

**State of Vermont
Water Resources Board**

**Re: South Alburg Swamp
Town of Alburg, Vermont**

Docket No. WET-02-01

DISMISSAL ORDER

I. PROCEDURAL HISTORY

On January 24, 2002, the Vermont Natural Resources Council (VNRC), filed a petition (Petition) with the Water Resources Board (Board) seeking reclassification of the South Alburg Swamp in Alburg, Vermont, from Class Two to Class One and an expansion of the protective buffer zone from a presumptive 50 feet to 300 feet, pursuant to 10 V.S.A. § 905(7)-(9) and Vermont Wetland Rule (VWR) § 7.

The Board provided Notice of the Petition on February 13, 2002, to persons owning real property within and adjacent to the South Alburg Swamp, and also published Notice of the Petition in the The Islander on February 19, 2002. In the notice, the public was informed how to request a hearing in this matter or file written comment. March 29, 2002, was set as the deadline for written comments and any requests for hearing.

In late February and March, the Board received written comment from the public and requests for a hearing on the Petition.

On March 11, 2002, VNRC filed a Motion for a Continuance of the wetland reclassification proceeding and a Memorandum in Support. VNRC specifically asked the Board to grant a continuance until June 15, 2002, to allow VNRC to provide additional information about the merits of the Petition to concerned citizens in Alburg, Vermont, and to discuss the implications to landowners if the Petition were to be granted by the Board.

On March 12, 2002, the Board deliberated with respect to VNRC's Motion for Continuance and determined that, in light of the need for more public outreach by VNRC concerning its Petition, the requested continuance should be granted. A Continuance Order was issued on March 19, 2002, providing for an expiration date of June 15, 2002, but also requiring VNRC to file by May 28, 2002, a letter stating the status of its public outreach efforts and indicating what further action the Board should take.

On May 28, 2002, VNRC filed with the Board a Motion to Dismiss, seeking voluntary dismissal without prejudice.

Accordingly, on June 4, 2002, the Board deliberated with respect to the pending Motion to Dismiss.

II. DISCUSSION

Pursuant to Board Procedural Rule 17 (eff. Jan. 1, 2002), administrative determinations of the Board, including wetland reclassification determinations, are required to be conducted in accordance with the Board's Rules of Procedure, Part III, *as appropriate*. Part III, Procedural Rule 24, governs dismissals, including notices of withdrawal by appellants and voluntary dismissals by petitioners. While Procedural Rule 24, as applied in contested case proceedings, requires the Board to provide the appellant and other parties with an opportunity for oral argument prior to dismissal of an appeal, the Board concludes that the requirement of oral argument is not applicable to proceedings convened for administrative determinations, such as wetland reclassifications, because there are no parties and the VWR contemplate only a notice and public comment process. VWR § 7.4(a).

Accordingly, the Board has determined that dismissal of the above-captioned Petition, without prejudice, is in the public interest. The Board therefore issues the following order.

III. ORDER

VNRC's Petition to reclassify the South Alburg Swamp from Class Two to Class One and to expand the protective buffer zone is hereby **dismissed without prejudice**.

Dated at Montpelier, Vermont, this 6th day of June, 2002.

WATER RESOURCES BOARD
By its Chair

/s/ David J. Blythe

David J. Blythe, Esq.

Concurring:
Jane Potvin
John D.E. Roberts

Absent:
Mardee Sánchez

Recused:
Lawrence H. Bruce, Jr., Esq