

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

**OFFICE OF APPEALS AND DISPUTE RESOLUTION**

August 1, 2019

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In the Matter of  
Edwin Mroz

**Docket No. 2017-021**  
DEP File No.  
UAO-CE-17-6W003  
Enforcement Document  
No. 00002537

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**RECOMMENDED FINAL DECISION ON RECONSIDERATION<sup>1</sup>**

**INTRODUCTION**

The Petitioner Edwin Mroz requests that the Commissioner of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) reconsider his June 18, 2019 Final Decision in this appeal upholding the Department’s issuance of a Unilateral Administrative Order (“UAO”) to the Petitioner for violations of the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 (“MWPA”), and the Wetlands Regulations, 310 CMR 10.00 et seq. (“the Wetlands Regulations”). The Department issued the UAO as a result of the Petitioner’s unauthorized activities in protected wetlands areas at 5 Burns Coat in Maynard, Massachusetts (“the Property”). See UAO, ¶¶ 4-18. For the reasons discussed in detail below, I recommend that the Department’s Commissioner issue a Final Decision On Reconsideration

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<sup>1</sup> At the outset of this appeal, the Petitioner informed the Office of Appeals and Dispute Resolution (“OADR”) that he has a vision problem necessitating his receipt of documents from OADR typewritten in a large font size in order to enable him to read the documents. As a result, at all times during the pendency of this appeal, OADR has provided the Petitioner with versions of all documents, including this document, typewritten in the large font size of Times New Roman 24, which has enabled him to read the documents.

denying the Petitioner's Motion for Reconsideration of the Final Decision because the Petitioner has failed to demonstrate that the Final Decision is based on findings of fact and/or rulings of law that are clearly erroneous.

### **PRIOR PROCEEDINGS**

The Department issued the UAO at issue in this appeal because the Petitioner performed the following activities in protected wetlands areas at the Property without prior authorization from the Town of Maynard's Conservation Commission ("MCC") or the Department in violation of the MWPA and the Wetlands Regulations:

- A. In or about December 2015, the Petitioner constructed an access road through Bordering Vegetated Wetlands ("BVW") and the Bank of a stream on the Property.<sup>2</sup> UAO, ¶¶ 11, 16.
- B. In or about April 2016, the Petitioner operated or allowed the operation of heavy equipment in a stream channel and adjacent wetlands area on the Property which altered the Bank of the stream channel and the BVW on the Property. UAO, ¶¶ 12, 16. The Petitioner operated or allowed the operation of this heavy equipment without erosion controls in place. *Id.* The Petitioner also placed or allowed to be placed large piles of brush and fill material adjacent to the BVW and within the 100-foot Buffer Zone to the BVW. *Id.*
- C. In or about May 2017, the Petitioner performed filling and grading activities within the 100-foot Buffer Zone to the Bank of the stream and within the BVW on the Property. UAO, ¶¶ 14, 15, 16. "Recent fill material appeared to include broken concrete, stone, woodchips, leaves, and soil." *Id.*, ¶ 15. The Petitioner performed these activities without erosion and sedimentation controls. *Id.* In performing these activities, the Petitioner parked or allowed to be parked heavy equipment in the 100-foot Buffer Zone to BVW. *Id.* Upon discovering these violations, Department staff directed the Petitioner to immediately cease all activities in the wetland resource areas and 100-foot Buffer Zone, which included the yard

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<sup>2</sup> BVW and Bank are two wetlands resources protected by the MWPA and the Wetlands Regulations. The nature of these wetlands resources areas are discussed in detail at pp. 8-12 of my June 7, 2019 Recommended Final Decision ("RFD") in this appeal, which the Department's Commissioner adopted as his Final Decision on June 18, 2019. The nature of BVW and Bank are discussed at pp. 27-44 of the large font size Times New Roman 24 version of the RFD that OADR provided to the Petitioner. *See* n. 1, at p. 1 above.

south and east of the house located on the Property. Department staff also directed the Petitioner to cease all grading, equipment operation, and importing or manipulating fill, and to stabilize the disturbed areas with erosion and sedimentation controls. UAO, ¶ 15.

- D. The Petitioner's unauthorized work in protected wetlands areas as described above (¶¶ A-C) altered the Bank of a stream, estimated to be between 30 and 100 feet, in violation of the Performance Standards at 310 CMR 10.54(4) governing activities in Bank. UAO, ¶¶ 16, 17.<sup>3</sup> It also altered BVW at the Property, estimated to be at least 20,000 square feet, in violation of the Performance Standards at 310 CMR 10.55(4) governing activities in BVW. UAO, ¶¶ 16, 18.

The UAO ordered the Petitioner to perform the following remedial actions within prescribed time periods to correct his purported violations of the MWPA and the Wetlands Regulations as described above on pp. 2-3 (¶¶ A-D):

- A. Immediately cease and desist from all further activities at the Property within wetland resource areas and all grading, equipment operation, and importing or manipulation of fill within the 100-foot Buffer Zone to Bank or BVW (UAO, ¶ 19A);
- B. Immediately implement measures to stabilize all exposed soils at the Property to prevent soil erosion, and install and maintain erosion and sedimentation controls such as silt fencing to prevent further sediment from reaching wetland resource areas (UAO, ¶ 19B);
- C. Within 14 days of the UAO's issuance, retain a wetlands specialist and identify all existing and altered wetland resource areas and flag and/or stake all wetland resource area boundaries and parcel boundaries at the Property (UAO, ¶ 19C);
- D. Within 21 days of the UAO's issuance, provide the Department with a report prepared by a wetland specialist containing an assessment of the extent of alterations to all wetland resource areas on the Property, including, but not limited to BVW and Bank (UAO, ¶ 19D);
- E. Within 30 days of the UAO's issuance, submit to the Department a

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<sup>3</sup> "Performance Standards" are "th[e] requirements established by [the Wetlands Regulations] for activities in or affecting [specific wetlands areas protected by MWPA]." 310 CMR 10.04.

detailed site plan, prepared and stamped by a Registered Professional Engineer (“RPE”) or Registered Land Surveyor (“RLS”), depicting all wetland resource areas, including those that have been altered, on the Property (UAO, ¶ 19E); and

- F. Within 30 days of the UAO’s issuance, submit to the Department for its review and approval prior to the Petitioner’s implementation, a detailed narrative and plan prepared by a wetland scientist/specialist for the restoration of any and altered wetland resource areas on the Property (UAO, ¶ 19F).

Following the UAO’s issuance, the Petitioner brought this appeal denying the UAO’s allegations and requesting that the UAO be vacated. Petitioner’s Appeal Notice (July 11, 2017).

On June 7, 2019, I issued a detailed RFD,<sup>4</sup> recommending that the Department’s Commissioner issue a Final Decision affirming the UAO because the Petitioner failed to prosecute his appeal of the UAO by repeatedly failing to comply with my directives to facilitate the appeal’s adjudication, including failing to file proper sworn Pre-filed Testimony (“PFT”) of witnesses, including the PFT of a wetlands expert, containing admissible evidence supporting the Petitioner’s claims in the appeal for the evidentiary Adjudicatory Hearing (“Hearing”) that I conducted to adjudicate the appeal. RFD, at pp. 12-22.<sup>5</sup> In the alternative, I recommended that the Department’s Commissioner issue a Final Decision affirming the UAO because, based on a strong preponderance of the evidence presented by the parties at the Hearing and the wetlands governing statutory and regulatory requirements, I determined that: (1) the Petitioner violated the MWPA and the Wetlands Regulations as alleged by the Department in the UAO; and (2) the remedial measures in the UAO that the Department ordered the Petitioner to perform to correct

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<sup>4</sup> See n. 2, at p. 2 above.

<sup>5</sup> This finding and recommendation are set forth at pp. 44-105 of the large font size of Times New Roman 24 version of the RFD that OADR provided to the Petitioner. See n. 1, at p. 1 above.

his violations are reasonable measures. RFD, at pp. 27-47.<sup>6</sup> The Commissioner agreed with my recommendations by issuing a Final Decision on June 18, 2019 adopting my RFD in all respects.<sup>7</sup> The Petitioner now seeks reconsideration of that Final Decision.

### DISCUSSION

It is well settled that a party seeking reconsideration of a Final Decision issued by the Department's Commissioner in an administrative appeal of a Department enforcement order or permit decision has the heavy burden of demonstrating that the Final Decision was unjustified. 310 CMR 1.01(14)(d); In the Matter of Gary Vecchione, OADR Docket No. WET-2014-008, Recommended Final Decision on Reconsideration (November 4, 2014), 2014 MA ENV LEXIS 83, at 6, adopted as Final Decision on Reconsideration (November 7, 2014), 2014 MA ENV LEXIS 82. Specifically, the party must demonstrate that the Final Decision was based upon a finding of fact or ruling of law that was "clearly erroneous." Id. In addition, a Motion for Reconsideration may be summarily denied if "[it] repeats matters adequately considered in the final decision, renews claims or arguments that were previously raised, considered and denied, or where it attempts to raise new claims or arguments . . . ." Id., at 6-7. Moreover, "reconsideration [of the Final Decision is not] justified by the [party's] disagreement with the result reached in the Final Decision." Id., at 7.

Here, the Petitioner has failed to satisfy the requirements for obtaining reconsideration of the Commissioner's Final Decision because his Motion for Reconsideration is merely the subject line of a June 21, 2019 electronic mail ("e-mail") message that he forwarded to OADR stating in

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<sup>6</sup> This finding and recommendation are set forth at pp. 105-187 of the large font size of Times New Roman 24 version of the RFD that OADR provided to the Petitioner. See n. 1, at p. 1 above.

<sup>7</sup> The Petitioner was provided a version of the Final Decision typewritten in the large font size of Times New Roman 24. See n. 1, at p. 1 above.

a summary fashion that he was seeking reconsideration of the Final Decision “so that readily available and prev[iously] timely supplied exculpatory information will no longer be suppressed.” Simply stated, contrary to the requirements of 310 CMR 1.01(14)(d), the Petitioner failed to set forth any specific findings of fact and/or rulings of law of the RFD that, in his view, are clearly erroneous and impacted the Commissioner’s Final Decision adopting the RFD and upholding the UAO.

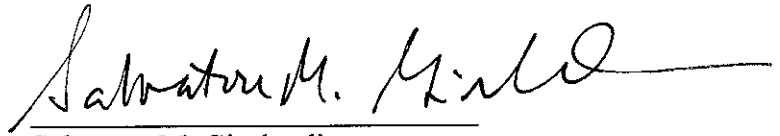
Given the deficiencies of the Petitioner’s Motion for Reconsideration, I would have been well within my authority to immediately issue a Recommended Final Decision On Reconsideration (“RFD On Reconsideration”) recommending that the Department’s Commissioner issue a Final Decision On Reconsideration denying the Petitioner’s Motion for Reconsideration. However, on July 16, 2019, I issued an Order to Show Cause granting the Petitioner with an opportunity to set forth specific findings of fact and/or rulings of law of the RFD that, in his view, were clearly erroneous and impacted the Commissioner’s Final Decision adopting the RFD and upholding the UAO. The Order to Show Cause directed the Petitioner to file a memorandum with OADR by Friday, July 26, 2019, setting forth specific findings of fact and/or rulings of law of the RFD that, in his view, were clearly erroneous and impacted the Commissioner’s Final Decision adopting the RFD and upholding the UAO. The Order to Show Cause made clear to the Petitioner that if he failed to file the required memorandum by the July 26, 2019 deadline, I would issue an RFD On Reconsideration recommending that the Department’s Commissioner issue a Final Decision On Reconsideration denying the Petitioner’s Motion for Reconsideration.

### **CONCLUSION**

The Petitioner, who had the benefit of legal counsel to assist him in responding to the

Order to Show Cause after it was issued on July 16, 2019,<sup>8</sup> neither sought an extension of the Order's July 26, 2019 deadline to file the required memorandum nor filed the memorandum by the deadline or thereafter. Accordingly, I recommend that the Department's Commissioner issue a Final Decision On Reconsideration denying the Petitioner's Motion for Reconsideration of the Final Decision because the Petitioner has failed to demonstrate that the Final Decision is based on findings of fact and/or rulings of law that are clearly erroneous.

Date: 08/01/19



Salvatore M. Giorlandino  
Chief Presiding Officer

#### **NOTICE-RECOMMENDED FINAL DECISION ON RECONSIDERATION**

This decision is a Recommended Final Decision On Reconsideration of the Chief Presiding Officer. It has been transmitted to the Department's Commissioner for his Final Decision On Reconsideration in this matter. This decision is therefore not a Final Decision On Reconsideration and may not be appealed to Superior Court pursuant to G.L. c. 30A. The Commissioner's Final Decision On Reconsideration may be appealed and will contain a notice to that effect.

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<sup>8</sup> Prior to July 16, 2019, the Petitioner proceeded in the appeal pro se. However, on July 16, 2019, OADR received an e-mail message from Stephen Bennett ("Mr. Bennett") informing OADR that "[he was] a retired attorney (retired from NH) living in Waltham, [Massachusetts] . . . [who was] asked by the [Petitioner] to review the status of his [appeal of the UAO] and provide assistance in completing any deadlines that he [might] be facing . . . ." On the same date, OADR responded to Mr. Bennett's e-mail message by forwarding to him electronic copies of: (1) my June 7, 2019 RFD in the appeal; (2) the Department's Commissioner's June 18, 2019 Final Decision adopting my RFD as his Final Decision and upholding the UAO; and (3) the July 16, 2019 Order to Show Cause. OADR's e-mail message to Mr. Bennett forwarding these documents to him informed him that "[the] Order to Show Cause [noted] the deficiencies of [the Petitioner's] June 21, 2019 Motion for Reconsideration of the Final Decision and direct[ed] [the Petitioner] to file a memorandum with OADR by Friday, July 26, 2019, setting forth specific findings of fact and/or rulings of law of the RFD that, in his view, [were] clearing erroneous and impacted the MassDEP Commissioner's Final Decision adopting the RFD upholding the UAO." As discussed above in the text, the Petitioner thereafter did not comply with the Order to Show Cause.

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