport Road, Suite 1, Barre, VT 05641 (Tel. # 802-828-1660).

### FINDINGS

1. A complete application was received from ACTR for Vermont Wetland Permit #2012-080 on August 6, 2012.
2. The wetland and adjacent 50-foot buffer zone are located approximately 1,300 feet south of the intersection of US Route 7 and Creek Road in Middlebury, VT.
3. Alan Quackenbush, Wetlands Program Manager, conducted a site visit to the subject property with Shelley E. Gustafson, of Shelly Gustafson Consulting, in October 2010.
4. The subject wetland meets the presumptions listed in Section 4.6 of the Vermont Wetland Rules, 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 is therefore designated as a Class II wetland.
5. The wetland in the vicinity of the project is predominantly emergent wetland and scrub swamp. The dominant plant species include reed canary grass (*Phalaris arundinacea*), narrow-leaf cattail (*Typha angustifolia*), jewelweed (*Impatiens capensis*), and Spirea (*Spiraea* sp.) It is naturally vegetated and a small foot path crosses the wetland in an east-west direction. The buffer zone is an open field; the dominant plant species are wild carrot (*Daucus carota*), reed canary grass, field horsetail (*Equisetum arvense*), and burdock (*Arcticum minus*).
6. The proposed project is to construct an approximately 5470 square foot administrative office, an approximately 6,880 square foot bus barn facility, parking for 40 vehicles, and the installation of utilities and stormwater treatment infrastructure.

7. Proposed impacts to the wetland and buffer zone as summarized in Section 12 of the permit application are as follows:

<b>Wetland Alteration:</b>		<b>Buffer Zone Alteration:</b>	
Wetland Fill:	0 sq.ft.		
Temporary:	0 sq.ft.	Temporary:	0 sq.ft.
Other Permanent: :	0 sq.ft.	Permanent: :	15,570 sq.ft.
<b>Total Wetland Impact</b>	<b>0 sq.ft.</b>	<b>Total Buffer Zone Impact:</b>	<b>15,570 sq.ft.</b>

8. The protected functions of the wetland complex include the following: water storage for flood water and storm runoff (§5.1 of the Vermont Wetland Rules); surface and groundwater protection (§5.2); wildlife and migratory bird habitat (§5.4); and erosion control through binding and stabilizing the soil (§5.10).
9. The protected functions of the subject wetland include the following: water storage for flood water and storm runoff (§5.1 of the Vermont Wetland Rules); and surface and groundwater protection (§5.2).
10. The following functions are either not present or are present at such a minimal level as to not be protected functions in the subject wetland: fish habitat (§5.3), wildlife and migratory bird habitat (§5.4), exemplary wetland natural community (§5.5), threatened and endangered species habitat (§5.6), education and research in natural science (§5.7), recreational value and economic benefits (§5.8), open space and aesthetics (§5.9), and erosion control through binding and stabilizing the soil (§5.10).
11. **Water Storage for Flood Water and Storm Runoff.** The wetland is significant for the water storage for flood water and storm runoff function as 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.
12. **Surface and Groundwater Protection.** The wetland is significant for the surface and ground water protection function as described in Section 17 of the permit application. Based on the factors described in Section 17.2 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. Under 10 V.S.A. §913 and Section 9 of the Vermont Wetland Rules, the Secretary may authorize activities in a significant wetland or in its adjacent buffer zone if the Secretary determines that it complies with the Wetland Rules and will have no undue adverse effect on the protected functions and values. The Secretary has determined that the proposed project, described in these Findings and in the permit application, will have no undue adverse impacts to the protected functions and values of the subject Class Two wetlands or the adjacent wetland complex.

14. The applicant has demonstrated the proposed activity in the subject wetland cannot practicably be located outside the buffer zone 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 project is confined to the buffer zone of the wetland. In addition, the installation of the stormwater treatment system will assume the function of the buffer zone, further minimizing adverse impacts.

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

David K. Mears, Commissioner  
Department of Environmental Conservation

by: Alan Quackenbush  
Alan Quackenbush  
Wetlands Program Manager, Watershed Management Division

Dated at Winooski, Vermont  
this 18<sup>th</sup> day of September, 2012

DM/AQ/NK