

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

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

August 9, 2019

In the Matter of
LH Realty, LLC

Docket Nos. WET-2018-011, 2017-006
West Bridgewater, MA

RECOMMENDED FINAL DECISION

LH Realty, LLC (“Petitioner”) filed these consolidated appeals concerning the real property at 249-251 Pleasant Street, West Bridgewater, Massachusetts (“the Property”). The appeal in Docket No. 2017-006 (“Appeal I”) challenges an Enforcement Order (#0001210) issued by the Massachusetts Department of Environmental Protection’s Southeast Regional Office with respect to the alleged unlawful cutting and filling of Bordering Vegetated Wetlands (“BVW”) at the Property. The appeal in Docket No. WET 2018-011 (“Appeal II”) challenges the Superseding Order of Resource Area Delineation (“SORAD”) issued by MassDEP with respect to the Property, and specifically the BVW that was alleged to be unlawfully filled and cut in Appeal I.

On June 11, 2019, the Petitioner entered a Consent Judgment with the Commonwealth of Massachusetts in Massachusetts Superior Court in Commonwealth of Massachusetts v. LH Realty, et al., CA NO. 1884CV02717A (“Superior Court Judgment”). The Superior Court Judgment resolved a civil enforcement action brought by the Massachusetts Attorney General. The issues raised in Appeals I and II were subsumed within the issues that were litigated and resolved in the Superior Court Judgment. As a consequence, the Petitioner has withdrawn the

request for an Order of Resource Area Delineation that was filed with the West Bridgewater Conservation Commission and led ultimately to Appeal II after MassDEP issued the SORAD. See Notice of Withdrawal of Request for Order of Resource Area Delineation and Motion for Dismissal. Also as a consequence of the Superior Court Judgment, MassDEP rescinded the Enforcement Order (#0001210) that led to Appeal I. See July 26, 2019, Notice of Rescission issued by MassDEP to the Petitioner.

In light of the above, Appeals I and II are now moot and the Petitioner has therefore moved, with MassDEP's assent, for their dismissal. For the above reasons demonstrating the absence of a justiciable issue and the absence of any opposition to the motion to dismiss, I find that the motion to dismiss should be allowed. See Matter of Wilkinson Excavating, Inc., Docket No. 2010-064, Recommended Final Decision (March 8, 2011), adopted by Final Decision (April 5, 2011). Accordingly, I recommend that MassDEP's Commissioner issue a Final Decision adopting this Recommended Final Decision to dismiss Appeals I and II as moot.

NOTICE- RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for his 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 his sole discretion, directs otherwise.

August 9, 2019



Timothy M. Jones
Presiding Officer

SERVICE LIST

In The Matter Of:

LH Realty, LLC

Docket No. WET-2018-011

File No. SE 328-706 (SORAD)
West Bridgewater

Representative

Party

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DEPARTMENT

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Date: August 9, 2019