

State of Vermont
WATER RESOURCES BOARD

Re: Miller Farm Pond
South Burlington, Vermont

Docket No. WET-05-05

ADMINISTRATIVE DETERMINATION

(Issued on March 4, 2005)

This decision pertains to a petition requesting reclassification of a wetland from Class Two to Class Three pursuant to 10 V.S.A. § 905(7)-(9) and Vermont Wetland Rule § 7. As explained below, the Board concludes that the subject wetland is not a significant wetland, based on an analysis of its functions and, accordingly, the Water Resources Board (Board) reclassifies that wetland from Class Two to Class Three.

I. PROCEDURAL HISTORY

On January 14, 2005, The University of Vermont (UVM), represented by Linda Seavey, UVM, 109 South Prospect Street, Burlington, VT 05405, filed a petition (Petition) with the Board seeking reclassification from Class Two to Class Three of a .15-acre wetland associated with a farm pond located on UVM's Miller Farm property. The farm property is adjacent to Spear Street and Interstate 89 in South Burlington, Vermont. The Petition was filed pursuant to 10 V.S.A. § 905(7)-(9) and § 7 of the Vermont Wetland Rules (eff. Jan 1, 2002) (VWR).

On January 21 and 24, 2005, UVM's consultant, Krebs & Lansing Consulting Engineers, Inc., filed additional materials to amend and augment the Petition.

On January 26, 2005, April Moulart, District Wetlands Ecologist with the Vermont Wetlands Office, Agency of Natural Resources, filed a signed Wetlands Office Certification (Appendix D) indicating agreement with UVM's request, without comment.

On January 27, 2005, the Board's Chair, John F. Nicholls, 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-05-05. On January 27, 2005, the Chair sent a letter to UVM's representative, Ms. Seavey, acknowledging receipt of the Petition and supplemental materials and enclosing a Notice of Petition. On January 27, 2005, 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 Burlington Free Press* on January 28, 2005. The Notice of Petition set a deadline of February 28, 2005, for the filing of any written comments or requests for hearing or both, pursuant to VWR § 7.4.

No written comments or requests for hearing were filed by the February 28, 2005, 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 March 3, 2005, based

solely on the information contained in the Petition and supplemental materials filed by UVM and wetland inventory maps in the public records of the Board. This matter is now ready for decision.

II. FINDINGS

1. In the late 1970s, UVM excavated a farm pond on its Miller Farm property (Farm) in South Burlington, Vermont. The purpose of the farm pond was to dispose of milk house wastes prior to the provision of municipal sanitary services.
2. The farm pond is currently used as a stormwater settling pond for surface runoff from the Farm. UVM proposes to make improvements to the pond to increase its ability to detain stormwater runoff and trap sediment. Specific changes may include adding a fore bay, high marsh and /or low marsh treatment areas, and modification of the outlet piping to restrict outlet flows from the pond to an unnamed tributary of Potash Brook.
3. The sides of the pond are steeply sloping, which provides for a very narrow opportunity for adequate conditions for hydric vegetation to persist. The subject wetland, therefore, is an approximately 11-foot wide vegetated strip at the edge of the farm pond, extending into the pond until the estimated depth of the pond is approximately 6 feet. The wetland is approximately 6,637 +/- square feet (0.15 acres) in area.
4. The wetland is shown as a Class Two wetland on the Vermont Significant Wetland Inventory (VSWI) map for South Burlington (April 19, 2000). On the National Wetlands Inventory (NWI) Map #13A, it is identified as "POWZ" (Palustrine, Open Water, Permanent).
5. The wetland and its presumptive 50-foot buffer zone are located exclusively on real property owned by the Petitioner, UVM.
6. The exact watershed of the farm pond has not been determined but it generally extends from the farm pond due westerly to Spear Street, northerly along Spear Street to the Farms' northerly property line, easterly along the Farm's northerly property line to a point due northerly of the farm pond. A small stormwater swale connects the farm pond outlet piping to an unnamed tributary of Potash Brook.
7. On January 13, 2005, April Moulart, District Wetlands Ecologist with the Vermont Wetlands Office, ANR, conducted a site visit with UVM's consultants, William Nedde, III, P.E., of Krebs and Lansing Consulting Engineers, Inc., and Bradley A. Wheeler of Wheeler Environmental Services, LLC. The purpose of this site visit was to evaluate the subject wetland for its significance for the ten functions listed in VWR § 5.

8. UVM's consultants used the Vermont Wetland Evaluation Form (VWEF) prepared by the Department of Environmental Conservation, ANR, as a preliminary field checklist. Based on an analysis of the VWEF results, the Board finds that the wetland does not perform the following functions at all or only at a very insignificant level: (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. Function 5.1 - Water Storage for Flood Water and Storm Runoff - The wetland is not significant for this function as it does not provide for the temporary storage of floodwater or stormwater to the extent that it makes an important contribution to reducing risks to public safety, reducing damage to public or private property, reducing downstream erosion or enhancing the stability of habitat for aquatic life. The narrow strip of wetland at the edge of the pond does not have the physical capacity to absorb a significant volume of water. There is also no potential for a flood of expected intensity in this area to damage downgradient developed property due to the size of the farm pond, the fact that the pond as now designed does not perform a water retention function, and the relative isolation of the farm pond from other properties and water resources.
10. Function 5.2 - Surface and Ground Water Protection - The wetland does not make an important contribution to the protection or enhancement of the quality of surface or of ground water in the area. As noted in Finding 9 above, the farm pond does not presently retain stormwater. The wetland in question is far too narrow to provide a significant opportunity for sediment removal or nutrient uptake to occur before surface flows reach the pond itself.
11. Function 5.3 - Fisheries Habitat - The wetland does not provide fish habitat, let alone important fish habitat. It has neither the vegetation nor the hydrology to support spawning, nursery or cover habitat for fish. It is isolated from any other natural surface waters.
12. Function 5.4 - Wildlife and Migratory Bird Habitat - The wetland does not support a significant number of breeding waterfowl or broods of waterfowl or provide important habitat for wildlife and migratory birds. The wetland's vegetation consists primarily of Reed Canary Grass (*Phalaris arundinacea*). This does not provide suitable nesting habitat nor suitable feed to support a breeding pair or brood of waterfowl. For similar reasons, the wetland does not provide a suitable resting, staging or roosting area for migrating waterfowl. Due to its small size, steep slopes, narrow configuration and near monoculture of Reed Canary Grass, and also its surrounding intensive agricultural uses, the

wetland does not provide significant wildlife habitat for other species of wildlife listed in VWR § 5.4.

13. Function 5.5 - Hydrophytic Vegetation Habitat - The wetland is not one of the significant wetland types listed in VWR § 5.5. It does not provide habitat for hydrophytic vegetation consisting of rare plant species or communities of plant species that make an important contribution to Vermont's natural heritage. As noted in Finding 12 above, the wetland vegetation is composed almost exclusively of common Reed Canary Grass.
14. Function 5.6 - Threatened and Endangered Species Habitat - The wetland does not contain species that are on either the federal or state threatened and endangered species lists. There is no suitable habitat for any such species, and there is no evidence that the wetland has ever contained such species in the past.
15. Function 5.7 - Education and Research in Natural Sciences - The wetland does not provide or is not likely to provide valuable resources for education or scientific research. While this wetland is owned by a public entity, UVM, which is dedicated to public education and research, the use of the farm pond and the wetland has not ever been used for any type of educational or research activities and UVM has no plans for future educational or research use of the wetland as it now exists.
16. Function 5.8 - Recreational Value and Economic Benefits - The wetland does not provide recreational values or economic benefits. It is not used for any recreational activities nor does it provide any of the other economic or social benefits listed in VWR § 5.8.
17. Function 5.9 - Open Space and Aesthetics - The wetland does not contribute substantially to the open-space and aesthetic character of the landscape. The wetland cannot be seen by anyone, let alone the public, unless such persons are standing on the immediate edge of the farm pond. It does not possess special or unique aesthetic qualities or values as open space.
18. Function 5.10 - Erosion Control through Binding and Stabilizing the Soil - The wetland is not important for erosion control as it is not subject to erosive forces. As noted in Findings 6 and 11 above, the farm pond is isolated from other surface waters and is not subject to wave action or other forces that might destabilize the soil of the pond itself. Therefore, the wetland does not perform an important function under VWR § 5.10.

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 the Vermont Wetland Rules (VWR).

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. UVM is an affected property owner for the purposes of VWR § 7.1. See, Re: Trapp Family Lodge Wetland, Docket No. WET-04-01, Administrative Determination at 3 (Oct. 6, 2004); 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, UVM 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 Vermont Significant Wetland Inventory (VWSI) maps. VWR § 4.5(a). The subject wetland is presently depicted on the applicable NWI map and on the VWSI map for Burlington, South Burlington and Winooski. 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: Trapp Family Lodge Wetland, Docket No. WET-04-01, Administrative Determination at 4 (Oct. 6, 2004); 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 analysis performed by UVM’s consultants based on the use of the VWEF supports this

conclusion. Indeed, after conducting a site visit of the Farm property, Ms. Moulaert, ANR's District Wetlands Ecologist, agreed to UVM's request to reclassify the wetland associated with the farm pond. To the extent that the wetland serves any of the functions listed in VWR § 5, it does so at a minimal level at best.

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 applicable VSWI map 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 UVM Miller Farm property in South Burlington, Vermont, described in this decision, is reclassified from Class Two to Class Three; and
2. The Vermont Wetlands Office, Water Quality Division, Department of Environmental Conservation, ANR, is directed to revise the Vermont Significant Wetland Inventory map for Burlington, South Burlington and Winooski to reflect the fact that the subject wetland is now a Class Three wetland.

Dated at Montpelier, Vermont, this 4th day of March, 2005.

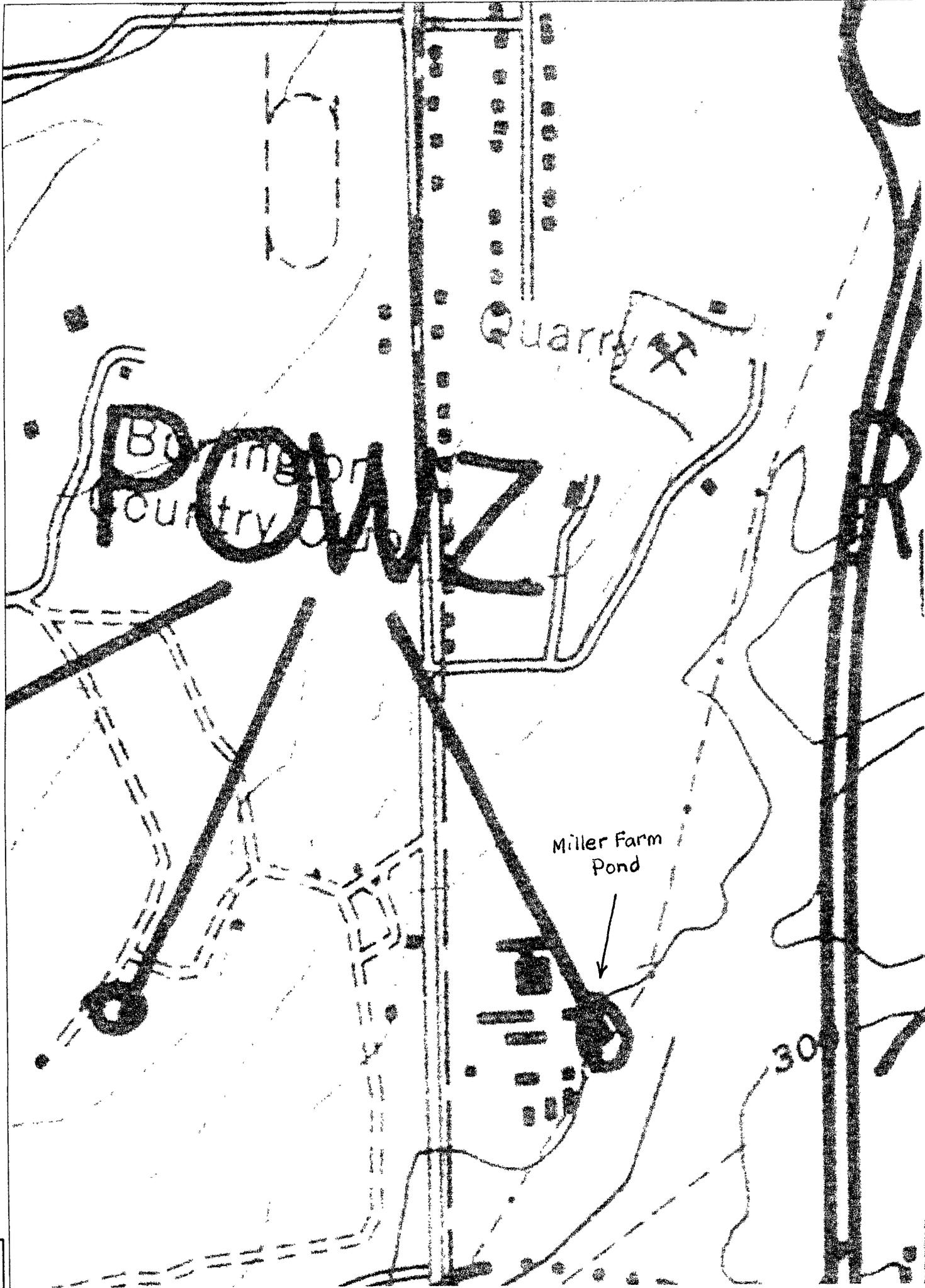
WATER RESOURCES BOARD

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

Concurring:
Lawrence H. Bruce, Jr.
Michael J. Hebert

Absent:
Joan Nagy
John D.E. Roberts

Attached for Reference: Relevant portion of NWI Map 13A with subject wetland indicated.



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