

**State of Vermont
WATER RESOURCES BOARD**

**Re: ABC/MRC, Inc., Kwiniaska Golf Course - West Pond
Docket No. WET-02-06; and
ABC/MRC, Inc., Kwiniaska Golf Course - East Pond
Docket No. WET-02-07 (Consolidated)**

ADMINISTRATIVE DETERMINATION

This decision pertains to two petitions filed by ABC/MRC, Inc., Kwiniaska Golf Course with the Water Resources Board (“Board”), seeking reclassification of two wetlands located on its property in the Town of Shelburne, Vermont, from Class Two to Class Three, pursuant to 10 V.S.A §§ (7) - (9) and Section 7 of the Vermont Wetland Rules (“VWR”). The subject wetlands are both man-made ponds constructed as golf course hazards. As explained below, the Board concludes that both wetlands are not significant wetlands and therefore the Board reclassifies both wetlands from Class Two to Class Three.

I. PROCEDURAL HISTORY

The petitions were filed on November 18, 2002, by David S. Marshall, PE of Civil Engineering Associates, Inc.

On November 20, 2002, the Board’s Executive Officer determined that the petitions were in substantial compliance with VWR § 7 and the Board’s Rules of Procedure, and he docketed the petitions as WET-02-06 and - 07 respectively. 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 also published in *Seven Days* on November 27, 2002. The Notice of Petition set a deadline of December 27, 2002, for the filing of any written comments or requests for hearing or both, pursuant to VWR § 7.4.

There were no requests for a hearing regarding the reclassification petitions. On December 27, 2002 the Board received a comment via e-mail from Dr. Kenneth Stavisky. Dr. Stavisky urged the Board to reclassify the wetlands to Class Three. The Board received no other comments on the petition. However, April Moulaert, Wetland Ecologist with the Department of Environmental Conservation, indicated on the petition form filed with the Board that she reviewed the petition and agrees with the request for reclassification.

II. FINDINGS OF FACT

1. The subject wetlands are located on property owned by ABC/MRC, Inc., Kwiniaska Golf Course in Shelburne, Vermont.
2. East Pond (aka 10th hole pond) is a small man-made feature on a golf course. The pond was constructed as a golf course water hazard. This wetland is located adjacent to Spear Street near the Webster Road Intersection.
3. West Pond (aka 5th hole pond) is a small man-made feature on a golf course. The pond was constructed as a golf course water hazard. This wetland is located approximately 350' from Spear Street and is briefly visible from Spear Street when traveling in the southerly direction.
4. Both wetlands are depicted on the National Significant Wetland Inventory ("NWI") Map #13A and on the Vermont Significant Wetland Inventory ("VSWI") for the town of Shelburne dated November 22, 2002. The map shows two polygons in the area of the subject wetlands identified as POWZ (palustrine, open water with an intermittently exposed/permanent hydric regime).
5. The Board finds that the subject wetlands do not serve the following ten functions at a significant level:

Function 5.1 (Water storage for flood water and storm runoff) - Neither pond is significant for water storage for flood water and storm runoff. East Pond is located very near the top of its drainage and, therefore, has a very small watershed area. Wetland vegetation occupies only a few square feet of the pond surface area, making the wetland surface area substantially less than one percent of the watershed. The wetland surface area of West Pond is also less than one percent of the watershed. The water levels of both ponds are maintained at relatively constant levels due to the fixed elevation of the outlet structures. There is little capacity for additional water storage in both ponds.

Function 5.2 (Surface and ground water protection) - Neither pond is significant for surface and groundwater protection. As man-made golf course water hazards, the ponds are characterized by few features indicative of any capacity for surface water quality protection, and the petitioners ecologist indicated that there are no field indications that the ponds are located in groundwater recharge areas. Wetland vegetation occupies only a small portion of the basin of both ponds, which further restricts the capacity of the wetlands to provide water quality protection.

Function 5.3 (Fisheries habitat) - Neither pond is significant for fisheries habitat. The ponds are small and shallow and surrounded by a mowed golf course. The ponds are subject to regular potential golf course maintenance activities, such as periodic water level draw-downs, which restrict their capacity to provide any significant fisheries habitat.

Function 5.4 (Wildlife and migratory bird habitat) - Neither pond is significant for wildlife and migratory bird habitat. While common wildlife species or migratory birds could potentially visit the golf course on occasion, the ponds possess no features that are likely to be potentially significant for such species.

Function 5.5 (Hydrophytic vegetation habitat) - Neither pond is significant for the hydrophytic vegetation function. The ponds are not known to provide significant habitat for hydrophytic vegetation features such as rare species, plants at their range limits or disjunct plant species 40 miles or more from the nearest population.

Function 5.6 (Threatened and endangered species habitat) - Neither pond is significant for any known threatened and endangered species habitat. The Non-game and Natural Heritage Program map information indicates that no threatened or endangered species are known to occur at this site.

Function 5.7 (Education and research in the natural sciences) - Neither pond is significant for education and research in natural science. The ponds have no known history for education or research, and they are not characterized by features that would make them valuable for such endeavors.

Function 5.8 (Recreational value and economic benefits) - Both ponds have recreational value as constructed golf course ponds. However, their recreational value as golf course ponds are completely unrelated to any wetland attributes.

Function 5.9 (Open space and aesthetics) - Both ponds are aesthetically pleasing man-made golf course features. However, their aesthetic value as golf course ponds are completely unrelated to any wetland attributes.

Function 5.10 (Erosion control) - Neither pond serves this function. There are no potentially significant erosive forces present at the site.

III. CONCLUSIONS OF LAW

The Board may 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 property owner. VWR § 7.1. ABC/MRC, Inc., Kwiniaska Golf Course is an affected property owner for purposes of VWR § 7.1 and, therefore, it is authorized to request reclassification of the Class Two wetlands to Class Three.

A wetland appearing on a National Wetlands Inventory (“NWI”) 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). Both wetlands are depicted on the National Significant Wetland Inventory (“NWI”) Map #13A and on the Vermont Significant Wetland Inventory (“VSWI”) map for the town of Shelburne dated November 22, 2002. Accordingly, they qualify as Class Two wetlands.

A Class Two wetland is presumed, unless the Board determines otherwise, to serve all the functions specified in VWR § 5. VWR § 4.2(b). 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: Ladd’s Landing, Ltd. et.al., Docket No. WET-01-09, Administrative Determination (Nov. 21, 2001); Re: The Orvis Company, Inc., Docket No. WET-01-06, Administrative Determination (Nov. 21, 2001).

Based on the uncontroverted assessment of the subject wetlands functions by the petitioner’s ecologist, which was confirmed by ANR, the Board concludes that both wetlands are not significant wetlands that merit protection under the VWR. Accordingly, the Board determines that the subject wetlands should be reclassified from Class Two to Class Three and that the Wetlands Office, ANR, should remove these wetlands from the Vermont Significant Wetland Inventory (“VSWI”) map dated November 22, 2002.

IV. ORDER

It is hereby ordered:

1. The subject wetlands described above and located on ABC/MRC, Inc., Kwiniaska Golf Course's property in the Town of Shelburne, Vermont, are reclassified from Class Two to Class Three; and
2. The Wetlands Office, ANR, is directed to remove the subject wetlands from the Vermont Significant Wetland Inventory ("VSWI") map for the town of Shelburne dated November 22, 2002.

Dated at Montpelier, Vermont, this 7th day of January, 2003.

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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