

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

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

In the matter of:

**Petition for the reclassification of a mapped Vermont Significant Wetland Inventory Class II
wetland to a Class III wetland.**
60 Petty Brook Road, Milton, Vermont

File #:2006-312

Date of Decision: [DATE]

Decision: "[Decision on classification]"

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. Section 4.2 of the 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.

Petition

1. A complete petition was received from Patrick and Linda Mahoney for a Wetland Determination 2016-312 on October 11, 2016 in association with an application for an Individual Wetland Permit (IP). The Wetland Determination was put on notice from [DATE] until [DATE] .
2. The subject wetland is in a field along the wooded area behind the residence at 60 Petty Brook Road, Milton, Vermont. A map showing the approximate location of the subject wetland was prepared by Patrick and Linda Mahoney and is depicted at the end of the IP application in Section 22.
3. Brock Freyer and Charlie Hohn, Wetlands Ecologists, conducted a site visit to the subject property with Patrick Mahoney on July 29, 2016.

4. 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.
5. The wetland in question is described in detail in Sections 4 and 5 of the permit application. Generally, the wetland is approximately 0.4 acres in size and is in an existing sloping swale. It consists of a few cat tails and grass and receives most of its water from run off. A seep on the embankment to the west does provide flow when water is present.
6. Public comments were received from [names] during the public comment period.

Findings

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 I 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 following functions are either not present or are present at such a minimal level as to not be protected functions: water storage for flood water and storm runoff as described in Section 5.1 of the VWR; surface and groundwater protection (Section 5.2) fisheries habitat (Section 5.3); wildlife and migratory bird habitat (Section 5.4); exemplary wetland natural community (Section 5.5); threatened and endangered species habitat (Section 5.6); education and research in natural science (Section 5.7); recreational value and economic benefits (Section 5.8); open space and aesthetics (Section 5.9); and erosion control through binding and stabilizing the soil (Section 5.10).

2. **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 the water storage for flood water and storm runoff function as demonstrated in Section 7 of the petition and as confirmed through a site visit by Agency staff.

3. **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 is not significant for the surface and ground water function as demonstrated in Section 8 of the petition and as confirmed through a site visit by Agency staff.

4. **Fish Habitat**

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

The wetland is not significant for the water storage for the fish habitat function as demonstrated in Section 9 of the petition and as confirmed through a site visit by Agency staff.

5. Wildlife Habitat

Wetlands that support a significant number of breeding waterfowl, including all species of ducks, geese and swans, or broods of waterfowl or that provide important habitat for other wildlife and migratory birds are significant wetlands.

The wetland is not significant for the water storage for the wildlife habitat function as demonstrated in Section 10 of the petition and as confirmed through a site visit by Agency staff.

6. Exemplary Wetland Natural Community

Wetlands that make an important contribution to Vermont's natural heritage are significant wetlands. These include wetlands that are identified as high quality examples of one of Vermont's recognized natural community types.

The wetland is not significant for the exemplary wetland natural community function as demonstrated in Section 11 of the petition and as confirmed through a site visit by Agency staff.

7. Rare, Threatened, and Endangered Species Habitat

Wetlands that contain rare, threatened, or endangered species of plants or animals are significant wetlands.

The wetland is not significant for the rare, threatened and endangered species habitat function as demonstrated in Section 12 of the petition and as confirmed through a site visit by Agency staff.

8. Education and Research in Natural Sciences

Wetlands that provide, or are likely to provide valuable resources for education or scientific research are significant wetlands.

The wetland is not significant for the education and research in natural sciences function as demonstrated in Section 13 of the petition and as confirmed through a site visit by Agency staff.

9. Recreational Value and Economic Benefits

Wetlands that provide substantial recreational values or economic benefits are significant wetlands.

The wetland is not significant for the recreational value and economic benefits function as demonstrated in Section 14 of the petition and as confirmed through a site visit by Agency staff.

10. **Open Space and Aesthetics**

Wetlands that contribute substantially to the open-space and aesthetic character of the landscape are significant wetlands.

The wetland is not significant for the open space and aesthetics function as demonstrated in Section 15 of the petition and as confirmed through a site visit by Agency staff.

11. **Erosion Control through Binding and Stabilizing Soil**

Wetlands that are important for erosion control are significant wetlands. Such wetlands are typically located along stream, river, pond or lake shorelines, where erosive forces are present.

The wetland is not significant for the erosion control through binding and stabilizing soil function as demonstrated in Section 16 of the petition and as confirmed through a site visit by Agency staff.

Determination of Wetland Classification

Based on the petition dated October 11, 2016, information obtained during a site visit by Wetlands Program staff on July 29, 2016, 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.

Effect of Class II Wetland Determination

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.

Reconsideration of Wetlands Determination

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.

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.

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.

Appeals

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

Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

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

Dated at Montpelier, Vermont
this ____ day of _____, 2016

ABS/LVPL/JBF