

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

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

May 14, 2025

**In the Matter of
Cascade Development, LLC**

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

RECOMMENDED FINAL DECISION

The Town of Wayland Conservation Commission (the “Commission”), on July 3, 2024, filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”) to challenge a Superseding Order of Conditions (“SOC”) issued by the Northeast Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”) on June 25, 2024. The SOC was issued to Cascade Development, LLC (the “Applicant”), overturning the Commission’s Order of Conditions (“OOC”) denying approval of the Applicant’s proposed Project at 113 and 115 Boston Post Road in Wayland, Massachusetts (the “Property”) for insufficient information and failure to satisfy the performance standards of the Massachusetts Wetlands Protection Act (“MWPA”) and the implementing regulations at 310 CMR 10.00 (“Wetlands Regulations”). The Applicant’s project is to demolish an existing single-family residence with related structures on lot 113 Boston Post Road and a former commercial nursery on lot 115 Boston Post Road in order to construct a G.L. c. 40B Residential Development. The construction proposed includes a 60-unit, 4-story housing development which includes two access drives, parking areas, a stormwater management system, and wastewater treatment facility (“proposed Project”).

As discussed in detail below, based on the undisputed material facts and as a matter of law, the Commission properly denied the Applicant's proposed Project for failure to provide the Commission with sufficient information to review the Project and determine whether it complied with the performance standards under the Wetlands Regulations governing proposed activities in Riverfront Area, a protected wetlands resource area. As a consequence, there is no need for me to address the merits of the proposed Project, specifically whether the Project complies with the MWPA and the Wetlands Regulations. Instead, in accordance with the MWPA and the Wetlands Regulations, the Applicant should be required to file a new Notice of Intent with the Commission under 310 CMR 10.02 if it desires to proceed with the proposed Project. For these reasons, I recommend that MassDEP's Commissioner issue a Final Decision granting summary decision to the Commission and vacating the SOC.

BACKGROUND

The Property

The Property consists of two parcels of land south of Route 20 in Wayland totaling approximately 6.483 acres. NOI, p. 2; SOC Cover letter, p. 1. The larger parcel is approximately 5.217 acres and contains the former Mahoney's Garden center, while the smaller parcel is approximately 1.266 acres and contains an abandoned single-family dwelling. NOI, p. 2. Both parcels contain portions of Pine Brook, a perennial stream and cold-water fishery resource designated for protection as an Outstanding Resource Water. NOI, p. 2; OOC Attachment, p. 2. The Property contains various gravel surfaces, areas of established meadow, and shrub and forested habitat. OOC Attachment, p. 2. Wetlands Resource areas on the Property include Riverfront Area, Bank, Bordering Land Subject to Flooding ("BLSF"), Bordering Vegetated Wetlands ("BVW"), and Land Under Water ("LUW"). NOI, pp. 3-4; OOC Attachment, p. 2; SOC

Cover letter, p. 2. A portion of the Riverfront Area on the Property is considered “degraded” under 310 CMR 10.58(5). NOI, pp. 5-6.

The Proposed Project

According to the NOI, the proposed Project involves “demolish[ing] existing structures, driveways, parking lots, and impervious and gravel areas associated with an abandoned garden center and single-family dwelling, and construct[ing] a 60-unit, 4-story affordable housing development (under chapter 40B) with associated access drives, parking lots, sediment forebay, stormwater retention basin, wastewater treatment facility, and mitigation.” NOI, p. 1. The proposed Project would also include site grading, a retaining wall, erosion controls, invasive species management, native revegetation, a meadow, and stormwater management. OOC Attachment, p. 3. In addition to stormwater runoff from the development, stormwater runoff from Route 20 would also be routed through the stormwater management system. NOI, p. 9; OOC Attachment, p. 3. The treated stormwater would ultimately be discharged to Pine Brook. NOI, p. 9; OOC Attachment, p. 3. Portions of the proposed Project would take place within Riverfront Area, BLSEF, and the 100-foot Buffer Zone to BVW. NOI, p. 1.

Procedural Background

On November 16, 2022, the Applicant filed a Notice of Intent (“NOI”) with the Commission seeking approval of the proposed Project. The Commission’s Wetlands peer review expert provided comments on the proposed Project on three occasions, and the Applicant responded to the comments and provided updated plans and an updated Stormwater Management Report each time. The third response to comments was submitted on November 1, 2023, one week prior to the Commission’s public hearing on the proposed Project scheduled for November 8, 2023. At that public hearing, the Commission told the Applicant that its Wetlands peer review expert had not had sufficient time to review the Applicant’s response. The Applicant stated that it

had complied with the Commission's rules, which require that documents be submitted one week before a public hearing and requested closure of the public hearing. The Commission voted unanimously to deny the proposed Project and confirmed that denial in its OOC of November 29, 2023.

In issuing its OCC, the Commission denied the proposed Project for insufficient information under 310 CMR 10.05(6)(c) and failure to meet the performance standards for Riverfront Area under 310 CMR 10.58(4)(d). The OOC listed thirteen (13) topics on which it based its decision that the Applicant provided insufficient information to describe the site, the work, or the effect of the work on the interests of the MWPA, summarized 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.

The Applicant filed a SOC request with the Department on December 12, 2023 seeking to overturn the Commission's denial of the proposed Project. In the course of its review, on February 27, 2024, MassDEP issued a letter to the Applicant stating that it was MassDEP's opinion that the Commission had received sufficient information from the Applicant.¹ MassDEP's letter listed the 13 topics that the Commission found insufficiently answered and concluded that the Applicant had responded adequately to each information request.

In the same correspondence, MassDEP also requested that the Applicant make four changes/additions to the plans: 1) an alteration to the boundary of the degraded Riverfront Area to match that found by the Commission's Wetlands peer review expert; 2) a standalone table quantifying the existing degraded and non-degraded Riverfront Area, proposed alteration within the degraded and non-degraded Riverfront Area, and proposed restoration/mitigation; 3) an updated restoration plan to reflect changes to the locations of stormwater measures; and 4) a depiction of the proposed work to disconnect and cap the three existing PVC pipes on the plans. The Applicant made the requested changes and provided the updated plans to MassDEP on March 26 and 27, 2024. MassDEP issued an SOC approving the proposed Project on June 25, 2024. In the SOC cover letter, MassDEP repeated the 13 topics the Commission had listed in its OOC in denying the proposed Project and stated that it had determined that the Applicant's NOI and subsequent responses to requests from the Commission contained sufficient information and as a result, had conducted further review and approved the proposed Project.

¹ February 27, 2024 letter to Cascade Development Associates, LLC from Jenna Pirrotta, Environmental Analyst, MassDEP NERO.

The Commission filed a timely appeal of the SOC with OADR on July 3, 2024 and I issued a Scheduling Order on July 11, 2024 directing the Parties to confer regarding settlement, and to file a Joint Status Report regarding those efforts, including a jointly proposed appeal resolution schedule if settlement efforts reached impasse. On August 7, 2024 the Parties filed a Joint Status Report requesting an extension to continue settlement discussions, which was granted. On September 10, 2024 the Parties filed a Joint Status Report which proposed issues for adjudication in the appeal, identified witnesses, and proposed an appeal resolution schedule. As a result, I held a Pre-Hearing Conference on September 26, 2024 and issued a Pre-Hearing Conference Report and Order (“PHC Report”) the following day which adopted the issues proposed by the Parties as follows:

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.

Relative to Issue 1, included in the adjudicatory proceeding schedule were dates for the Commission to file a Motion for Summary Decision and the Applicant and MassDEP to file Oppositions to the Motion. Accordingly, on October 22, 2024, the Commission moved for summary decision with respect to Issue 1. MassDEP and the Applicant each filed Oppositions to the Petitioner’s Motion for Summary Decision on November 21, 2024.

LEGAL BACKGROUND

1. Summary Decision

“The Department’s Rules for Adjudicatory Proceedings provide that summary decision may issue where 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 10.05(4)(a). See, e.g., Matter of Papp, Docket No. DEP-05-066, Recommended Final Decision, (November 8, 2005), adopted by Final Decision (December 27, 2005); Matter of Lowes Home Centers Inc., Docket No. WET-2009-013, Recommended Final Decision (January 23, 2009), adopted by Final Decision (February 18, 2009). A motion for summary decision in an administrative appeal is similar to a motion for summary judgment in a civil lawsuit. See Matter of Lowes Home Centers, Inc., supra (citing Massachusetts Outdoor Advertising Council v. Outdoor Advertising Board, 9 Mass. App. Ct. 775, 785-86 (1980)). A party may move for summary decision on any of the issues that are the subject of the adjudicatory appeal. 310 CMR 1.01(11)(f). Summary decision is appropriate where the party seeking summary decision can ‘demonstrate that there is no genuine issue of material fact and that the party is entitled to a final decision as a matter of law.’ Id. ‘A party opposing the motion may not rest upon the mere allegations or denials of said party’s pleadings but must respond . . . setting forth specific facts showing there is a genuine issue for hearing on the merits.’ Id.” In the Matter of David Kindred c/o The Morin Cameron Group, 66 Elm Street, Danvers, MA 01923, OADR Docket No. WET-2022-023, Recommended Final Decision (September 1, 2023), 2023 WL 11228778, *3, adopted as Final Decision (April 2, 2024), 2024 WL 1915684.

2. Petitioner’s Burden of Proof

As the Party challenging the Department’s issuance of the SOC, the Commission has the burden of proof to produce credible evidence from a competent source to support its positions in

the appeal.² Specifically, the Commission is required to present “credible evidence from a competent source in support of each claim of factual error [made against the Department], including any relevant expert report(s), plan(s), or photograph(s).”³ Because the Commission is seeking summary decision on Issue 1, the material facts supporting its motion for summary decision must be undisputed as required by the summary decision rule in 310 CMR 1.01(11)(f) discussed above.

3. The MWPA and the Wetlands Regulations

The MWPA and the Wetlands Regulations have as their purpose the protection of wetlands and the regulation of activities affecting wetlands areas in a manner that promotes the following interests: (1) protection of public and private water supply; (2) protection of ground water supply; (3) flood control; (4) storm damage prevention; (5) prevention of pollution; (6) protection of land containing shellfish; (7) protection of fisheries; and (8) protection of wildlife habitat. G.L. c. 131, § 40; 310 CMR 10.01(2); see In the Matter of Kristen Kazokas, OADR Docket No. WET-2017-022, Recommended Final Decision (August 29, 2018), 2018 WL 9847851, *3, adopted as Final Decision (September 18, 2019), 2019 WL 5209254, citing Ten Local Citizen Group v. New England Wind, LLC, 457 Mass. 222, 224 (2010).

4. Riverfront Area

Riverfront Areas generally receive special protection under the MWPA and the Wetlands Regulations because of the multiple environmental benefits they provide. 310 CMR 10.58(1). “Riverfront Area is the area of land between a river’s mean annual high-water line measured

² See 310 CMR 10.03(2); 310 CMR 10.05(7)(j)2.b.iv; 310 CMR 10.05(7)(j)2.b.v; 310 CMR 10.05(7)(j)3.a; 310 CMR 10.05(7)(j)3.b.

³ See 310 CMR 10.05(7)(j)3.c. “A ‘competent source’ is a witness who has sufficient expertise to render testimony on the technical issues on appeal.” In the Matter of Diamond Development Realty Trust, Docket No. WET-2018-016, Recommended Final Decision (April 2, 2019), 2019 WL 4735457, *5-6, adopted by Final Decision (April 8, 2019), 2019 WL 4735456.

horizontally outward from the river and a parallel line located 200 feet away” 310 CMR 10.58(2)(a)3. Riverfront Area is presumed to be significant to the advancement of all eight of the MWPA’s statutory interests, a presumption that is rebuttable upon a clear showing [by the project proponent] that Riverfront Area does not play a role in the protection of these MWPA interests. 310 CMR 10.58(1), 10.58(3); In the Matter of Christopher N. Colby, OADR Docket No. WET - 2016-016, Recommended Final Decision (October 12, 2018), 2018 WL 6844318, *12A, adopted as Final Decision (October 26, 2018), 2018 WL 6844317. A project “must have no significant adverse impact on the riverfront area to protect the interests identified in M.G.L. c. 131, § 40.” 310 CMR 10.58(4)(d).

5. Insufficient Information

“If the conservation commission finds that the information submitted by the applicant [of a proposed project] is not sufficient to describe the site, the work or the effect of the work on the interests identified in M.G.L. c. 131, § 40, it may issue an Order prohibiting the work. The Order shall specify the information which is lacking and why it is necessary.” 310 CMR 10.05(6)(c). The Wetlands Regulations specifically provide that “[w]hen the request for a Superseding Order concerns an Order prohibiting work and issued 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); see also In the Matter of David A. Bosworth Co., Inc., OADR Docket No. WET-2015-015, Recommended Final Decision (February 17, 2016), 2016 WL 1235261, *10, adopted as Final Decision (March 14, 2016), 2016 WL

1235263. “If . . . the Department determines that the project proponent submitted sufficient information to the local conservation commission, the Department is required to review the merits of the project and determine whether to issue an SOC either approving or denying the project on its merits. . . . In this situation, the Department’s ‘review [of the proposed project] may be based upon additional information that was not before the [local conservation] [c]ommission.’” 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 use of [a denial for insufficient information] rather than [a denial on the merits] determines both the scope of project review and the remedy available in an adjudicatory appeal. The distinction is therefore important. Accordingly, information which, in the opinion of the issuing authority, would not support the issuance of an Order of Conditions—and on the basis of which a project should be denied—must be distinguished from a lack of sufficient information as the term is used in 310 CMR 10.05(7)(h). A denial based on what is perceived to be inaccurate information cannot be substituted for a denial based on the applicant’s failure to provide sufficient information for the Department to make any determination at all.” In the Matter of Zora Enterprises, Docket No. 90-206, Final Decision (October 14, 1994), 1994 WL 761987, *3.

DISCUSSION

Regulations are interpreted in the same way as statutes. “‘Our primary goal in interpreting a statute is to effectuate the intent of the Legislature.’ . . . We begin with the statute’s plain language, as it is ‘the best indication of the Legislature’s ultimate intent’ . . . and endeavor to ascertain that intent from ‘all [the statute’s] words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished’” Commonwealth v.

Du, 495 Mass. 103, 105-106 (2024). Additionally, “we consider the legislative history where it is informative.” Wallace W. v. Commonwealth, 482 Mass. 789, 793 (2019); see also In the Matter of Semass Partnership, OADR Docket No. 2010-051, *7, Recommended Final Decision, (December 20, 2010), 2010 WL 5804745, adopted as Final Decision (January 18, 2011), 2011 WL 573405.

In the OOC, the third topic about which the Commission claimed to have insufficient information was written as follows:

“As stated in 310 CMR 10.58(4)(d), within 200-foot RAs, the Commission may allow the alteration of up to 5,000 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 or up to 10% of the RA within a lot recorded after October 6, 1997. The Project is proposed on two separate assessor’s lots. The Applicant did not apply the RA performance standards on a per lot basis and therefore, did not provide the Commission with sufficient information to sufficiently describe the effect of the work on the interests of the Act. Throughout the NOI hearing process, the Commission repeatedly requested that the Applicant determine if the Project met 310 CMR 10.58(4)(d) by applying the standard on a per lot basis. The Applicant would not provide this information (see attached riverfront evaluation table).” (Emphasis in original). OOC Attachment, pp. 3-4.

The dispute here is about the definition of the word “lot” in 310 CMR 10.58(4)(d). That regulation reads: “1. Within 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” All Parties here agree that the Property consists of two parcels of land. See NOI, p. 2 (“[t]he 6.483± acre property contains two parcels”); OOC Attachment, p. 2 (“[t]he Project Site is comprised of two lots totaling 6.483 acres”). The Commission argues that “lot” refers to the parcels, and therefore the Applicant must provide information showing that the proposed Project would have no significant adverse impact on the Riverfront Area *in each parcel*, while the Applicant and MassDEP argue that “lot” refers to the total area on which the proposed Project will take place, and therefore the Applicant must provide

information showing that the proposed Project would have no significant adverse impact on the Riverfront Area *in the entire site*. I agree with the Commission's position and reject the Applicant's and MassDEP's position for the following reasons.⁴

First, aside from the reference to lots subject to 310 CMR 10.58(4)(c)2.b.vi, which is not relevant in this case, 310 CMR 10.58(4)(d) only uses the word "lot" in the singular. The use of the singular means that the performance standards are only ever applied to a single lot at a time, not to multiple lots at once. The question, therefore, is what qualifies as a "lot."

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. The Quitclaim Deed for the sale of the Property to the Applicant is recorded and refers to two parcels, which it calls Parcel One and Parcel Two.⁵ The Quitclaim Deed states that Parcel One consists of a single lot, called Lot B,

⁴ I am aware that as the Presiding Officer in the appeal I owe deference to MassDEP's reasonable interpretation of environmental statutes, regulations, and policies it is responsible for enforcing, including the MWPA and the Wetlands Regulations. The Prysmian Group and Prysmian Cables & Systems USA, LLC, OADR Docket No. 2024-006, Recommended Final Decision (August 26, 2024), 2024 WL 4920921, *3, adopted as Final Decision (September 26, 2024), 2024 WL 4920920; In the Matter of Energy North, Inc., Recommended Final Decision (June 7, 2024), at p. 20-23, adopted as Final Decision (April 30, 2025). However, I owe no deference to MassDEP's interpretation or construction of a statutory or regulatory requirement that is arbitrary, unreasonable, or inconsistent with the plain terms of the governing statutory and regulatory requirements. Arrowood Indemnity Company v. Workers' Compensation Trust Fund, 104 Mass. App. Ct. 419, 421 (2024); In the Matter of Brockton Power Co., LLC, OADR Docket Nos. 2011-025 and 2011-026, Recommended Final Decision (July 29, 2016), 2016 WL 8542559, at *8-10, adopted by Interlocutory Decision [of MassDEP's Commissioner] (March 13, 2017), 2017 WL 1063662 (no deference due MassDEP's interpretation that OADR lacked jurisdiction to adjudicate federal Title VI discrimination claims in air permit appeal where MassDEP lacked a formal Title VI Grievance Policy required by Title VI Regulations of the U.S. Environmental Protection Agency ("USEPA") to review such claims); Prysmian, 2024 WL 4920921, *3 and Energy North, at pp. 20-23, citing, Brockton Power, 2016 WL 8542559, *8-10. Here, for the reasons explained in the text above, I reject MassDEP's interpretation or construction of "lot" as being unreasonable.

⁵ The SOC identifies the Property recorded in the Middlesex South Registry of Deeds, Book 80325, Page 106. See SOC, General Information, A.6. As such the SOC incorporates by reference the document recorded in that Book and Page number, specifically, Quitclaim Deed discussed above.

and defines those boundaries. The Quitclaim Deed then says that Parcel Two consists of three lots, called Lot 2, Lot 3B, and Lot 4, and refers to a plan titled “Plan of Land in Wayland – Mass. (Middlesex County) May 30, 1985, by Malcolm N. Johnson Co.” for further details. This plan defines the boundaries of the aforementioned Lot 2, Lot 3B, and Lot 4. Therefore, the Property actually consists of four lots total, not one as the Applicant and MassDEP suggest and not two as the Commission suggests. Regardless, in none of these documents are the boundaries of the Property as a whole defined, so it can be confidently stated that the Property as a whole is not a lot for purposes of the Wetlands Regulations.

This interpretation is supported by the regulatory history of the Wetlands Regulations. The Preface to the 1997 Regulatory Revisions for the Rivers Protection Act Amendments to the Wetlands Protection Act reads: “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.” In other words, the allowance for up to 5,000 square feet of alteration was eliminated for new lots because of the worry that landowners would divide their properties into distinct lots that each contain fewer than 5,000 square feet of Riverfront Area and thus be able to alter all the Riverfront Area on any property. If the Applicant and the Department are correct that the regulation was intended to apply to an entire project site regardless of how many parcels it contains, there would be no reason to remove the allowance for up to 5,000 square feet of alteration for new lots. The fact that the 5,000 square feet allowance was removed demonstrates that 310 CMR 10.58(4)(d) was intended to apply to each individual lot, not the project site as a whole.

Here, the Applicant did not apply the Riverfront Area performance standards separately to each lot. For example, the NOI states that the proposed Project will alter 7,014 square feet of

Riverfront Area out of a total 209,448 square feet of Riverfront Area on the Property. NOI, p. 18. However, the NOI does not describe how much Riverfront Area will be altered on each lot or how much Riverfront Area exists on each lot. The NOI also describes improvements that will be made to the degraded Riverfront Area. NOI, p. 20. Again, however, it fails to specify the extent of the improvements on each lot. The Commission repeatedly requested that the Applicant analyze the performance standards for Riverfront Area on a per lot basis and the Applicant repeatedly refused. See Response to Peer Review Comments, pp. 3-6; Response to Peer Review Comments 2, pp. 2-5. Given these refusals, the Commission was not provided with enough information to determine if the proposed Project met the performance standards for Riverfront Area in each lot.

CONCLUSION

For the reasons discussed in detail above, based on the undisputed material facts and as a matter of law, the Commission properly denied the Applicant's proposed Project for failure to provide the Commission with sufficient information to review the Project and determine whether it complied with the performance standards under the Wetlands Regulations governing proposed activities in Riverfront Area, a protected wetlands resource area. As a consequence, in accordance with the MWPA and the Wetlands Regulations, the Applicant should be required to file a new Notice of Intent with the Commission under 310 CMR 10.02 if it desires to proceed with the proposed Project. In sum, I recommend that MassDEP's Commissioner issue a Final Decision granting summary decision to the Commission and vacating the SOC.

Date: May 14, 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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