

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

100 CAMBRIDGE STREET, BOSTON, MA 02114 617-292-5500

**THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

**June 24, 2025**

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**In the Matter of  
C.A.M. Holdings LLC,  
134 Wheeler Street**

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**OADR Docket No. WET 2025-003  
DEP File # 028-2982  
Gloucester, MA**

**RECOMMENDED FINAL DECISION**

Petitioner, Walter Donovan, filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”) to challenge the dismissal of his request for a Superseding Order of Conditions (“SOC dismissal”) by the Northeast Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”) as untimely. The SOC request was made pursuant to the Massachusetts Wetlands Protection Act (“MWPA”), G.L. c. 131, § 40 and the Wetlands Regulations at 310 CMR 10.00 and intended to challenge the Order of Conditions (“OOC”) issued on June 3, 2024, by the Gloucester Conservation Commission (“GCC”) which approved a Notice of Intent filed by C.A.M. Holdings, LLC (“Applicant”) for the razing and rebuilding of a new single family home adjacent to the Annisquam Riverfront area in Gloucester.

After reviewing arguments filed by the Parties, on May 9, 2025 I issued a Ruling and Order in which I concluded that this appeal was timely filed.<sup>1</sup> I explained, however, that there is an additional jurisdictional issue that must be addressed, namely, whether the Petitioner’s SOC

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<sup>1</sup> Ruling and Order on Petitioner’s More Definite Statement, May 9, 2025 (“May 9, 2025 Order”).

request was timely filed with the Department's Northeast Regional Office. I directed the Parties to present additional facts and legal analysis supporting their respective positions regarding whether the Petitioner's SOC request was timely filed. The Applicant's Response included a Motion to Dismiss,<sup>2</sup> a request echoed in the Department's Response.<sup>3</sup> Following my review of the Parties' responses<sup>4</sup>, I have concluded that the Petitioner's request for an SOC was not timely filed and therefore, I recommend that MassDEP's Commissioner issue a Final Decision dismissing this appeal.

### **DISCUSSION**

The ten-day period to request that the Department review a commission's decision is jurisdictional and cannot be waived. See In the Matter of Orazio Petrosillo, Docket Nos. 2001-022 and 024, Recommended Final Decision (February 6, 2002), 2002 WL 450916, \*3 ("an untimely request for a superseding order divests the Department of jurisdiction to issue a superseding order"). The MWPA provides that a person aggrieved "may, by certified mail and within ten days from said commission's order" file a request for review with the Department. G.L. c. 40, § 131, ¶ 19. The relevant Wetlands Regulation provides, that "[a] request for a Superseding Order or Determination shall be made in writing and shall be sent by certified mail or hand delivered within ten days of issuance of the Order, Determination or Notification which is being appealed." 310 CMR 10.05(7)(c). The Wetlands Regulations do not specify that the request must be filed during business hours, but that, "[a]ll requests for the Department to act shall be sent to the appropriate Regional Office of the Department." 310 CMR 10.05(7)(d).

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<sup>2</sup> Applicant's Response to OADR Ruling and Order Dated May 9, 2025, and Motion to Dismiss, May 21, 2025 ("Applicant's Response").

<sup>3</sup> The Department of Environmental Protection's Response to the Order of May 9, 2025, May 23, 2025 ("Department's Response").

<sup>4</sup> The Petitioner filed his response on May 23, 2025 ("Petitioner's Response").

The evidence shows that the SOC request was sent to MassDEP's previous address within the ten-day appeal period but was not sent to MassDEP's current address until after the ten-day appeal period.<sup>5</sup> The Petitioner sent a check dated June 17, 2024 to the Department's Lock Box with his Request for Departmental Action Fee Transmittal Form as required by the fee regulations at 310 CMR 4.06(1)(d). The evidence shows that MassDEP became aware of the Petitioner's SOC request when the Applicant filed an opposition with the Department's Northeast Regional Office. The evidence also shows that MassDEP initially accepted the late request for SOC review at that time, but its later review resulted in its reversing its position and dismissing the SOC request as untimely filed.<sup>6</sup> While the Parties dispute the legal significance of these facts and how they affect the analysis under 310 CMR 10.05(7)(c) and (d), Petitioner's argument that it filed a timely SOC request is unconvincing.

The Petitioner contends that because the Applicant received the request and filed an opposition with the Department, and the Department cashed or accepted the Petitioner's check paying the filing fee for its SOC request, the Department had constructive notice of the SOC request. The evidence shows that the Department received notice of the SOC request when the Applicant opposed the request in August 2024 and later confirmed in a letter dated January 9, 2025 that it accepted the appeal and scheduled a site visit.<sup>7</sup> Further the Petitioner contends that there is no prejudice because the proposed Project cannot proceed until Superior Court zoning

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<sup>5</sup> The record includes a copy of the Request for Departmental Action Fee Transmittal Form, indicating the Petitioner filed for an SOC request, and a copy of a check for \$120.00 and evidence that it was cashed. See Notice of Appeal, Ex. 3; Petitioner's More Definite Response, Ex. 5.

<sup>6</sup> See Notice of Appeal, Ex. 2 and Ex. 3; Petitioner's Response, p. 2-3; MassDEP's Response, p.2. Applicant's Response, p. 2.

<sup>7</sup> See Notice of Appeal, Ex. 2; Petitioner's Response, p. 5, citing MassDEP email, January 2025.

litigation is resolved.<sup>8</sup> However, neither of these facts are relevant because the 10-day filing requirement for an SOC request is jurisdictional and there are no exceptions to jurisdiction for constructive notice or lack of prejudice.

Whether the Department said it would accept the SOC request is not controlling because the Department lacks jurisdiction to consider an untimely SOC request. See In the Matter of Orazio Petrosillo, 2002 WL 450916 (“an untimely request for a superseding order divests the Department of jurisdiction to issue a superseding order”). A jurisdictional defect, such as the one in this case, can be addressed at any time.<sup>9</sup>

The OOC was issued on June 3, 2024, therefore it was necessary for the Petitioner to file his SOC request with the Department’s Northeast Regional Office by June 17, 2024. The record indicates that the Petitioner sent his SOC request to the former address of the Department’s Northeast Regional Office on June 17, 2024.<sup>10</sup> The Department learned of the SOC request from the Applicant in August 2024.<sup>11</sup> A straightforward interpretation of the phrase “shall be sent to the appropriate Regional Office” in 310 CMR 10.05(7)(d) indicates a requirement for delivery to the correct address. The word “to” implies a location, the word “appropriate” implies that there is a correct location, the word “the” implies that there is only one single correct location, and the word “shall” implies that the single correct location must be successfully reached for the

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<sup>8</sup> The Petitioner references Comstock, et al. v C.A.M. Holdings, LLC, et al., Essex County Superior Court, Docket No. 2477cv00474. See Petitioner’s More Definite Response, p. 2.

<sup>9</sup> See In the Matter of Town of Brewster, OADR Docket No. WET 2012-006, 2012 WL 3679963, \*8 adopted as Final Decision (August 16, 2012), 2012 WL 3679962 (standing is a jurisdictional prerequisite to maintenance of an appeal and may be raised as an issue at any time).

<sup>10</sup> The Department’s Northeast Regional Office was previously located at 205B Lowell St., Wilmington, Massachusetts and moved from that location roughly eighteen (18) months prior to the Petitioners’ SOC request. Department’s Response, p. 2.

<sup>11</sup> Contrary to the Petitioner’s position, the requirement to pay a fee does not substitute for the MWPA and Wetlands Regulatory requirement that a SOC request must be sent to the appropriate regional office.

regulation to be satisfied.<sup>12</sup> In sum, for the forgoing reasons, I have concluded that the Petitioner's request for an SOC was not timely filed and therefore I recommend that the Department's Commissioner issue a Final Decision dismissing this appeal.

**Date:** June 24, 2025



Margaret R. Stolfa  
Presiding Officer

### **NOTICE - RECOMMENDED FINAL DECISION**

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

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<sup>12</sup> The Petitioner's reliance on In the Matter of Lynn Little, Docket No. 98-104, Final Decision (July 12, 1999), 1999 WL 647530 does not support his position that delivery to the incorrect address does not affect the timeliness of the appeal. Rather, the Little matter determined that the hand delivered SOC request received at the appropriate regional office after hours on the 10th day was timely.

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