

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

INDIVIDUAL WETLAND PERMIT

In the matter of:

Hillview Heights, LLC
PO Box 4251
Burlington, VT 05406

Application for the construction of access drives and stormwater management in association with a seven-lot residential subdivision with proposed impacts to 1,685 square feet of wetland and 5,320 square feet of buffer zone.

Hillview Road, Richmond

File #: 2021-221

Date of Decision: December 13, 2022
Permit Decision: **Approved**
Permit Expiration: December 13, 2027

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 April 22, 2022 from Hillview Heights, LLC (permittee) seeking an individual Vermont Wetland Permit for a project involving activities in a wetland wetlands and associated buffer zones located in Richmond, 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 wetlands. The permittee has demonstrated that the project will have no undue adverse effects on the protected functions

and values of the significant wetlands and associated buffer zones, provided the project is conducted in accordance with the following conditions:

- A. All activities in the wetlands and buffer zones shall be completed, operated, and maintained as set forth in the permit application #2021-221 and the supporting materials submitted with the permit application including site plans titled
- “EX-1: Wetland Exhibit”; designed by Cross Consulting Engineers, dated 2/23/2022
 - “EX-2: Partial Wetland Exhibit”; designed by Cross Consulting Engineers, dated 6/20/2022

and stamped by the Wetlands Program. 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 the issuance notice in the land records of the Town of Richmond 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 the issuance notice¹. Unless otherwise waived, the record shall be submitted through ANROnline.
- C. Prior to commencement of the approved project, the permittee shall notify the Vermont Wetlands Program electronically in writing of the date the project will commence. Unless otherwise waived, the notification shall be submitted through ANROnline.
- D. **Prohibitions:** No additional activities are allowed in the wetlands and associated buffer zones 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 wetlands and buffer zones is allowed with the exception of the proposed project area as approved by this permit.
- E. 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.

¹ Submit records, notifications, and certifications to ANROnline: <https://anronline.vermont.gov/>

- F. 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.
- G. 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. Unless otherwise waived, the letter shall be submitted through ANROnline.
- H. A continuous line of orange snow fence or flagging tape shall be installed along the limits of disturbance prior to the start of construction.
- I. 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.
- J. If a stream alteration permit is obtained for this project, the requirements of that permit shall be followed. If no stream alteration permit was required, the permittee shall comply with the following: The method of installing a 15" hdpe for W2 crossing and 30" hdpe for W3 crossing 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. 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. Stream work shall be limited to the period June 1 to October 1. Culvert invert elevations shall be installed six inches below the stream bed level.
- 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 wetlands 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.

- L. Permanent markers of split-rail fence, large boulders, or an approved alternative shall be installed at regular intervals no more than 30 feet apart at *the 50-foot buffer zone of the adjacent wetland*. These markers shall be installed prior to sale or occupancy of any building lots and before the dwelling is occupied.
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. **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 from Hillview Heights, LLC for a Vermont Wetland Permit on April 22, 2022.
2. The wetlands and adjacent 50-foot buffer zones are located northwest of 2235 and 2283 Hillview Road.
3. Tina Heath, District Wetlands Ecologist, conducted a site visit to the subject property with Ryan Wells on 5/12/2021.

The subject wetlands meet 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 wetlands meet wetland category 5a. The wetland is of the same type and threshold size as those mapped on the VSWI maps: i.e.; open water (pond); emergent marsh; shrub swamp; forested swamp; wet meadow; beaver pond or beaver meadow; bog or fen; and greater than 0.5 acres. under the Secretary's pending general determination #2020-263.

4. The wetland complexes and the subject wetlands in question are described in detail in the multiple wetland application table of the permit application and summarized in Table 1 below.

Table 1: Wetland Descriptions

Wetland IDs	Location of Subject Wetland	Classification Presumption	Size of Wetland in Acres	Vegetation Cover Types	Landscape Position	Wetland Hydrology
W1	North of Hillview Rd	<i>Same type and size as mapped on VSWI</i>	Property: 0.82	90% PFO; 10% PSS	Toe of slope meeting a spring overflow	Surface runoff and ground water
W2	North of Hillview Rd	<i>Same type and size as mapped on VSWI</i>	Property: 1.24	5% PFO; 15% PSS; 80% PEM	Toe of slope in a concave landscape	Surface runoff and high water table
W3	North of Hillview Rd	<i>Same type and size as mapped on VSWI</i>	Property: 0.77	70% PFO; 15% PSS; 15% PEM	Hillside; natural drainageway	Surface runoff, occasional flooding, groundwater

5. The proposed project is described in detail in Sections 17 and 18 of the permit application. The project consists of the construction of access drives and stormwater management in association with a seven-lot residential subdivision.
6. Proposed impacts to the wetlands and buffer zones, summarized in Section 19 of the permit application and multiple wetland application table of the permit application, are as follows:

Wetland Alteration:		Buffer Zone Alteration:	
Wetland Fill:	1,685 sq.ft.		
Temporary:	0 sq.ft.	Temporary:	703 sq.ft.
Other Permanent:	0 sq.ft.	Permanent:	4,478 sq.ft.
Total Wetland Impact	1,685 sq.ft.	Total Buffer Zone Impact:	5,320 sq.ft.

7. The protected functions of the wetlands include the following: water storage for flood water and storm runoff (VWR § 5.1), surface and groundwater protection (VWR § 5.2), and wildlife habitat (VWR § 5.4).
8. 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), 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).
9. Subject Wetlands W1, W2, and W3 are significant for water storage for flood water and storm runoff function as demonstrated in Section 7 of the permit application and wetlands evaluation form. 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.
10. Subject wetlands W1, W2, and W3 are significant for the surface and ground water protection function as described in Section 8 of the permit application and wetlands evaluation form. Based on the factors described in Section 8.2 of the application and multiple wetlands application table, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
11. Subject wetlands W1 is significant for the wildlife habitat function as described in Section 10 of the permit application and wetlands evaluation form. Based on the factors described in Section 10.2 of the application and multiple wetlands application table, as confirmed through a site visit by Agency staff, the proposed project will not result in an undue adverse impact to this function.
12. 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

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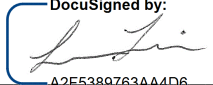
application, the site visit(s) by Agency staff, and the foregoing findings and analysis, the Secretary has determined that the proposed project will have no undue adverse effects on the protected functions and values of the Class II wetlands.

13. Pursuant to VWR § 9.5(b), the permittee has demonstrated that the proposed activity in the wetlands cannot practicably be located outside the wetlands 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 permittee has minimized impacts to the most practicable extent. The original concept was a 9-lot subdivision that was reduced to 7 lots based on extent of wetlands. Impacts are limited to existing wetland crossings and previous disturbance. Impacts from stormwater conveyance cannot be avoided due to required setbacks from wastewater systems. The proposed drive to access lots 4,5,6, and 7 utilizes an existing crossing. This access could not avoid additional impacts due to Town Zoning of Special Flood Hazard Areas and steep bank constraints. Permanent demarcation is required to prevent encroachment into wetland and buffer zones on all lots with currently managed areas. Additionally, further minimization measures in the form of a “no mow” zone will be established for all managed wetland and buffer areas of Wetland 3, which is approximately 8,440 sf of wetland and 27.354 sf of buffer zone to be discontinued from management and allowed to naturalize.

14. Multiple public comments were received during the public comment period. See the attached responsiveness summary.

Julie S. Moore, Secretary
Agency of Natural Resources

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

Dated at Montpelier, Vermont
this thirteenth day of December 2022

JSM/LVPL/TMH