

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

July 7, 2020

**In the Matter of
Edwin N. Woods, Jr. Realty Trust**


Docket No. 2019-021
DEP File No.: Waterways Application
No. JD19-5542
Edgartown, MA

FINAL DECISION

The Petitioner Edwin N. Woods, Jr. Realty Trust brought this appeal challenging a Determination of Applicability (“the Chapter 91 Determination”) that the Boston Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner on May 10, 2019, pursuant to the Massachusetts Public Waterfront Act, G.L. c. 91 (“Chapter 91” or “c. 91”), and the Waterways Regulations at 310 CMR 9.00. The Chapter 91 Determination concluded that a portion of the Petitioner’s real property at 35 Tower Creek Road in Edgartown, Massachusetts (“the Site”) included flowed and filled tidelands subject to the Department’s regulatory jurisdiction under Chapter 91 and the Waterways Regulations.

Currently pending before me for review pursuant to 310 CMR 1.01(8)(c), is a proposed Settlement Agreement that the Petitioner and the Department have executed to settle the Petitioner’s appeal of the Chapter 91 Determination as set forth above. The Settlement Agreement has been executed by: (1) Christine Hopps, Assistant Director of the Department’s

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Waterways Regulation Program, on November 15, 2019 and (2) Adam P. Kahan, the Petitioner's legal counsel, on November 18, 2019.

After reviewing the Settlement Agreement, I issue this Final Decision approving and incorporating the Settlement Agreement because it is reasonable and furthers the statutory and regulatory interests of Chapter 91 and the Waterways Regulations for the following reasons.

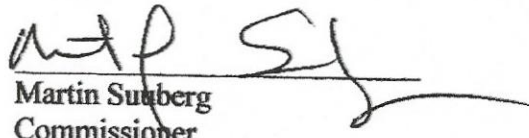
In its Chapter 91 Determination, the Department determined that the location of a proposed seawall at the Site as depicted on Figure 3 of the Petitioner's April 5, 2019 request to the Department for a Determination of Applicability was subject to the Department's regulatory jurisdiction under Chapter 91 and the Waterways Regulations. The Department has changed its position after reviewing a Georeferenced Survey Plan for the Site¹ that the Petitioner presented to the Department on August 16, 2019 in a supplemental filing that the Petitioner made with the Department. Staff in the Department's c. 91 Program reviewed the Petitioner's Georeferenced Survey Plan for the Site and agreed with the Petitioner that the proposed seawall at issue is not subject to the Department's regulatory jurisdiction under Chapter 91 and the Waterways Regulations. The Department's finding concurring with the Petitioner's position is set forth in the second paragraph of the proposed Final Determination of Applicability-310 CMR 9.00 that the Department will issue in the matter. Settlement Agreement, ¶¶ 2-3.

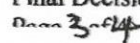
In approving and incorporating the Settlement Agreement, I issue the following orders:

- (1) The effective date of the Settlement Agreement is the date of this Final Decision.
- (2) In accordance with ¶¶ 4 and 8 of the Settlement Agreement, G.L. c. 30A, and 310

¹ "Georeferencing means that the internal coordinate system of a digital map or aerial photo can be related to a ground system of geographic coordinates. A georeferenced digital map or image has been tied to a known Earth coordinate system, so users can determine where every point on the map or aerial photo is located on the Earth's surface." https://www.usgs.gov/faqs/what-does-georeferenced-mean?qt-news_science_products=0#qt-news_science_products.

CMR 1.01(8)(c), this appeal is dismissed with the parties waiving whatever rights they may have to further administrative review before the Department as well as any appeal to Court.


Martin Sunberg
Commissioner

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SERVICE LIST

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