

**State of Vermont  
WATER RESOURCES BOARD**

**Re: Trapp Family Lodge Wetland  
Town of Stowe, Vermont**

**Docket No. WET-04-01**

**ADMINISTRATIVE DETERMINATION**

(Issued on October 6, 2004)

This decision pertains to a petition filed by Trapp Family Lodge with the Water Resources Board (Board) seeking reclassification of a wetland located on its real property in the Town of Stowe, Vermont, from Class Two to Class Three, pursuant to 10 V.S.A. § 905(7)-(9) and § 7 of the Vermont Wetland Rules (eff. Jan 1, 2002) (VWR). As explained below, the Board concludes that the subject wetland is not a significant wetland, based on analysis of its functions, and therefore reclassifies this wetland from Class Two to Class Three.

**I. PROCEDURAL HISTORY**

On August 3, 2004, Trapp Family Lodge (Petitioner) filed a wetland reclassification petition with the Board, through its representative Kristina von Trapp Frame.

On August 11, 2004, the Board Chair determined that the petition was in substantial compliance with VWR § 7 and the Board's Rules of Procedure, and the matter was docketed as WET-04-01. On August 11, 2004, the Chair sent a letter to the Petitioner's representative acknowledging receipt of the petition and enclosing a Notice of Petition. On August 11, 2004, the 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 Stowe Reporter* on August 19, 2004. The Notice of Petition set a deadline of September 23, 2004, for the filing of any written comments or request for hearing or both, pursuant to VWR § 7.4.

No written comments or requests for hearing were filed by the August 19, 2004, deadline. Accordingly, the Board did not hold a public hearing in this matter, but instead considered the merits of the reclassification request in deliberations on October 5, 2004, based solely on the information contained in the petition filed by Trapp Family Lodge and wetland inventory maps in the public records of the Board. This matter is now ready for decision.

**II. FINDINGS**

1. The subject wetland is an open water pond, .4 acres in area. It is located one mile south of the Trapp Family Lodge and 100 feet easterly of the dirt portion of Trapp Hill Road in the Town of Stowe, Vermont. A driveway and parking area are located 25 feet to the southeast of the wetland, both of which serve a house, also not far from the wetland.

2. The wetland is shown as a Class Two wetland on the Vermont Significant Wetland Inventory (VSWI) map for the Town of Stowe (November 26, 2002). On the National Wetlands Inventory (NWI) Map #33A, it is identified as "POWH" (Palustrine, Open Water, Permanent).
3. The wetland and its presumptive 50-foot buffer zone are located exclusively on real property owned by the Petitioner.
4. The wetland is comprised of a pond, constructed for the von Trapp family in 1972. The pond has historically been used for swimming, and it has been stocked with trout on occasion.
5. In the northern corner of the pond, there is a small area dominated by wetland species of vegetation, primarily speckled alder and sensitive fern. Other species present include honeysuckle, broadleaf spirea, reed canary grass, cinnamon fern and willow.
6. Most of the area immediately surrounding the pond is mowed weekly to the edge of the water.
7. On May 1, 2004, Shannon L. Morrison, District Wetlands Ecologist with the Water Quality Division, Department of Environmental Conservation, Agency of Natural Resources (ANR), visited Petitioner's real property. She verified that the subject wetland is a manmade pond, which is used primarily for aesthetic and recreational purposes. She also verified that there is a small area on the northern end of the pond where alder, sensitive fern and *Spirea* spp. are growing, but the area surrounding the pond is mowed lawn.
8. Petitioner's representative completed a Vermont Wetland Evaluation Form (VWEF) prepared by the Department of Environmental Conservation as a preliminary field checklist. Based on the characteristics of the wetland described in the VWEF, the Board finds that the wetland does not perform the following functions at all or only at a very insignificant level and as a consequence of its function as a man-made pond: (1) water storage for flood water and storm runoff; (2) surface and ground water protection; (3) fisheries habitat; (4) wildlife and migratory bird habitat; (5) hydrophytic vegetation habitat; (6) threatened and endangered species habitat; (7) education and research in natural sciences; (8) recreational value and economic benefits; (9) open space and aesthetics; and (10) erosion control through binding and stabilizing the soil.
9. The wetland is located near lands mapped by the Town of Stowe as a deer wintering area and the surrounding land uses comprise significantly more than 50% open land. The wetland is also within 1/4 mile of another Class Two wetland. Nevertheless, the subject wetland does not meet four or more conditions indicative of wildlife habitat. Indeed, given the location of the pond in close proximity to a residence, a town highway, and a

driveway, and the attendant traffic and human intrusions, it has very limited potential for habitat for wetland-dependent species.

### III. CONCLUSIONS OF LAW

The Board is authorized to adopt rules for the identification and protection of wetlands that are so significant that they merit protection under state law. 10 V.S.A. § 905(7) and (9). The Board is also authorized to act on petitions to designate specific wetlands as significant based on functional analyses of those wetlands. 10 V.S.A. § 905(8). Conversely, in response to a petition, the Board has the implicit authority to conduct a functional analysis of a specific wetland to determine whether it is not so significant that it merits protection under its rules.

The VWR specify the process and criteria by which the Board may reclassify any wetland to a higher or lower classification. VWR §§ 4.4 and 7.1. The Board may undertake such a reclassification upon receipt of a petition from an affected property owner. VWR § 7.1. Trapp Family Lodge is an affected property owner for the purposes of VWR § 7.1. Re: Styles Brook Reservoir, Docket No. WET-03-02, Administrative Determination at 6 (Aug. 7, 2003); Re: Mt. Mansfield Company, Docket No. WET-02-08, Administrative Determination at 3 (Feb. 25, 2003). Therefore, it is authorized to request reclassification of the subject Class Two wetland to Class Three.

A wetland appearing on an NWI map for the State of Vermont is presumed to be a Class Two wetland, unless determined otherwise by the Board as provided by VWR § 7. VWR §§ 4.2(b) and 4.4. NWI maps for the State of Vermont, revised to conform with the VWR and updated to reflect any reclassifications, are published for each Town in Vermont by the Secretary of ANR and are known as VWSI maps. VWR § 4.5(a). The subject wetland is presently depicted on the applicable NWI map and on the VWSI map for the Town of Stowe. Accordingly, the subject wetland is presumed to be a Class Two wetland.

A Class Two wetland is presumed to serve all of the functions specified in VWR § 5 at a significant level, unless the Board determines otherwise. VWR § 4.2(b). A Class Three wetland, on the other hand, is a wetland “determined not to be 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 listed in VWR § 5 at a significant level, it may reclassify a Class Two wetland to a Class Three wetland. See Re: Styles Brook Reservoir, Docket No. WET-03-02, Administrative Determination at 6 (Aug. 7, 2003); Re: Mt. Mansfield Company, Docket No. WET-02-08, Administrative Determination (Feb. 25, 2003); Re: ABC/MRC, Inc., Kwiniaska Golf Course - West Pond & East Pond, Docket No. WET-02-06 and-07 (Cons.), Administrative Determination (Jan. 7, 2003); Re: Ladd’s Landing, Ltd., et al., Docket No. WET-01-09, Administrative Determination (Nov. 21, 2001).

The Board has reviewed the petition and supporting documentation and concludes that

the subject wetland does not serve any of the ten functions identified in VWR § 5 at a significant level. The description of the wetland in the VWEF supports this conclusion. Indeed, after conducting a site visit of the Petitioner's property, Ms. Morrison, ANR's District Wetlands Ecologist, concluded that the functions and values of the wetland were not significant enough to merit protection under the VWR. On August 2, 2004, Ms. Morrison sent a letter to the Petitioner's representative (attached to the Petition), supporting the reclassification of the wetland from Class Two to Class Three. While the subject wetland has some characteristics that suggest it could provide wildlife habitat, its value for this function is minimal at best given that four or more conditions for wildlife habitat diversity are not present and, further, given the wetland's close proximity to a residence, a town highway, and a driveway.

For these reasons, the Board concludes that the subject wetland is not a significant wetland meriting protection under the VWR. Therefore, it should be reclassified from Class Two to Class Three and the VSWI map for the Town of Stowe should be revised by ANR to reflect the Board's action, pursuant to VWR § 4.5(a).

#### **IV. ORDER**

It is hereby ordered:

1. The wetland located on the Trapp Family Lodge real property in the Town of Stowe, Vermont, described in this decision, is reclassified from Class Two to Class Three; and
2. The Wetlands Office, Water Quality Division, Department of Environmental Conservation, ANR, is directed to revise the Vermont Significant Wetland Inventory map for the Town of Stowe to reflect the fact that the subject wetland is now a Class Three wetland.

Dated at Montpelier, Vermont, this 6th day of October, 2004.

WATER RESOURCES BOARD

/s/ John F. Nicholls  
John F. Nicholls, Chair

Concurring:  
Lawrence H. Bruce, Jr.  
Michael J. Hebert  
Joan Nagy  
John D.E. Roberts