

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

100 CAMBRIDGE STREET, BOSTON, MA 02114 617-292-5500

**THE OFFICE OF APPEALS AND DISPUTE RESOLUTION**

**June 8, 2023**

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In the Matter of  
Michael Bean

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OADR Docket No. WET-2023-003  
DEP File No. 288-0478  
South Hadley, MA

**RECOMMENDED FINAL DECISION**

This is an appeal of a Superseding Order of Conditions (“SOC”) issued on March 16, 2023 to Michael Bean (“Applicant”) by the Western Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP”) pursuant to the Massachusetts Wetland Protection Act, M.G. L. c. 131, § 40 (“MWPA”), and the Wetlands Regulations, 310 CMR 10.00. The SOC authorized the construction of a single-family house and associated appurtenances at 11 San Souci Drive in South Hadley, Massachusetts. The appeal was filed by Jeromie Whalen, an abutter to the project site (“Petitioner”). The Notice of Claim (Appeal Notice) was timely filed, but it failed to comply with the rules for filing an appeal of a wetlands permit decision because it failed to allege facts sufficient to establish that the Petitioner has standing to bring the appeal as a person aggrieved, a prerequisite to maintaining this administrative appeal.

On April 13, 2023, I issued an Order for a More Definite Statement (“the Order”) to the Petitioner so that he could provide a more definite statement of his claim that he is aggrieved.

The deadline for his response to the Order was April 21, 2023; he did not file a response. On April 26, 2023 I issued an Order to Show Cause to the Petitioner requiring him to show cause why his appeal should not be dismissed for failure to respond to the Order. The Order to Show Cause was issued via email to the Petitioner on April 26, 2023, and via certified mail, return receipt requested, on May 1, 2023. The Petitioner signed for the certified mail on May 3, 2023. He did not file a response to the Order to Show Cause or seek an extension of time to do so.

310 CMR 1.01(5)(a)15.d. authorizes the Presiding Officer to issue an Order for a More Definite Statement to a party to provide a more definite statement of their claims, and to show cause why an appeal should not be dismissed. 310 CMR 1.01(5)(a)15.f.vi. authorizes the Presiding Officer to dismiss appeals for failure to comply with an order. Pursuant to 310 CMR 1.01(10):

When a party fails to file documents as required, respond to notices, correspondence or motions, comply with orders issued and schedules established in orders or otherwise fails to prosecute the adjudicatory appeal; demonstrates an intention not to proceed; demonstrates an intention to delay the proceeding or resolution of the proceedings; or fails to comply with any of the requirements set forth in 310 CMR 1.01; the Presiding Officer may impose appropriate sanctions on that party.

Among the sanctions authorized by this regulation is the sanction of dismissal. See 310 CMR 1.01(10)(e). Because the Petitioner failed to respond to either order, he has demonstrated an intention not to pursue his appeal and a sanction of dismissal is appropriate. I recommend that MassDEP's Commissioner issue a Final Decision dismissing the appeal and affirming the SOC.

**Date:** June 8, 2023



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Jane A Rothchild  
Senior Presiding Officer

## **SERVICE LIST**

**In The Matter Of:**

**Michael Bean**

**Docket No. WET-2023-003**

**South Hadley**

**Representative**

**Party**

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