

Public Meeting for Ripton Reclassification Petitions

March 30, 2021 6:30 PM via Microsoft Teams

Number of participants: 25

Participant list: Bethany Sargent, Heather Pembroke, Jim Deshler, Pete LaFlamme, Zapata Courage, Mark Nelson, John Widness, Karen Jeffers, Barry and Warren King, Michelle Graziosi, Toby Brooks, Alison Dickinson, Ellen Forshaw (by phone), Robert Stowe, Judy Kowalczyk, Steve Fiske, Unknown User, Unknown User, Angie Allen, Kellie Merrell, Chris von Alt, Jeff Benton, Holly Bull, Unknown Caller, Martha McCaughin

Introduction (Pete LaFlamme)

- Meeting purpose is to receive public comments on petitions received to reclassify Alder Brook, Blue Bank Brook, and Goshen Brook from B(2) to A(1) for Aesthetics, Aquatic Biota, Aquatic Habitat.
- Comments are part of process of deciding whether to accept the petitions and amend the Vermont Water Quality Standards (VWQS).

Meeting Agenda and Guidelines, VWQS Overview, Reclassification, Petitions (Bethany Sargent)

Meeting Guidelines:

- Purpose of meeting is to take public comment on reclassification petitions received from Ripton Conservation Commission (RCC).
- Review of meeting agenda, meeting guidelines and etiquette.
- Written comments will be accepted through April 9th via email or mail to Bethany Sargent.

Vermont Water Quality Standards:

- Establish designated uses, management objectives, minimum criteria.
- Surface water classifications: B(2) Good, B(1) Very Good, A(2) Public water source, A(1) Excellent.
- Waters classified independently for each designated use.
- Below 2,500 feet, B(2) for all uses, unless specifically designated otherwise for any use.
- All waters above 2,500 feet are A(1) unless A(2) for public water source.

Class A Prohibitions:

1. Direct discharge of wastes that, prior to treatment, contained pathogenic organisms.
2. New indirect discharge systems (i.e., in-ground septic) with design flow >1000 gallons/day. Existing systems cannot be increased if it will be greater than 1,000 gallons/day.
3. Solid Waste management rules prohibit siting solid waste management facilities and application of biosolids or septage in Class A watersheds.

Reclassification Process:

- Classification structure established by the legislature.
- Individual reclassification decisions made through rulemaking by the Agency of Natural Resources (ANR).
- Public may petition agency to reclassify for any designated uses.
- ANR solicits public comments on petitions.
- ANR Secretary determines whether to initiate rulemaking to reclassify, and the reaches to be reclassified, based on technical evaluation and public comments received.
- Rulemaking for reclassification applies to VWQS Appendix F.

Overview of Petitions:

- Three petitions submitted by RCC:
 - Alder Brook in Ripton and Lincoln
 - Blue Bank Brook in Ripton and Lincoln
 - Goshen Brook in Goshen, Hancock, and Ripton
- Per the VWQS, propose to reclassify to A(1) for Aesthetics, Aquatic biota, Aquatic habitat.

Overview of Petition Evaluation Procedure and Available Data (Heather Pembrook)

Stream reclassification guided by two documents:

- Big picture: VWQS, management objectives for A1 waters, managed to achieve excellent biological integrity, waters in their natural condition.
- Details: Reclassification Procedure: how we evaluate petitions we receive.

Reclassification procedure provides 3 paths for aquatic biota use:

1. Bug and fish data alone: 3 or more bug and fish assessments of Excellent biological integrity.
2. Bug and fish plus land use: one year of Excellent bug and fish data plus forested/natural land cover in the watershed > 95% and excellent biological, chemical, physical habitat indicative of reference (natural) condition.
3. Land use only: publicly owned lands where limited or no data is available, but land management plans required by federal or state entities manage towards waters in their natural condition.

Location of streams, watersheds, and sampling locations:

- Alder, Blue Bank and Goshen Brook
- Extent of stream reach to be reclassified will be delineated by considering the biological, chemical, physical, and land use information in watershed.
- Biological communities are used to determine status of waters because they reflect overall ecological integrity of river system, integrate stressors over time, provide direct ecological measure of conditions.

Alder Brook:

- Hybrid Low Gradient stream type.
- 4/4 bug assessments rated Excellent.
- Fish community could not be assessed due to lack of fish biocriteria for low gradient stream types, but fish community has Brook Trout, which are often found in natural conditions.

Blue Bank Brook:

- 4/4 bug assessments are Excellent.
- Fish sampled twice: Good and Excellent.
- Good was because of low density, Slimy Sculpin and Brook Trout community present in both sampling events.

Goshen Brook Trib 2:

- 3/3 bug and 3/3 fish sampling events scored Excellent at river mile 0.3.

Reviewed summary of biological data for each of the three streams.

Alder: Reclassification procedure B.

Blue Bank and Goshen: Reclassification procedure A.

Physical and chemical attributes:

- >95% natural land use for each stream
- Water chemistry and physical substrate characteristics collected at each site show reference conditions.
- Water quality: circumneutral pH, low alkalinity, low nutrients, low turbidity, non-detectable chloride levels.
- Pebble counts for Blue Bank and Goshen typical for classic crasher mountain streams, mostly large substrates, little to no sand, silt or clay.
- Alder Brook physical substrate not characterized because of stream type, instead noted amount of large woody debris.
- Will use this data to assess petitions.

Project Background (Mark Nelson, RCC Chair)

- In 2016: VTDEC and Addison County River Watch Collaborative came to RCC meeting to talk about these three streams and reclassification.
- RCC researched and discussed the natural resource benefits, work involved, whether to undertake the project, landowner impacts, how it would impact privately held land.
- April 2017: RCC decided they wanted to move forward.
- Went to Ripton Selectboard, presented, and got their approval.
- Sept 2018: public meeting at Ripton community house, sent letters to landowners to talk about what and why, reviewed information.

- Oct 2019: meeting with Lincoln Selectboard and got approval.
- 5/2017-12/2019, RCC worked with VTDEC to research, write and submit the petitions.
- Petitions submitted to VTDEC in 12/2019.
- From 12/2019-1/2021, VTDEC reviewed the petitions to ensure they were administratively complete.
- RCC used atlas and DEC data to learn more about streams and watersheds in general.

Why did RCC want to submit these petitions?

In addition to info provided by Bethany and Heather, streams have high value and special characteristics:

- High priority connectivity blocks, forest blocks and habitat blocks, IDed by VTFW as important to protect from a forestry perspective, add to biodiversity and ecological values of these forests.
- Rare physical landscape area, species that are RTE.
- Riparian wildlife connectivity corridors and are highest priority surface waters and riparian areas.
- Alder Brook: 13 identified Class 2 wetlands in the Alder Brook watershed, thriving and undisturbed wetlands.
- Blue Bank: multiple significant natural communities, 11 threatened or endangered plant species locations, uncommon natural communities, rare plant species, thriving and undisturbed wetlands.
- Goshen Brook: rare animal species, natural plant communities, high priority habitat blocks and connectivity blocks.

Public Comments

Bethany reviewed guidelines, 5 mins, those who requested to talk will go first.

Will collect all comments and prepare a response to comments.

Ellen Forshaw was called upon to comment.

Ellen opted to go last to allow others to comment since her prepared comments exceeded 5 minutes.

Public Commenter #1: Karen Jeffers

- She is Ellen's sister. Did not have a chance to comment before, did not receive a copy of petition until now. Abutting landowner: back lots up to spruce lodge, described a memory of walking to northern lot which they called the old place, then to the natural turnpike lot, memory is seeing the natural turnpike as what it was then. Today people don't realize they are traveling through a glacial formation, now the road has covered it. Described memories of paying the Ripton taxes with her grandparents and came back via natural turnpike, always stopped at the old place and had a picnic. Grandfather would take Karen to the cellar hole where he was born and where he had his childhood. Married her husband in 1977 and had

her honeymoon at the farm. Her daughter loved the land and her ashes are scattered there. Her family has managed this land and harvested the trees. Her family has thought of it as a renewable resource. They have managed the land to protect the land and resources. Owner concerns about reclassification in 2016 petition dismissed, restrictions triggered were limited, petitioners kept talking about natural conditions. Next thing was to check ANR Atlas, found that streams within GMNF are not A1 to petition seemed to fail. December 2016, RCC was contacted by the DEC to prod into filing this petition, no private landowners in support of these petitions. Wetlands address issue of silviculture and beavers.

- If A1 classification, states natural conditions, what are natural conditions and who decides what they are? Can't harvest trees without disturbing beavers.
- Changes to buffer zone – can't take private trees, you can't use your private property, in violation of 5th amendment of the US constitution. Strongly opposes this reclassification, 200 acre lot in Blue Bank Brook watershed.
- More due diligence should have been done prior to reclassification.

Public Commenter #2: Toby Brooks

- Family owns land that surrounds Goshen brook, grandfather owned the land in 1920s, been in family for 90 years. Land that grandfather owned subdivided amongst his children, among dad and uncle. Cousins own a piece of land on Brooks Rd, they own land that abutts the Middlebury Snowbowl.
- Question: Given the water quality of Goshen Brook being excellent and undeveloped surrounding land, why is it necessary to reclassify the watershed? The only private landowners besides Middlebury college are ourselves and our cousins. Makes no sense that this needs to be reclassified.
- What is the source of potential pollution in the reclassification area that petitioners and DEC are concerned about? Our property is at the edge of reclassification area, there is an unnamed tributary of Crystal brook/South branch Middlebury river, has flowed into Crystal Brook before meeting Goshen Brook. There are beavers in the wetland area at the confluence, changes based on how active the beavers are.
- Reclassification boundary drawing so that their home is in the reclassification area, only restriction is in-ground septic area, seems arbitrary and somewhat incorrect not to include area where waters run. What is the source of potential pollution runoff is from landowners in Goshen Brook that petitioners and DEC are concerned about?

Bethany indicated that VTDEC will be providing a response to comments at a later time.

Public Commenter #3: Robert Stowe

Thanks for what you are doing. On behalf of the other owners of the property around Goshen Brook, he reiterates Toby's questions and looks forward to responses.

Public Commenter #4: Ellen Forshaw

- Commenting on portions of petition regarding Blue Bank Brook, can't show which property because she is on the phone, but they are the two largest private properties, totals 212 acres in size.

- History of the land to put petitions in perspective. Grandfather Louis Chatfield, Chatfield clearing was family farm. 1871 grandfather went to work logging. Lots 119 and 120. Describes family history of Louis Chatfield. Built small house. Continued to log the land, was struck by lightning. Then transitioned to dairy farming. Memories of logging, spruce gum, Christmas trees. Grandmother became sole owner of properties, willed land to her daughter, commenter's mother. Ellen and Karen are now owners of the land, 4th generation, children and grandchildren are learning to love it.
- Unfair of VTDEC to hold public meeting during a time of COVID when commenters cannot access documents, which are in Vermont. Would have gladly shared history with petitioners but they never contacted them. Ellen received notice from VTDEC, learned that outreach occurred to property owners, but Ellen and sister did not receive any notice before DEC letter. Letter sent to executor of estate, but address was incorrect. October 2, 2017 land decreed to Ellen and sister. Second letter sent to incorrect owners. Petitions finalized in 2019, no one contacted us. Knew nothing about stream reclassification despite being largest landowners in Blue Bank Brook watershed. All land registered in Use Value Appraisal program: requires that we log or farm the land. Vermont's interest is to provide jobs to Vermonters through forestry or farming. Enrolling in UVA is choice of landowner, not town. Financial penalties of removing land from the program, Karen and Ellen will decide. The land will be used, it will not remain as wilderness.
- East bank of Blue Bank Brook, only access to land is across the brook. Pretty little brook dotted with beaver dams. Beaver dams can be good for the environment, listed benefits. Vast majority of beaver dams are on their property, shows visitors. Beavers are cutting down our trees, sister and her have allowed the beavers to exist because the damage is not extensive. Grandfather had beavers trapped. Beavers depleted wood. Beavers abandon dams, can be catastrophic or gradual, silt will wash down the brook. Not reasonable for VTDEC to reclassify the brook to assume it will remain as is. Lots were supposed to be logged in 2016, state approved logging plan is to remove 1/3. Logging will begin in 2026 or 2027 after sugar lease expires. Will have to remove beaver dams, some dams will affect Barrows Rd, lot 122. How will logging affect the land? Petition mentions that Dept FPR will affect logging.
- AMPs presumes compliance with nonpoint source discharge. "Any presumption provided by section should be negated by water quality analysis" Nonpoint source monitoring procedures adopted after public notice and comment. Can comply with all AMPS and still be in violation of nonpoint source rules. Can logging cause alteration to streams even if AMPs are followed? Yes, AMPs designed to minimize, not eliminate impacts. Impossible to not disturb water and soil during harvest. Concerned that they will be penalized. Buffer zone extended from 50 ft current to 200 feet. This would impact 35 acres of their land, in addition to 9 acres within current zone. Logging restricted. Neither state nor town is proposing to compensate for value of property. Reemphasize current logging plans. Sugaring operations can resemble a significantly logged area.
- Petition itself fails to provide water quality data. David Addeo responded to public records request and provided water chemistry data for Blue Bank Brook. Brook exceeded WQS in 2009, never sampled that spot again. Sensitivity of measurements not sufficient to show it meets. Need to demonstrate that water quality samples meet at multiple locations throughout the brook in different seasons. Also need to show that it meets after the failure of the beaver dam. Petition sloppily written, says that landowners were notified, but they were not. Listed various errors in petition. DEC and Addison County River Watch instigated RCC to reclassify. Why did VTDEC become involved?

- After semiautomatic weapons were being fired, posted the land for the first time, repeatedly taken down.
- Zoning changed by Ripton. No letter of proposed zoning change. Town never notified landowners. Ripton is taking their land and restricting their use. First time a reclassification petition received for waters crossing private land. Private property whose owners were not consulted before petition submitted. Petition includes no supporting letters from landowners. Setbacks would result in an unjust reduction in value of property by restricting logging. Neither Ripton or State of Vermont considering historical use or future use. Ancestors came to Vermont before it was a state. Being good stewards has not meant constantly keeping the brook pristine but allowing it to recover. Feel they are being punished for being good stewards. Opposes reclassification. Asked if public hearing period can be extended until quarantine is over.

Bethany indicated that comments will be accepted through April 9th, thanked attendees, indicated that responses to comments would be forthcoming, closed the meeting.

The meeting ended around 7:55PM.