

**State of Vermont
WATER RESOURCES BOARD**

**Re: Mt. Mansfield Company
Docket No. WET-02-08**

ADMINISTRATIVE DETERMINATION

This decision pertains to a petition filed by Mt. Mansfield Company with the Water Resources Board ("Board"), seeking reclassification of a wetland located on its property in the Town of Stowe, Vermont, from Class Two to Class Three, pursuant to 10 V.S.A §§ (7) - (9) and Section 7 of the Vermont Wetland Rules ("VWR").

I. PROCEDURAL HISTORY

The petition was filed on December 16, 2002, by Robert Apple of the Mt. Mansfield Company. On December 24, 2002, 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-02-08. 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 *The Stowe Reporter* on January 2, 2003. The Notice of Petition set a deadline of January 31 2003, 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 or comments regarding the reclassification petitions filed with the Board. However, Shannon Morrison, 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 "POWH" (palustrine open water, permanently flooded) wetland is located on property owned by Mt. Mansfield Company in Stowe, Vermont between Barnes Camp and The Pinnacle.
2. The wetland in the past included a beaver pond, created by a beaver dam. The pond size was estimated at less than 1/4 acre, and appears on the National Wetlands Inventory (NWI) map #22D.
3. With the approval of DEC, Mt. Mansfield Company removed the beaver dam in the summer of 2002. After the dam was removed, what remained was a small stream with gravel bars and a wetland fringe around what used to be a pond..
4. The total area of the wetland is 5,500 square feet or 0.1 acre.
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) - The wetland surface area is less than 1% of the watershed. An analysis of the wetland by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form

submitted with petition, indicates that the wetland is not significant for water storage for flood water and storm runoff.

Function 5.2 (Surface and ground water protection) - The wetland does not meet any of the criteria for being significant for surface and groundwater protection based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form.

Function 5.3 (Fisheries habitat) - The wetland does not meet any of the criteria for being significant for fisheries habitat based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form.

Function 5.4 (Wildlife and migratory bird habitat) - The wetland does not meet any of the criteria for being significant for wildlife and migratory bird habitat based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form. The petitioner acknowledges that virtually any stream that supports fish or amphibians may be a potential feeding area for great blue heron. However, given its small size and shallowness during summer months, this wetland is not significant for this function.

Function 5.5 (Hydrophytic vegetation habitat) - The wetland does not meet any of the criteria for being significant for hydrophytic vegetation habitat based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form. In particular, no elements of concern shown on the 1997 Significant Habitat Map indicates habitat for rare species of hydrophytic vegetation, one or more plant species at their range limits or disjunct plant species 40 miles or more from the nearest population.

Function 5.6 (Threatened and endangered species habitat) - The wetland does not meet any of the criteria for being significant for threatened and endangered species habitat based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form. In particular, no elements of concern shown on the 1997 Significant Habitat Map indicates that the wetland provides important habitat for any species on the federal or state threatened or endangered species list.

Function 5.7 (Education and research in the natural sciences) - The wetland does not meet any of the criteria for being significant for education and research in natural sciences based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form.

Function 5.8 (Recreational value and economic benefits) - The wetland does not meet any of the criteria for being significant for recreational value and economic benefits

based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form.

Function 5.9 (Open space and aesthetics) - The wetland does not meet any of the criteria for being significant for open space and aesthetics based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form.

Function 5.10 (Erosion control) - The wetland does not meet any of the criteria for being significant for erosion control based on an analysis of this function by Charlotte Brody, Field Naturalist with Dubois & King, Inc., using the Vermont Wetland Evaluation Form..

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. Mt. Mansfield Company 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). The wetland in question is depicted on the National Significant Wetland Inventory (“NWI”) Map #22D. Accordingly, the wetland qualifies as a Class Two wetland.

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 wetland’s functions by the petitioner’s field naturalist, which was confirmed by ANR, the Board concludes that the wetland is not a significant wetland that merits 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 wetland from the Vermont Significant Wetland Inventory (“VSWI”) map.

IV. ORDER

It is hereby ordered:

1. The subject wetland described above and located on the Mt. Mansfield Company's property in Stowe, Vermont, is 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 Stowe.

Dated at Montpelier, Vermont, this 25th day of February, 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