

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

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

June 26, 2025

In the Matter of
Costas Malapanis and Cherie Ansin

OADR Docket No. WET-2025-002
DEP File # 309-1020, SOC Dismissal
Tyngsborough, MA

RECOMMENDED FINAL DECISION

Kimberly Craven (“the Petitioner”) on February 10, 2025, filed an appeal with the Office of Appeals and Dispute Resolution (“OADR”) to challenge the Massachusetts Department of Environmental Protection Northeast Regional Office’s (“NERO” or “the Department”) dismissal of her request for a Superseding Order of Conditions (“SOC”) on January 28, 2025. The Petitioner sought the Department’s review of an Order of Conditions (“OOC”) issued by the Tyngsborough Conservation Commission (“TCC”) in response to an after-the-fact Notice of Intent filed by Costas Malapanis (“Applicant”). The Petitioner indicates that the OOC authorized construction of a 12’x 12’ patio with a 16’x 40’ retaining wall on a parcel of land described as Lot 1, Common Land. The Department based its dismissal on the Petitioner’s lack of response to a request for additional detail and clarification that would constitute evidence of surficial ownership rights over the property where Applicant completed the work and which would support Petitioner’s claim of standing. The Petitioner contends that she is a joint owner of Lot 1, Common Land. The Petitioner contends the Department’s dismissal is in error, that the Petitioner has submitted sufficient documents to support standing as a property owner, and

further that the OOC by the TCC approved work that does not meet the Riverfront Regulations, 310 CMR 10.58(5).

On February 25, 2025, I issued an Order for More Definite Statement and Expert Witness Identification (“the Order”). The Order stated,

“The Petitioner’s Notice of Claim fails to provide clear and concise statements of the alleged errors in the SOC dismissal, the applicable regulatory and statutory provisions violated, and a statement tying the citations to the errors alleged. Specifically, regarding standing, attached to the Notice of Claim are several documents, some of which are not entirely legible. The Petitioner does not clarify or describe which document(s) demonstrate her claim of standing.”

On March 4, 2025, the Petitioner submitted a More Definite Statement. The More Definite Statement contends the documents relevant to the Petitioner’s claim of standing as an owner can be found in her Notice of Appeal Ex. A, some of which she included with her More Definite Statement: the “Common Land Plan,”¹ the “Declaration of Common Land Easement Rights,”² and the “Deed to Kimberly Craven.”³ The Petitioner contends that these documents demonstrate her standing as a co-owner of the land on which the work took place. The Petitioner contends therefore that, as a co-owner, she does not have to demonstrate standing by aggrievement. The Petitioner further contends that she need not identify expert witness(es) and their expected topic of testimony, contending that no expert testimony is necessary to demonstrate her standing, the only issue on which the Department denied her SOC request.

¹ Petitioner’s Notice of Appeal Ex. A included an illegible plan, which, when viewed with the excerpt included in her More Definite Statement, appears to be a plan of a tract of land labeled “this tract of land to be kept open for the common use of all abutters” as well as lots 1-15. Presumably this is the plan referenced in the Declaration of Common Land Easement Rights, and in Petitioner’s deed titled, “Plan of Cottage Lots Owned by the Lakeland Land company, surveyed April, 1893, by J.C. Kendall of Dunstable, Mass., Scale 50 feet to the inch” (the “Plan”).

² Included in Petitioner’s Notice of Appeal Ex. A and her More Definite Statement are five copies of a document titled “Declaration of Common Land Easement Rights” which references the Common Land Plan.

³ Petitioner’s Notice of Appeal Ex. A and her More Definite Statement include a deed into Kimberly P. Craven for Lot #9 which references the Common Land Plan and describes a parcel presumed to be the Common Land lot she references in her Notice of Appeal. The Deed does not reference the Declaration of Common Land Easement Rights.

The land on which the work took place is defined in the initial Notice of Claim as follows: “Lot 1, is Common Land, (Common Land) a separate parcel jointly owned by all abutters with a deed restriction that states ‘This tract of land to be kept open for the common use of all abutters.’” Notice of Claim, para. 7. Additionally, in an email the Petitioner sent to Jill Provencal, the Wetlands Section Chief for the Northeast Regional Office, the Petitioner states, “The work in question is on lot 1.” Notice of Claim, Ex. B. The Plan shows a lot with the number 1 in it (“Lot 1”), and also shows a separate tract with the words, “This tract of land to be kept open for the common use of all abutters” written in it (the “Common Land Tract”). Importantly, and contrary to the Petitioner’s statement in her Notice of Claim, the Plan shows that Lot 1 and the Common Land Tract are separate tracts of land.

The Declaration of Common Land Easement Rights grants easement rights in the Common Land Tract “for the installation, repair, inspection and replacement of subsurface septic disposal systems” to every abutter of the Common Land Tract; the Declaration of Common Land Easement Rights makes no reference to Lot 1. The Deed to Kimberly Craven states that it conveys all “right, title and interest in and to the following parcel of land, adjoining the first parcel above described, bounded and described as follows,” which is presumably the Common Land Tract, which does not include in its description, Lot 1.⁴

The Petitioner’s conflation of Lot 1 with the Common Land Tract in her Notice of Claim creates ambiguity regarding where the work in question took place, and the More Definite Statement does not resolve this ambiguity. Determining where the work took place is of the utmost importance to the Petitioner’s claim of standing, as while she has provided some evidence

⁴ Petitioner’s Deed then includes a metes and bound description of this parcel which, although it does not reference the Plan or the Declaration of Common Land Easement Rights, appears to align with the Common Land Tract shown on the Plan.

suggesting easement rights on the Common Land Tract, she has presented no evidence suggesting any sort of property interest in Lot 1.⁵ The regulations at 310 CMR 10.05(7)(j)2.b.v require that a Notice of Claim contain “a clear and concise statement of the alleged errors contained in the Reviewable Decision.” Rather than being clear, the Petitioner’s Notice of Claim and More Definite Statement are self-contradictory. The regulations at 310 CMR 10.05(7)(j)2.c provide that “[a]n Appeal Notice that does not contain all of the information required in [310 CMR 10.05(7)(j)2.b] may be dismissed.”

For purposes of standing, the Petitioner has demonstrated that she has a property interest in the subsurface of the Common Land Tract, and although not referenced in her Notice of Claim or her More Definite Statement, she also has a right of way easement over the Common Land Tract for the purpose of accessing the Lake. MassDEP does not make property determinations and considers only whether a Petitioner has demonstrated a colorable claim of title to the real property on which the work occurred. Tindley v. DEQE, 10 Mass. App. Ct. 623 (1980) (affirming that the Department’s role is not to adjudicate private property rights, but to determine whether the Applicant asserted a colorable claim of right sufficient to carry out the proposed work).⁶ Here, the Petitioner has shown some “colorable claim of title” to the Common Land Tract, but not to Lot 1. Her ambiguous assertions as to where the work in question occurred are not discernable. The Petitioner was provided with an opportunity in her response to my Order for

⁵ Petitioner’s Deed appears to confer ownership to Lot # 9 shown on the Plan.

⁶ See also, In the Matter of Town of Brewster, OADR Docket No. WET-2012-006, Recommended Final Decision (August 10, 2012), 2012 WL 3679963, *9 n.20, adopted as Final Decision (August 16, 2012), 2012 WL 3679962 (to establish standing must demonstrate a colorable claim of title to real property, citing Tindley); In the Matter of Michael Gleason, OADR Docket No. WET-2017-019, Recommended Final Decision (December 4, 2019), 2019 WL 8883856, *6, adopted as Final Decision (January 7, 2020), 2020 WL 2616480 (MassDEP does not resolve property ownership disputes, but rather determines whether applicant has colorable claim of title); In the Matter of John Donovan, Jr., Trustee Seagate Realty Trust, Docket No. 2000-016, Final Decision (September 21, 2000), 2000 WL 1478827, *3 (applicant must present a colorable claim to the property in question for review of Chapter 91 license application; at no point will MassDEP intrude upon the prerogative of the court and entertain the merits of a property dispute).

More Definite Statement to support her claim but did not provide any new information. The Petitioner provided no additional clear and concise statement to her assertion that the applicable regulatory and statutory provisions were violated, or the errors alleged.

CONCLUSION

As discussed herein, the Petitioner's Notice of Claim is insufficient, and she failed to support her claim with her More Definite Statement. Accordingly, I recommend that MassDEP's Commissioner issue a Final Decision that dismisses the Petitioner's appeal and affirms the SOC denial.

Date: June 26, 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.

SERVICE LIST

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