

State of Vermont
WATER RESOURCES BOARD

Re: Morrissey Pond
No. WET-05-01

ADMINISTRATIVE DETERMINATION

(Issued Mar. 7, 2005)

A petition to determine that a constructed pond is not a wetland is granted.

I. Background

On January 10, 2005, Franklin B. Parent, P.E., of Enman Engineering in Rutland, Vermont, filed a petition (Petition) with the Water Resources Board (Board) on behalf of Jim and Jennifer Morrissey seeking a determination that an area depicted as a Class Two wetland on Vermont Significant Wetland Inventory (VSWI) maps is in fact not a wetland. The mapped area, totaling approximately 0.4 acre, consists of a constructed pond located entirely on real property owned by the Morrisseys in the Town of Rutland, Vermont. The Petition includes a letter of support signed by Alan Quackenbush, District Wetland Ecologist with the Wetlands Office of the Department of Environmental Conservation in the Vermont Agency of Natural Resources (ANR), explaining that the mapped area does not warrant protection as a wetland.

Pursuant to section 7.4.a of the Vermont Wetland Rules and Procedural Rule 22, the Board provided personal notice of the Petition to persons required to be so notified on January 18, 2005, and the Board published notice of the Petition in the *Rutland Herald* on January 20, 2005. As provided by the Board's personal and published notice of the Petition, and in accordance with section 7.4.a of the Vermont Wetland Rules, the deadline for submitting comments or requesting a hearing on the Petition was February 22, 2005. No comments or requests for a hearing were received by the February 22, 2005 deadline, and the Board did not determine on its own initiative that a hearing would be necessary. The Board deliberated on the Petition at its March 3, 2005 meeting in Essex Junction, Vermont. This matter is now ready for decision.

II. Facts

1. Jim and Jenny Morrissey own a constructed pond (herein referred to as Morrissey Pond), about 0.4 acre in size, on the East side of East Pittsford Road, approximately 700 feet from the intersection with US Route 7, in the Town of Rutland, Vermont. Morrissey Pond is located entirely on real property owned by Jim and Jenny Morrissey.
2. Morrissey Pond is presently identified as a Class Two wetland on VSWI maps for the Town of Rutland. National Wetland Inventory maps for the State of Vermont classify Morrissey Pond as POWZ (palustrine, open water, intermittently exposed/permanent).

3. Morrissey Pond, which was formerly used for farming, was excavated in an upland area, constructed with a plastic liner, and fed from a well.
4. The soils beneath Morrissey Pond have not become hydric because they are covered with a plastic liner.
5. Morrissey Pond does not exhibit wetland hydrology because, other than rainwater, the water source for the pond was pumped well water.
6. The only hydrophytic vegetation growing at the site of Morrissey Pond is the common reed (*Phragmites australis*), a non-native nuisance plant that typically invades disturbed sites.
7. Morrissey Pond supports no wetland-dependent aquatic life.
8. ANR District Wetland Ecologist Alan Quackenbush and the Morrissey's consultant, Franklin B. Parent, P.E., of Enman Engineering, have visited Morrissey Pond and have each concluded that this site is not a wetland.
9. Morrissey Pond lacks hydric soils, significant hydrophytic vegetation, aquatic life, and wetland hydrology and is therefore not a wetland.

III. Analysis

The Board is authorized to “determine whether an area shown as a wetland on the VSWI maps is not a wetland.” VWR § 4.4.e. To be regulated as a wetland under the Vermont Wetland Rules, an area must exhibit hydric soils, hydrophytic vegetation, and wetland hydrology. *See* VWR § 3.2.a (describing methodology for identifying and delineating wetlands). *See also* VWR § 2.29 (defining wetlands as characterized by hydric soils, significant hydrophytic vegetation or aquatic life, and wetland hydrology); VWR §§ 2.02, 2.14, 2.15, 2.31 (defining aquatic life, hydric soils, hydrophytic vegetation, and wetland hydrology, respectively).

Based on the facts contained in the Petition and the information provided by ANR District Wetland Ecologist Alan Quackenbush, the Board concludes, pursuant to sections 4.4.e and 7.1.e of the Vermont Wetland Rules, that a constructed pond on the real property of Jim and Jennifer Morrissey in the Town of Rutland, Vermont, currently depicted as a wetland on VSWI maps, lacks hydric soils, wetland hydrology, and significant hydrophytic vegetation or aquatic life and is therefore not in fact a wetland. Accordingly, the Board grants the Petition and directs ANR's Wetlands Office to update the VSWI maps for the Town of Rutland accordingly.

IV. Order

It is hereby Ordered:

1. The petition to determine that a constructed pond located on real property owned by Jim and Jennifer Morrissey is not a wetland is granted.
2. This pond, located on the east side of East Pittsford Road, approximately 700 feet from the intersection with US Route 7 in the Town of Rutland, Vermont, currently classified as a significant wetland, is hereby determined not to be a wetland within the meaning of the Vermont Wetland Rules.
3. ANR's Wetlands Office shall remove this pond from the VSWI maps for the Town of Rutland.

Dated at Montpelier, Vermont this 7th day of March, 2005.

WATER RESOURCES BOARD

/s/ John F. Nicholls

John F. Nicholls, Chair

Concurring:

Lawrence H. Bruce, Jr., Member
Michael J. Hebert, Member