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May 15, 2026

In the Matter of
Cascade Development, LLC

OADR Docket No. WET-2024-020
DEP File No. 322-1000
Wayland, MA

DECISION AND REMAND ORDER

I decline to adopt the Presiding Officer's recommendation to grant summary decision to the Town of Wayland Conservation Commission (the "Commission"). Instead, I grant summary decision to the Massachusetts Department of Environmental Protection ("MassDEP" or the "Department") and Cascade Development, LLC (the "Applicant") and remand the matter to the Presiding Officer to proceed with the appeal on an expedited basis to address the remaining substantive issues for adjudication.

In this appeal, the Commission challenges a Superseding Order of Conditions ("SOC") issued by the Department's Northeast Regional Office ("NERO") to the Applicant approving, with conditions, the Applicant's proposed housing development project at 113 and 115-121 Boston Post Road in Wayland, Massachusetts (the "Project Site"). The SOC overturned the Commission's Order of Conditions ("OOC") which denied the project. The Applicant proposes to construct a 60-unit, G.L. c. 40B residential development (the

"Project"). The Project Site is comprised of two adjacent parcels owned by the Applicant totaling approximately 6.483 acres. Portions of the Project Site are located within Riverfront Area, a wetlands Resource Area protected under the Wetlands Protection Act ("WPA") and the Wetlands Regulations at 310 CMR 10.58, associated with Pine Brook.

Procedural History

The procedural history of the appeal is set forth in detail in the Recommended Final Decision ("RFD"), but I restate the most salient points here. The Applicant filed a Notice of Intent ("NOI") with the Commission seeking an OOC approving the Project in November 2022. As part of its evaluation of the Project, the Commission and its consultants on multiple occasions sought additional information from the Applicant. The Applicant responded to these requests on May 3, 2023, July 11, 2023, and November 1, 2023, in the form of revised project plans, an updated Post Construction Stormwater Management Report, and narrative responses. Certain disagreements between the Applicant and the Commission emerged during this time, including the exact boundary of degraded Riverfront Area on the Project Site, as well as whether the Applicant needed to provide separate information regarding potential impacts for the parcels at 113 and 115-121 Boston Post Road (*i.e.*, per lot), or whether relevant Riverfront Area information could be provided for the Project Site as a whole.

After the close of the public hearing in November 2023, the Commission denied the proposed project, asserting that (1) pursuant to 310 CMR 10.05(6)(c), the Applicant provided insufficient information for the Commission to evaluate the project, and (2) the

proposed project failed to meet the performance standards for Riverfront Area at 310 CMR 10.58(4)(d). In the OOC, the Commission identified thirteen reasons for its lack of information denial pursuant to 310 CMR 10.05(6)(c). The RFD summarizes those reasons as follows:

1. Whether the proposed Project satisfies the Stormwater Standards at 310 CMR 10.05(6)(k).
2. The location of the degraded Riverfront Area boundary.
3. Whether the proposed Project satisfies the Riverfront Area performance standards at 310 CMR 10.58(4)(d) on a per lot basis.
4. An understandable summary of why the proposed Project meets the Riverfront Area performance standards.
5. Whether the new stormwater discharge would impair the existing use of Pine Brook as a cold-water fishery resource.
6. Whether the subsurface sewage disposal system would impair the existing use of Pine Brook as a cold-water fishery resource.
7. Whether the work associated with the new stormwater discharge would impair the existing use of Pine Brook as a cold-water fishery resource.
8. Whether the new stormwater discharge would have an adverse impact on important wildlife habitat.
9. An updated restoration plan to reflect changes to the locations of stormwater measures.
10. Identification of land used for restoration and stormwater management as riverfront alteration and quantification of the area of such land.
11. The amount of runoff generated by the street that will be discharged to Pine Brook.
12. The origin of the three PVC pipes currently on the Property that are discharging to Pine Brook and/or a discussion of proposed work to remove these pipes.
13. The amount of tree and shrub removal.

RFD at 4-5.

The Applicant requested an SOC from NERO. NERO reviewed the NOI, project plans and documents, and the Applicant's responses to the Commission's requests for more information, and visited the Project Site. Pirrotta Aff., ¶ 8. Following that initial review, NERO determined that the Commission had received sufficient information from the Applicant to render a decision on the merits. NERO informed the Applicant and the Commission of this determination in a letter dated February 27, 2024 ("February 27 Letter"). Proceeding to evaluate the project's compliance with the Wetlands Regulations for its de novo SOC review, NERO asked for and received certain clarifying information and plan updates from the Applicant. The Department issued an SOC approving the Project in June 2024.

The Commission then initiated this appeal with the Office of Appeals and Dispute Resolution ("OADR"). The Presiding Officer identified three issues for adjudication:

- Issue 1: Whether the Department correctly issued the SOC pursuant to 310 CMR 10.05(7)(h), in light of the Commission's OOC denial for lack of information pursuant to 310 CMR 10.05(6)(c).
- Issue 2: Whether the Department correctly determined that the Project met the performance standards set forth in 310 CMR 10.58(4) (Riverfront performance standard) and (5) (Redevelopment Within Previously Developed Riverfront Areas; Restoration and Mitigation).
- Issue 3: Whether the Department correctly determined that the Project design complies with the MassDEP Stormwater Standards (310 CMR 10.05(6)(k) through (q)), and in particular, Stormwater Standard 6 Critical Area.

The Commission moved for summary decision as to Issue 1. The Applicant and the Department each submitted oppositions and cross-motions for summary decision. As

explained in the RFD, the Presiding Officer found that the Commission is entitled to a decision in its favor as a matter of law because the Applicant did not furnish information about its compliance with the Riverfront Area standards separately for each lot within the Project Site. RFD at 12-13. The Presiding Officer recommends I grant summary decision to the Commission. Id. at 14.

Legal Standards

Given the posture of this matter, this Decision and Remand Order relies on three legal frameworks:

First, the Commission has moved for summary decision as to Issue 1, while the Applicant and MassDEP have opposed that motion and moved for summary decision in their favor on Issue 1. Summary decision is warranted where the pleadings, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law. 310 CMR 1.01(11)(f).

Second, Issue 1 asks whether the Department correctly issued an SOC pursuant to 310 CMR 10.05(7)(h), in light of the Commission's OOC denial for lack of information pursuant to 310 CMR 10.05(6)(c). A conservation commission may issue an Order of Conditions prohibiting proposed work if it finds "the information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests [protected by the WPA]." 310 CMR 10.05(6)(c). If an applicant requests a Superseding Order following an Order of Conditions prohibiting work pursuant to 310 CMR 10.05(6)(c), "the Department shall limit its review to the information submitted to the conservation

commission. If the Department determines that insufficient information was submitted, it shall affirm the denial and instruct the applicant to refile with the conservation commission and include the appropriate information. If the Department determines that sufficient information was submitted, it shall so inform the applicant and the conservation commission, and shall proceed to issue a Superseding Order as provided in 310 CMR 10.05." 310 CMR 10.05(7)(h). Once reviewing a project on the merits, the Department may seek additional information from the applicant that was not before the conservation commission. In the Matter of Brian Corey, OADR Docket No. WET 2016-023, Recommended Final Decision (February 28, 2018), 2018 WL 2002973, *5, adopted as Final Decision (March 15, 2018), 2018 WL 2002972. The Department is guided by Wetlands Program Policy 08-1 when reviewing a lack of information denial. That policy identifies examples of factors to be assessed such as "the adequacy of the proponent's submission, the degree to which the application involves technical or complex questions, the need for an outside consultant to address those questions, the capability of a typical commission to perform a meaningful review of the submission without an outside consultant, and other pertinent factors." Wetlands Program Policy 08-1 (March 28, 2008).

Third, the RFD turns on two provisions within the Wetlands Regulations at 310 CMR 10.00. One is the definition of "lot," which is "an area of land in one ownership, with definite boundaries." 310 CMR 10.04. The other is the performance standard of No Significant Adverse Impact for Riverfront Areas. That standard provides that "[w]ithin 200 foot riverfront areas, the issuing authority may allow the alteration of up to 5000 square feet or 10% of the riverfront area within the lot, whichever is greater, on a lot recorded on or before

October 6, 1997 or lots recorded after October 6, 1997 subject to the restrictions of 310 CMR 10.58(4)(c)2.b.vi., or up to 10% of the riverfront area within a lot recorded after October 6, 1997." 310 CMR 10.58(4)(d)1.

Discussion

A. The Meaning of "Lot" in 310 CMR 1058(4)(d)(1)

The OOC denying the Project identified thirteen reasons why the Applicant purportedly failed to provide adequate information. OOC Attachment at 3-5. One such reason was the Applicant's provision of information regarding alterations within the 200-foot Riverfront Area for the Project Site as a whole, rather than on a per lot basis. The RFD focuses on that topic and indeed turns solely on that legal question ("[t]he dispute here is about the definition of the word 'lot' in 310 CMR 10.58(4)(d)").[1] RFD at 11.

The Presiding Officer finds that the word "lot" in 310 CMR 10.58(4)(d) means a lot as specifically defined in a recorded document. She arrives at that conclusion by analyzing the definition of "lot" in 310 CMR 10.04 and the use of "lot" in 310 CMR 10.58(4)(d)1. The RFD provides:

> The Wetlands Regulations provide a definition for the word "lot." 310 CMR 10.04 defines "lot" as "an area of land in one ownership, with definite boundaries." The use of the word "definite" when referring to the boundaries of a lot suggests that an area's boundaries must be "defined" to be considered a lot. Additionally, 310 CMR 10.58(4)(d)1 refers to "recorded" lots, so the boundaries of a lot must be defined in a recorded document.

1 Notably, in the summary decision briefing, no party analyzed—or even raised—the specific issue of whether 310 CMR 10.58(4)(d) requires an applicant to provide Riverfront Area information separately for every lot within a project site.

RFD at 12.

The Presiding Officer goes on to explain that the Project Site, while comprised of two distinct parcels with separate addresses (113 and 115-121 Boston Post Road), in fact consists of four separate *lots* as identified in the recorded deed for the property; one parcel consists of a single lot and the other parcel consists of three lots. RFD at 12-13. "Therefore, the [Project Site] actually consists of four lots total, not one as the Applicant and MassDEP suggest and not two as the Commission suggests." RFD at 13. Applying the interpretation that a lot must be defined in a recorded document, the Presiding Officer found that the Applicant provided insufficient information when it submitted analysis of Riverfront Area impacts for the Project Site as a whole and not separately for each lot. RFD at 13, 14.

I disagree with the Presiding Officer's analysis and legal conclusion. The definition of "lot" in the Wetlands regulations—"an area of land in one ownership, with definite boundaries"—specifies neither that only a singular, recorded lot meets the definition, nor that a lot must even be recorded to have definite boundaries. See 310 CMR 10.04. Of course, the boundaries of real property will typically be defined by a recorded deed. But an "area of land in one ownership" could consist of a property that, while comprised of multiple parcels and lots, still has easily discernible and definite boundaries. For example, a definite boundary might consist of the perimeter of a multi-parcel property. In this case, the Project Site is an area of land in one ownership with definite boundaries defined in the deed for the property consisting of two adjacent parcels at 113 and 115-121 Boston Post Road.

It is true that the standard at 310 CMR 10.58(4)(d) refers to "recorded" lots but, viewing the section in whole, it is clear the purpose of that reference is to establish a temporal marker to distinguish between before and after the new Riverfront Area regulations took effect. The mere reference to a "recorded" lot does not establish a spatial requirement that the standards in 310 CMR 10.58(4)(d) be applied individually for each individual lot in the subject property based on how that property is subdivided in a plan or deed.

Indeed, to read such a requirement into the regulation would lead to an overly cumbersome process that would not further the intent of the Riverfront Area provisions. When interpreting regulations, we avoid a construction that creates absurd or unreasonable results. In the Matter of Town of Brewster, 2012 WL 3679963, at *15, citing Attorney General v. School Comm. of Essex, 387 Mass. 326, 336 (1982). To require an applicant to break out Riverfront Area impacts by distinct lots rather than for the whole project site creates more work for all stakeholders, may lead to conflicting interpretations of how many lots are in play, and, most importantly, is not necessary to meet the intent of the Riverfront Area regulations. The instant case is a good example of this. The Commission requested distinct Riverfront Area information for two parcels: 113 and 115-121 Boston Post Road. The Applicant believed it was required to provide Riverfront Area alteration information for the Project Site as a whole, and DEP agreed with that approach. In the Presiding Officer's reading, the Project Site is actually four distinct lots, according to a 1985 plan referenced in the recorded quitclaim deed. See RFD at 12-13. The parties and the Presiding Officer each have a different interpretation. Meanwhile, the proposed Project—

and its impacts to Pine Brook—would span the Project Site without regard to the boundaries of the four lots noted in the deed for the property.

The Applicant's and DEP's interpretation is correct and consistent with the definition of "lot" in 310 CMR 10.04. It is also consistent with the regulatory history of the Riverfront Area regulations. The Preface to the 1997 Regulatory Revisions for the Rivers Protection Act Amendments to the Wetlands Protection Act (the "Preface") explains 310 CMR 10.58(4)(d) as follows: "The limitation of 5000 square feet or 10%, whichever is greater, applies to lots existing on the effective date of the regulations and to entire subdivisions. The limitation of 10% for new lots removes the incentive to create small lots in order to maximize the potential for alteration of riverfront areas." Contrary to the Presiding Officer's interpretation of this explanation (RFD at 13), the Preface is clear that the concern is not with applicants applying the performance standards to an entire project site, but instead with applicants dividing a project site into smaller lots in an attempt to maximize allowable alteration. When, as is the case here, the opposite happens and an applicant provides information about Riverfront Area impacts for the entire project site, there can be no gaming the numbers, and the issuing authority gets the most complete picture of Riverfront Area impacts on which to base its review.[2] Because the RFD turned solely on the interpretation of 310 CMR 10.58(4)(d), for the reasons stated above, I decline to adopt the RFD.

B. <u>The Applicant Provided Sufficient Information to the Commission</u>

2 This decision does not prevent a conservation commission or the Department from identifying instances when an applicant might be attempting to circumvent the requirements of 310 CMR 10.58(4)(d), whether by creating smaller lots or some other creative proposal intended to get around Riverfront Area performance standards. Issuing authorities can and should still be on the lookout for such instances.

The issue on which the Commission moved for summary decision is broader than the interpretation of one performance standard. The question is whether, pursuant to 310 CMR 10.05(7)(h), the Department properly determined that the Applicant provided sufficient information to the Commission to describe the site, the work or the effect of the work. As I explain below, I find the Department correctly determined that the Applicant provided sufficient information to the Commission.

1. NERO Complied with the Requirements of 310 CMR 10.05(7)(h).

Upon a request for an SOC following a lack of information denial, the Department "shall limit its review to the information submitted to the conservation commission." 310 CMR 10.05(7)(h). Following that initial review, "if the Department determines that sufficient information was submitted, it shall so inform the applicant and the conservation commission, and shall proceed to issue a Superseding Order as provided in 310 CMR 10.05." Id. After the Department determines that sufficient information was submitted, its review of the merits of the application is de novo and may be based upon additional information that was not before the conservation commission. Brian Corey at *5; In the Matter of Daniel and Laurie Darosa, OADR WET 2015-004, 2015 WL 9999150, at *6, Recommended Final Decision (Sept. 21, 2015), adopted as Final Decision (Sept. 30, 2015).

Beginning with the plain language of 310 CMR 10.05(7)(h), the first question is whether NERO initially limited its review to the information submitted to the Commission. The most relevant evidence on this question is the February 27 Letter in which NERO informed the parties of its determination that the Applicant had submitted sufficient information and requested certain additional information and plan revisions, and the

affidavit of NERO Environmental Analyst Jenna Pirrotta, in which Ms. Pirrotta states that during her initial review she reviewed only the information that was submitted to the Commission. Pirrotta Aff., ¶ 8. Ms. Pirrotta identifies the specific documents and plans submitted to the Commission that she reviewed to make her determination. Id.

The Commission does not offer specific evidence demonstrating that NERO in fact failed to appropriately limit its review, but instead points to the follow-up requests from NERO to the Applicant in the February 27 Letter to make two arguments: first, the Commission asserts that because NERO agreed with the Commission's delineation of degraded Riverfront Area over the Applicant's proposed delineation, NERO was in effect acknowledging that the Commission did not have sufficient information at the time of its OOC review. Commission's Motion at 14. Second, the Commission contends that the fact that NERO's four requests in the February 27 Letter sought information that overlapped with information requested by the Commission during the OOC public hearing demonstrates that NERO failed to limit its review to information already submitted to the Commission. Commission's Motion at 18-20.

The Commission's arguments fail on both counts. Regarding the degraded Riverfront Area delineation, while the record demonstrates the Applicant and Commission disagreed about the exact boundaries, it is clear the Commission had ample information before it. For example, in response to comments from the Commission's consultant about the exact boundary of degraded Riverfront Area, the Applicant provided updated plans showing both its and the consultant's delineations, and provided a narrative explanation of the differences between them. Pirrotta Aff., Exhibit 3, LEC Response to Peer Review

Comments, May 3, 2023, 2-3; Exhibit 2, LEC Response to Peer Review Comments, July 11, 2023, 11-12. NERO reviewed that information, including the delineations offered by the Applicant and the Commission. See Pirrotta Aff., ¶ 8. Ms. Pirrotta noted that the delineations "differed slightly." Pirrotta Aff., ¶ 16. Based on site observations, NERO agreed with the Commission's boundary and requested that final Project plans be updated to reflect those boundaries. February 27 Letter at 2. The record demonstrates NERO's findings on the degraded Riverfront Area settling on the better of two slightly different interpretations of the boundary. Given that the Commission had before it the same information about the competing interpretations, NERO's choice of degraded Riverfront Area boundary raises no genuine issue of material fact as to whether NERO limited its review to information submitted to the Commission.

Next, the Commission argues more broadly that NERO's requests of the Applicant in the February 27 Letter, which included the request to update degraded Riverfront Area boundaries in addition to three other requests that touched on concerns previously raised by the Commission, demonstrate that NERO failed to limit its review to the information submitted to the Commission. Commission's Motion at 18-20. This argument does not hold up, nor does it raise any genuine issue of fact as to whether NERO complied with 310 CMR 10.05(7)(h). For one, by the time of the follow-up requests NERO had already determined that the Commission had sufficient information before it to describe the site, the work or the effect of the work. The primary purpose of the February 27 Letter was to inform the Applicant and the Commission of that determination, as NERO is required to do pursuant to 310 CMR 10.05(7)(h). Once that determination is made, the Department may

request additional or clarifying information as part of its de novo SOC review. See Brian Corey at *5. Further, NERO's requests were largely requesting clarifying and better-organized versions of information already submitted to the Commission at various times throughout the course of a year-long public hearing period. These requests were part of NERO's de novo review on the merits of the SOC request and are not evidence of any failure to first determine whether the Applicant provided sufficient information to the Commission.

1. The Record Reflects that NERO Appropriately Determined that the Applicant Provided Information to the Commission Sufficient to Describe the Site, the Work, and the Effect of the Work on the Interests Protected by the Wetlands Protection Act.

Having found that NERO properly limited its initial review to information previously submitted to the Commission pursuant to 310 CMR 10.05(7)(h), I turn now to the sufficiency of the information provided. Based on the record and briefing before me, I find that NERO was correct in determining that the Applicant provided sufficient information to the Commission, and there is no genuine issue as to any material fact on that point. Therefore, the Applicant and the Department are entitled to summary decision on Issue 1.

While the language of 310 CMR 10.05(6)(c) provides some insight into what makes information "sufficient"—it must be sufficient to "describe the site, the work or the effect of the work" on the interests identified in the WPA—the regulation governing the Department's review does not specify how the Department may determine whether sufficient information was provided. See 310 CMR 10.05(7)(h). However, the Department's Wetlands Policy 08-1 offers some guidance. Pursuant to the Policy, the Department should consider "the

adequacy of the proponent's submission, the degree to which the application involves technical or complex questions, the need for an outside consultant to address those questions, the capability of a typical commission to perform a meaningful review of the submission without an outside consultant, and other pertinent factors." Wetlands Policy 08-1.

We may also look to prior OADR decisions that addressed when information is sufficient. When the deficiencies in an applicant's information amount to "fundamental omissions" despite requests from the conservation commission to cure such deficiencies, a commission is likely justified in denying a project for insufficient information. See In the Matter of David A. Bosworth Co., Inc., OADR Docket No. WET-2015-015, Recommended Final Decision (February 17, 2016), adopted as Final Decision (March 14, 2016) at *14 (affirming the conservation commission's denial of a project for insufficient information). On the other hand, when there is a "robust exchange of information" between the applicant and a conservation commission, MassDEP may properly determine that a denial pursuant to 310 CMR 10.05(6)(c) is not warranted. Matter of Daniel and Laurie Darosa at *7 (granting summary decision to applicant after finding there was no genuine issue of material fact that the conservation commission had sufficient information).

Bosworth is instructive, particularly as the Commission points to it in several instances in its summary decision brief. In that case, the conservation commission denied a project for insufficient information, but the Department disagreed and issued an SOC approving the project. Bosworth at *4. In the appeal, the Presiding Officer reviewed the record before the commission and found that the applicant had not, in fact, provided

sufficient information. Id. at *22. The Presiding Officer highlighted how the applicant had, among other deficiencies, failed to provide foundational plan sets and information; agreed to update certain resource area boundaries but then never submitted those updates to the conservation commission; and failed to have project plans stamped by a professional licensed surveyor despite requests to do so. Id. at *15-*18. The applicant in that case appeared to be largely unresponsive to the conservation commission and was either not understanding information requests or was ignoring them, to the point that as the public hearing period progressed, "discrepancies with the Project Plans and actual site conditions increased." Id. at *15. In the Presiding Officer's view, these deficiencies amounted to "fundamental omissions." Id.

The record in the present appeal contains no such fundamental omissions. Instead, the record shows the Applicant engaged with the Commission's consultants throughout the year-long public hearing period and provided detailed responses and plan revisions in reply to multiple rounds of comments and questions. E.g., LEC Response to Peer Review Comments, May 3, 2023, July 11, and November 1, 2023. There was a robust exchange of information.

NERO correctly determined that the Applicant provided sufficient information that addressed the thirteen areas for which the Commission claimed to have insufficient information. Those thirteen areas fall into four groups: stormwater management, compliance with the Riverfront Area regulations, wastewater discharge, and vegetation removal and restoration. Taking each of these subjects in turn, I find that NERO correctly

determined that the Applicant provided sufficient information to the Commission to describe the site, the work or the effect of the work on the interests identified in the WPA.

The Applicant submitted detailed information regarding stormwater management, including a Post Construction Stormwater Management Report that describes the Project's compliance with Stormwater Management Standards. The Applicant revised the report in response to feedback from the Commission and included detailed information expected to be found in such a report. Pirrotta Aff., ¶ 18. NERO found that the information contained in the Project plans and in the Applicant's responses to the Commission's peer reviewer's comments was sufficient to enable the Commission to render a decision on the Project's compliance with the Stormwater Standards. Pirrotta Aff., ¶¶ 12, 18.

Regarding Riverfront Area, as discussed above, the record demonstrates differences in opinion between the Commission's consultant and the Applicant as to the exact boundaries of the degraded Riverfront Area. But the record also shows that the Applicant acknowledged and quantified those differences for the Commission's review. LEC Response to Peer Review Comments, May 3, 2023, 2-3. During its SOC review, NERO staff visited the Project Site and determined in its judgment that the Commission consultant's boundaries were more accurate. Pirrotta Aff., ¶ 16. But crucially, the Commission had the information before it to assess the competing delineations evaluate the Project's compliance with the WPA.

Regarding wastewater, the Applicant submitted to the Commission a Revised Hydrogeologic Report approved by the Department. The Applicant was clear that the

project will require a Groundwater Discharge Permit from MassDEP under a separate permitting process. LEC Response to Peer Review Comments, May 3, 2023, 12. The Revised Hydrogeologic Report was among the documents reviewed by NERO. Pirrotta Aff., ¶ 8. Given the separate permit required for groundwater discharges and the Applicant's provision of the Revised Hydrogeologic Report, the Commission's concern in this area raises no genuine issue of material fact and does not support a lack of information denial pursuant to 310 CMR 10.05(6)(c).

Last, regarding vegetation removal and restoration, the Commission asserted in the OOC that "[n]o information was provided to the Commission regarding vegetation removal from the riverfront area or the wetland buffer zone." OOC Attachment at 5. But the Applicant's NOI and responses to comments describe a proposal to remove invasive species and engage in restoration and enhancement of native species within the Riverfront Area. May 3, 2023 Response to Comments at 5. NERO noted that the Applicant's NOI contained narrative descriptions of proposed restoration activities, site plans submitted to the Commission showed the extent of the work, and the Riverfront Area Planting Plan showed areas of planting and seeding. SOC at 5. NERO determined that this information, taken together, amounted to sufficient information. Id. The Commission has raised no genuine issue countering NERO's determination in this area.

Ultimately, the record makes clear that NERO was justified in deeming the information before the Commission sufficient to describe the site, the work and the effect of the work. See 310 CMR 10.05(6)(c), and there is no genuine issue of material fact that the Commission had sufficient information to render a decision on the merits of the proposed

Project. The Commission clearly disagreed with certain of the Applicant's conclusions and proposals. But there was ample information before the Commission to review the project on the merits. The record simply does not support a denial based on lack of information.

Conclusion

For the reasons stated herein, I do not adopt the recommendation of the Presiding Officer to grant summary decision to the Commission. The Commission's motion for summary decision as to Issue 1 is denied, and the Department's and Applicant's cross-motions for summary decision as to Issue 1 are granted. The matter is remanded to the Presiding Officer to resolve the remaining two substantive issues for adjudication on an expedited basis.

Bonnie Heiple
Commissioner

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