

Vermont Agency of Natural Resources  
Department of Environmental Conservation  
Watershed Management Division

Wetland Determination  
Issued Pursuant to Section 8 of the Vermont Wetland Rules

In the matter of:

Agency of Natural Resources  
Petition for the reclassification of a VSWI mapped  
pond from a Class II to a Class III  
146 Chittenden Road, Chittenden

File #:2016-255

Date of Decision: [DATE]

Decision: Designate as Class III

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).

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.

**Findings**

A. *Petition*

1. A complete petition was received from Michael and Terry Arceiro for a Wetland Determination 2016-255 on September 1, 2016. The Wetland Determination was put on notice from [DATE] until [DATE].
2. The subject wetland is located at 146 Chittenden Road, Chittenden. A map showing the approximate location of the subject wetland is attached.
3. Zapata Courage, District Wetlands Ecologist, conducted a site visit to the subject property with David Cooper of Facey Goss & McPhee P.C, and Jeffery Severson of Oakledge Environmental Services, Inc. on July 20, 2016.
4. **VSWI Option Class II to Class III:** The subject wetland is currently identified as a Class II wetland on the Vermont Significant Wetlands Inventory (VSWI) map. The petition is to reclassify this wetland from Class II to Class III. The wetland does not meet a presumption under VWR § 4.6, and the Secretary has determined based on an evaluation of the functions

and values of the subject wetland that it is not a significant wetland and is therefore designated as a Class III wetland.

5. The wetland in question is described as a Palustrine Emergent (PEM) wetland with a manmade pond constructed in the southern portion. Inclusive of the pond the wetland is approximately 0.4 acres in size. It is dominated by cattails, forested swamp dominated by red maple, and a scrub-shrub swamp component dominated by several willow species. Soils consisted of a depleted matrix and hydrology indicators included soil saturation, geomorphic position and saturation visible on aerial imagery.
6. Public comments were received from [names] during the public comment period.

#### *B. Section 4.6 Presumptions*

1. Certain wetlands are presumed to be Class II wetlands unless determined otherwise by the Secretary. VWR § 4.6. These wetlands include those that are mapped or contiguous to wetlands shown on the Vermont Significant Wetland Inventory maps and those that meet threshold requirements under VWR § 4.6.
2. The wetland is mapped on the VSWI.

#### *C. Functions and Values*

As required by 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. Section 5 provides that in evaluating whether a wetland is a Class II or a Class III wetland, the Secretary shall evaluate the functions that the wetland serves both as a discrete wetland and in conjunction with other wetlands by considering detailed functional criteria. Consideration shall be given to the number of and/or extent to which protected functions and values are provided by a wetland or wetland complex.

1. The wetland does not provide any functions or values at a significant level.
2. The following functions are not present: exemplary wetland natural community (VWR § 5.5); threatened and endangered species habitat (VWR § 5.6); education and research in natural science (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).
3. The following functions are present at such a minimal level as to not be protected functions: water storage for flood water and storm runoff as described in VWR § 5.1; surface and groundwater protection as described in VWR § 5.2, fisheries habitat (VWR § 5.3); and wildlife and migratory bird habitat (VWR § 5.4).

4. **Water Storage for Flood Water and Storm Runoff.**

Wetlands that provide for the temporary storage of floodwater or stormwater runoff to the extent that they make an important contribution to reducing risks to public safety, reducing damage to public or private property reducing downstream erosion or enhancing the stability of habitat for aquatic life are significant wetlands.

The wetland is not significant for water storage for flood water and storm runoff, due to its small size, sloping topography, and the lack of storage capacity. Nearly the entire water storage capacity is provided by the deep man-made pond basin constructed approximately 20 years ago. Water levels in the pond are largely controlled by the configuration and elevation of the pond outlet, and remain relatively stable. The relatively small areas of wetland adjacent to the pond are located on sloping terrain that provides extremely limited additional water storage capacity. Therefore, the wetland does not make a significant contribution to reducing risks to public safety, reducing damage to property, reducing downstream erosion or enhancing aquatic life habitat as demonstrated in the narrative of the petition and as confirmed through a desktop study and site visit by Agency staff.

5. **Surface and Ground Water Protection.**

Wetlands that make an important contribution to the protection or enhancement of the quality of surface or of ground water are significant wetlands.

The wetland provides surface and ground water protection. However, the wetland does not provide this function at a significant level due to its small size and limited capacity for filtering and treating surface water and groundwater. A narrow wetland finger extends southward along the small section of intermittent stream that flows into the adjacent woods from the pond outlet. The pond discharge disappears within approximately 100 feet of the pond outlet, and most likely recharges a small section of the shallow groundwater table; however, the small wetland in this location has the potential to provide limited groundwater protection as demonstrated in the narrative of the petition and as confirmed through a desktop study and site visit by Agency staff.

6. **Fish Habitat**

Wetlands that are used for spawning by northern pike or that are important for providing fish habitat are significant wetlands.

The wetland does not provide significant fish habitat due to its small size and limited capacity to provide shade, cover and food resources for fish that have been stocked in the pond. The man-made pond provides limited fish habitat, however, the wetland is not significant for the fish habitat function as demonstrated in the narrative of the petition and as confirmed through a site visit by Agency staff.

7. **Wildlife Habitat**

Wetlands that support a significant number of breeding waterfowl, or that provide important habitat for other wildlife, including amphibians and migratory birds are significant wetlands.

The wetland/pond complex is not characterized by the wildlife and migratory bird habitat. Bullfrogs (*Lithobates catesbeianus*) and eastern newts (*Notophthalmus viridescens*) were observed utilizing the wetland fringe around the pond, which is typical for small man-made ponds. The wetland is not significant for the wildlife habitat function as demonstrated in the narrative of the petition and as confirmed through a site visit by Agency staff.

### **Determination of Wetland Classification**

1. Based on information gathered by the Wetlands Program, comments received during the public notice period and an evaluation of the functions and values of the wetland, the Secretary has determined that the wetland under consideration is not a Class II wetland.
2. Although the wetland is mapped on the Vermont Significant Wetland Inventory maps and the wetland provides functions as described in VWR §§ 5.1, 5.2, 5.3, and 5.4 the wetland does not provide these functions and values at a significant level.
3. Activity in a Class III wetland or its associated buffer zone is not prohibited under 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.
4. This determination expires ten (10) years from the date of issuance. Any request for an extension must be received by the Agency at least 30 days prior to the end of the ten-year period in order to prevent the expiration of the determination. A request for extension may be considered a minor modification at the discretion of the Secretary. A request for and an approval of an extension of this wetland determination shall be based on a re-evaluation of the wetland under applicable VWR at the time of the request.

### **Reconsideration of Wetlands Determination and Appeals**

1. Within 15 days of the date of this decision, the Applicant, any person entitled to notice under VWR § 8.3(a), or any person who filed written comments regarding the permit application may request in writing reconsideration by the Secretary. VWR § 8.4. 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 VWR § 8.3(c). 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.

2. 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.
3. 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.
4. Appeals from any act or decision of the Secretary under the Wetland Rules are governed by 10 V.S.A. §8504.

Alyssa Schuren, Commissioner  
Department of Environmental Conservation

By \_\_\_\_\_  
Laura Lapierre, Program Manager  
Wetlands Program

Dated at Montpelier, Vermont  
This \_\_\_\_\_ day of \_\_\_\_\_ 2016