



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

October 27, 2020

In the Matter of
John Driscoll

OADR Docket No. WET-2020-001
File No. SDA
Hull, MA

FINAL DECISION

Martin Suuberg, the Commissioner of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) has designated me as the Final Decision Maker in this appeal.

The Petitioner, William R. Germaine (“the Petitioner”), filed this appeal challenging a superseding determination of applicability (“SDA”) issued by the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) to the Applicant, John Driscoll. The SDA was issued pursuant to 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 SDA determined that the Applicant’s proposed project to remove an existing concrete retaining wall did not require the filing of a Notice of Intent (“NOI”). MassDEP determined that the proposed project would occur within an area subject to protection under the MWPA, but would not fill, dredge or alter that area. The Petitioner, whose property abuts the

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project site, alleged that a NOI should have been required because the proposed project would change pre-existing drainage characteristics, which is considered an alteration under the wetlands regulations. He also alleged that removing the wall would not protect the MWPA interests of storm damage prevention and flood control but would increase the risk of storm damage to his property, particularly in less than 100-year storm events. Petitioner also asserted that MassDEP erred by not limiting its review to what the Petitioner asserted was the scope of the RDA, i.e., a determination of whether the area of the proposed project was subject to wetlands jurisdiction, and not whether the proposed project itself, i.e. the work, was subject to the MWPA. The Applicant removed the wall on the day this appeal was filed.

On August 7, 2020, the Petitioner filed a withdrawal of his appeal. The Petitioner stated that while he “withdraws his claim not because he does not believe the likelihood of success on the merits...but because the Department has made clear that ...[it] is unlikely to authorize approval of storm damage protection measures that would replicate the wall removed by the Applicant....” The Petitioner’s voluntary withdrawal of his appeal constitutes a waiver by the Petitioner to any further administrative review before the Department as well as appeal to court of the SDA that was at issue in this appeal. Accordingly, the Department issues this Final Decision which allows the Petitioner’s withdrawal and dismisses this appeal.



Salvatore M. Giorlandino
Chief Presiding Officer

SERVICE LIST

**IN THE MATTER OF:
DOCKET NO. WET-2020-001**

JOHN DRISCOLL

REPRESENTATIVE

PARTY

Robert D. Cox, Jr., Esq.
Bowditch & Dewey, LLP
311 Main Street, P.P. Box 15156
Worcester, MA 01615-0156
rcox@bowditch.com

PETITIONER

Curtis A. Connors, Esq.
Michael S. Campinell, Esq.
Giarrusso Norton Cooley & McGlone, PC
Marina Bay
308 Victory Road
Quincy, MA 02171
cconnors@gncm.net
mcampinell@gncm.net

APPLICANT

Robert J. Doonan, Esq.
Doonan Law
350 Lincoln Street, Suite 2400
Hingham, MA 02043
DoonanLaw@gmail.com

APPLICANT

David Bragg, Esq.
MassDEP Office of General Counsel
One Winter Street
Boston, MA 02108
david.bragg@mass.gov

DEPARTMENT

Gregory DeCesare
Wetlands & Waterways Program
MassDEP Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347
gregory.decesare@mass.gov

DEPARTMENT

Shaun Walsh
MassDEP/Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347
shaun.walsh@mass.gov

DEPARTMENT

Leslie DeFilippis
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108
Leslie.defilippis@mass.gov

DEPARTMENT

James Lampke, Esq.
Town Counsel, Town of Hull
115 North Street, Suite 3
Hingham, MA 02043
jlampke@town.hull.ma.us

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