

State of Vermont
WATER RESOURCES BOARD

Re: Ladd's Landing, Ltd., et al.
Town of Grand Isle, Vermont
Docket No. WET-01-09

ADMINISTRATIVE DETERMINATION

This decision pertains to a petition filed by Ladd's Landing, Ltd., with the Water Resources Board ("Board"), seeking reclassification of a wetland located on property owned by Douglas Tudhope in the Town of Grand Isle, Vermont, from Class Two to Class Three, pursuant to 10 V.S.A. §905(7)-(9) and Section 7 of the Vermont Wetland Rules ("VWR"). The co-petitioners are Rick Surprenant and Douglas Tudhope. As explained below, the Board concludes that the subject wetland is not a significant wetland and therefore reclassifies this wetland from Class Two to Class Three.

I. PROCEDURAL HISTORY

The petition was filed by Ladd's Landing, Ltd., on October 8, 2001. The petition was prepared for Ladd's Landing, Ltd., by Rick Surprenant, President and sole stock holder of Ladd's Landing, Ltd. Ladd's Landing, Ltd., leases property from Douglas Tudhope, former operator of the Tudhope Sailing Center. Ladd's Landing, Ltd., operates under the name, Tudhope Sailing Center and Marina.

On October 16, 2001, the Board's Executive Officer determined that the petition was in substantial compliance with VWR § 7 and the Board's Rules of Procedure, and he docketed the petition as WET-01-09. In his letter acknowledging receipt of the petition, dated October 16, 2001, the Board's Executive Officer advised Mr. Surprenant that while the petition was substantially complete, additional information would need to be filed to clarify, among other things, the ownership of the real property subject to the petition. If title was not in Ladd's Landing, Ltd., the Executive Officer indicated that the current owner of the property would need to file a letter verifying that it is a co-petitioner.

Mr. Surprenant promptly provided the requested information by phone and Fax.

On October 17, 2001, a Notice of Petition was sent to all persons required to receive notice pursuant to VWR §§ 7.3 and 7.4. The Notice of Petition was published by the Board in the *Burlington Free Press* on October 19, 2001. The Notice of Petition set a deadline of November 19, 2001, for the filing of any written comments or requests for hearing or both, pursuant to VWR § 7.4.

On October 22, 2001, the Board received a supplemental filing from Mr. Surprenant, along with a letter from Douglas Tudhope, consenting to co-petitioner status as the affected

land owner in this proceeding.

No other written comments or requests for hearing were filed by the November 19, 2001, deadline.

Accordingly, the Board did not hold a public hearing in this matter, but instead considered the petition in deliberations on November 20, 2001, based solely on the information filed by Ladd's Landing, Ltd. As discussed in more detail below, the Board determines that the subject wetland lacks significance for all ten of the wetland functions identified in VWR §5. Therefore, the Board concludes that reclassification of the subject wetland from Class Two to Class Three is warranted and it so orders, along with other appropriate relief.

II. FINDINGS OF FACT

1. The subject wetland is approximately 3,000 square feet in size and is located entirely within a former rock quarry. The quarry was created by the State of Vermont, c. 1950, to provide fill material for the nearby approach causeways for the lift bridge between South Hero and North Hero Islands.
2. The subject wetland is located in the Town of Grand Isle, northeast of Route 2, on property owned by Douglas Tudhope, operated as the Tudhope Sailing Center and Marina. The subject wetland consists of a small depression, bordered by a boat yard and the walls of the former quarry. See Attachment A.
3. The subject wetland is located in a wetland polygon (Palustrine, scrub/shrub, seasonally emergent) on Vermont Significant Wetland Inventory Map #1D ("VSWI Map"). The VSWI Map incorrectly represents the characteristics and overstates the size of the subject wetland, at least as the wetland currently exists. This may be due to a mapping error or as a result of the fact that quarrying activities at the site altered the wetland between the time that the aerial photographs were taken (c. 1977) that were used to create the map and the effective date of the Vermont Wetland Rules (Feb. 1990).
4. The subject wetland is largely devoid of wetland plants. A few red maple trees grow in the wetland, but there is no significant wetland vegetation given that the soils consist of a thin organic layer over stone.
5. Padraic Monks, former District Wetlands Ecologist with the Wetlands Office, Department of Environmental Conservation, Agency of Natural Resources ("ANR"), visited the subject wetland on September 1, 2000. At that time, he reviewed the wetland for

functions and values in accordance with Section 5 of the Vermont Wetland Rules and he concluded that the wetland did not perform any of these at a significant level.

6. The Board finds that the subject wetland does not serve the following ten functions at a significant level:

Function 5.1 (Water storage for flood water and storm runoff) - The subject wetland does not intercept flood water or stormwater for treatment or storage. The drainage area of the wetland is very small and has no significant water storage capacity, the wetland is not a part of any watershed or tributary to a watercourse, the wetland is not contiguous to a lake or pond, and there is no downstream flood plain or public and private property that can be affected.

Function 5.2 (Surface and ground water protection) - The subject wetland does not contribute to the protection or enhancement of the quality of surface or of ground water. The wetland does not recharge a well head or an aquifer protection area or a Class I or Class II ground water area, it does not reduce levels of contaminants in surface waters which recharge underlying or adjacent ground water resources, it does not contribute to the flows of Class A waters, and it does not protect or enhance water quality through retention, removal or treatment of sediments, nutrients or organic matter or moderate the adverse water quality effects of soil erosion or stormwater runoff.

Function 5.3 (Fisheries habitat) - The subject wetland does not provide fisheries habitat for northern pike or other species. The wetland is very small and not connected to other surface waters. It does not provide spawning, feeding or cover habitat for fish.

Function 5.4 (Wildlife and migratory bird habitat) - The subject wetland does not provide significant habitat for wildlife. It does not support any breeding waterfowl or broods of waterfowl, or provide an important habitat for wildlife and migratory birds. The wetland is does not contain evergreen trees for cover and feeding habitat for white-tailed deer nor does it provide necessary feeding habitat for other large mammals. The wetland does not have beaver dams or other indicia of use by beavers. Likewise, it does not provide habitat to support the reproduction of uncommon Vermont amphibian species or populations of declining or disjunct reptile species. Because the wetland is small, not contiguous with or hydrologically connected to a variety of other wetland types and land uses, it is not significant habitat for wetland dependent wildlife species.

Function 5.5 (Hydrophytic vegetation habitat) - The subject wetland does not provide hydrophytic vegetation habitat. It is not a bog, fen, alpine peatland or black gum swamp. It is not an important wetland community type. It does not contain a disjunct rare plant

population or a plant species at its range limit.

Function 5.6 (Threatened and endangered species habitat) - There is no documentation of rare, threatened, or endangered species at the subject wetland, nor does the wetland have important habitat to support any known occurrence of rare, threatened, or endangered species.

Function 5.7 (Education and research in the natural sciences) - The subject wetland has no significance for education and research in the natural sciences. The wetland is not owned by a public entity dedicated to these purposes and it is not accessible by a public easement. It does not have a history of use for education or research, and it does not have any characteristics which potentially make it unique or valuable for education and scientific research purposes.

Function 5.8 (Recreational value and economic benefits) - The subject wetland does not have significant recreational or economic value. Due to its location, size, and characteristics, it does not support recreational activities such as fishing, hunting, and trapping, and it is not used for the harvesting of wild foods.

Function 5.9 (Open space and aesthetics) - The subject wetland does not provide significant open space or possess unique or special aesthetic qualities. It cannot be readily observed by the public and it is not a prominent feature in the surrounding landscape.

Function 5.10 (Erosion control through binding and stabilizing the soil) - The subject wetland does not provide an erosion control function as there are no erosive forces present in or adjacent to the wetland. It is not a part of a shoreline, riverbank or streambank, and it does not play a role in controlling erosion by dissipating waves or water current energy since it is not contiguous with Lake Champlain.

III. CONCLUSIONS OF LAW

According to the former District Wetlands Ecologist at ANR, the wetland located on Douglas Tudhope's property in Grand Isle is not a significant wetland meriting protection under the VWR. Based on the uncontroverted evidence, the Board agrees that the wetland should be reclassified from Class Two to Class Three because it is not significant for any of the ten functions identified in Section 5 of the VWR.

The Board may determine whether to reclassify any wetland to a higher or lower classification. VWR §§ 4.4 and 7.1. It may do so upon receipt of a petition from an affected land

owner. VWR §7.1. Douglas Tudhope, a title holder to the land where the wetland is located is a proper petitioner. Ladd's Landing, Ltd. is properly joined as a co-petitioner given that it is the current lessee of the property. Rick Surpenant is properly joined as a co-petitioner given that he President and sole stock holder of Ladd's Landing and is in negotiations with Mr. Tudhope over acquisition of the affected property.

A wetland appearing on a National Wetlands Inventory map for the State of Vermont (1978) is presumed to be a Class Two wetland, unless determined otherwise by the Board as provided by VWR § 7. VWR §4.2.b. The National Wetlands Inventory map for that portion of Grand Isle area is VSWI Map #1D and the subject wetland appears on this map.

A Class Two wetland is presumed, unless the Board determines otherwise, to serve all the functions specified in VWR § 5. VWR § 4.2.b(2). Accordingly, unless otherwise determined by the Board, the subject wetland is presumed to serve all the functions in VWR § 5 at a significant level.

A Class Three wetland, on the other hand, is a wetland "determined not to be sufficiently significant to merit protection" under the VWR. VWR § 4.1.c. The Board may determine that a mapped, Class Two wetland is not sufficiently significant to merit protection under the VWR based on an evaluation of that wetland's functions. If the Board concludes that the wetland does not serve any of the ten functions at a significant level, it may reclassify the Class Two wetland to a Class Three wetland. See Re: New England Container Company, Docket No. WET-01-05, Administrative Determination (Sept. 18, 2001); Re: Hogback/ Hollister Wetland, Docket No. WET-90-05, Administrative Determination (July 23, 1991).

The Board has considered the uncontroverted evaluation of the wetland functions performed by Ladd's Landing, Ltd., and concludes that the subject wetland is not a significant wetland meriting protection under the VWR. Accordingly, the Board determines that the subject wetland should be reclassified from Class Two to Class Three and that the Wetlands Office, ANR, should remove the subject wetland from VSWI Map #1D.

IV. ORDER

It is hereby ordered:

1. The subject wetland located on property owned by Douglas Tudhope in the Town of Grand Isle Vermont, is a Class Three Wetland; and

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2. The Wetlands Office, ANR, is directed to remove the subject wetland from VSWI Map #1D.

Dated at Montpelier, Vermont, this 21st day of November, 2001.

WATER RESOURCES BOARD

/s/ David J. Blythe
David J. Blythe, Chair

Concurring:

Lawrence H. Bruce, Jr.

Jane Potvin

John D.E. Roberts

Mardee Sánchez

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