

State of Vermont
WATER RESOURCES BOARD

RE: Links at Lang Farm, Essex, Vermont
Docket No. WET-99-02DR
(Petition filed by the Department of Environmental Conservation)

DISMISSAL ORDER

On December 30, 1999, the Department of Environmental Conservation ("DEC"), Agency of Natural Resources, filed a petition for a declaratory ruling with the Water Resources Board ("Board") pursuant to WRB Rule of Procedure ("Procedural Rule") 16(B), seeking Board review of an Executive Officer Advisory Opinion, In re: Links at Lang Farm, Essex, Vermont, WET-99-01-AO. The DEC asked the Board to determine whether three wetlands, located on property owned by John and Nancy Lang in Essex, Vermont ("Lang Farm property"), are wetlands protected under the Vermont Wetland Rules ("VWR").

Pending before the DEC at the time of its petition for declaratory relief was a conditional use determination ("CUD") application filed by Links at Lang Farm, LLC ("CUD Applicant"). The CUD Applicant proposed to develop a golf course on the Lang Farm property ("Project") and its application addressed the impacts of development on certain Class Two wetlands and their buffer zones located on the Lang Farm property. The petition filed by DEC with the Board was intended to clarify whether certain other wetlands located on the Lang Farm property (Wetlands 98-3, 98-4, and 98-6) were subject to the protections of the VWR by virtue of their alleged contiguity to Class Two wetlands described in the CUD application. See Sections 2.07 and 4.2(b) of the VWR

The only persons who sought and were granted party status in the declaratory ruling proceeding were the DEC and the CUD Applicant. Prehearing Conference Report and Order at 3, 6 (Feb. 2, 2000). After the filing of all prefiled testimony and the scheduling of a hearing in this matter, the parties on April 21, 2000, requested a continuance to facilitate settlement negotiations in this matter. On April 21, 2000, and again on July 21, 2000, Board Chair David J. Blythe, issued Continuance Orders in this matter.

On July 28, 2000, DEC and the CUD Applicant filed a Stipulation and Proposed Order with the Board. Under the terms of that Stipulation, the CUD Applicant has conceded DEC jurisdiction over Wetlands 98-3, 98-4, and 98-6 and redesigned its Project to address the DEC's concerns. The DEC now intends to issue a CUD for the Project. Both parties ask the Board to dismiss the DEC's Petition for declaratory relief and declare that Advisory Opinion WET-99-01-AO is moot and of no precedential effect in the interpretation of the VWR, either with respect to the wetlands in dispute or over other wetlands.

The Board considered the Stipulation and Proposed Order in deliberations on August 8, 2000. The Board concluded that dismissal of this matter is not contrary to law and is consistent with the Board's power to allow informal disposition of contested case matters. 3 V.S.A. § 809(d).

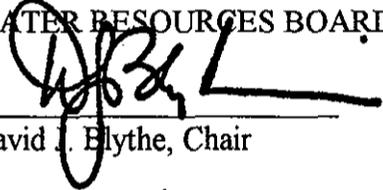
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Accordingly, it is hereby ordered, consistent with the parties' Stipulation and Proposed Order, that:

1. The issue in dispute in Advisory Opinion, Docket No. WET-99-01AO is moot, by virtue of the parties' Stipulation, and Advisory Opinion Docket No. WET-99-01AO has no precedential effect; and
2. Docket No. WET-99-02DR is hereby dismissed,

Dated at Montpelier, Vermont, this 9th day of August, 2000

WATER RESOURCES BOARD



David J. Elythe, Chair

Concurring:
Barbara S. Farr
John D.E. Roberts