

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

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

January 10, 2025

In the Matter of
Brooke Charter School

OADR Docket No. WET 2024-022
MassDEP File #06-0931
Boston, MA

RULING AND ORDER:

- (1) **GRANTING THE APPLICANT AND MassDEP's
MOTION TO STAY PROCEEDINGS, AND**
(2) **REMANDING MATTER TO MassDEP FOR FURTHER SOC
REVIEW OF NEWLY OBTAINED INFORMATION**

A ten-resident group from the Dorchester neighborhood in the city of Boston (the Morton Street Ten Resident Group or “Petitioners”), filed this appeal challenging a Superseding Order of Conditions (“SOC”) issued by the Northeast Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”). The SOC was issued to the Brooke Charter School (the “Applicant”) and affirmed the Order of Conditions which had been approved by the Boston Conservation Commission. Specifically, the SOC approved the construction of an artificial turf field with associated infrastructure facilities portions of which would be located within buffer zone to Bordering Vegetated Wetlands (“BVW”) and within Riverfront Area and that it fails to apply environmental justice policies and requirements as established by the Climate Roadmap Act.

I conducted a Pre-Hearing Conference on October 30, 2024, allowed the Parties to comment on the issues discussed at the Pre-Hearing Conference and thereafter established the

issues for adjudication.¹ At the Pre-Hearing Conference the Applicant and MassDEP opposed the Petitioners' request to conduct the Hearing via Zoom and I scheduled the Hearing in person. I included in the schedule an opportunity for the Petitioner to file a motion to support their request for holding the Hearing via Zoom, which they duly filed. The Applicant and MassDEP opposed the Petitioners' Motion and I conducted a Status Conference for the purpose of reviewing the Motion and Opposition. Thereafter I granted the Petitioners' Motion and scheduled the Hearing to take place via Zoom.²

On December 31, 2024 the Applicant and MassDEP filed a Motion to Stay the appeal adjudication schedule indicating that they had learned that a Federal Emergency Management Agency ("FEMA") flood map for the proposed Project area became final on July 3, 2024 and was not considered in the SOC which was issued on July 10, 2024. The Motion indicates that the FEMA map shows that Bordering Land Subject to Flooding ("BLSF") is located on part of the project Property which is a jurisdictional resource area pursuant to 310 CMR 10.02. The Applicant and MassDEP also requested that the matter be remanded to the Department's Northeast Regional Office ("NERO Office") to review the BLSF which was not considered in its issuance of the SOC. Thereafter the Petitioners filed a motion supporting the motion and moving to stay and remand. In sum, I issue the following orders:

1. The Parties' assented to request for an opportunity to review the FEMA map not previously considered in issuing the SOC is good cause to stay the appeal adjudication proceedings ("the proceedings") in the appeal. Accordingly, the proceedings are **stayed from today, January 10, 2025 to Monday March 10, 2025.**
2. Further, this Ruling and Order is an Interlocutory Remand of this matter to the Department's Northeast Regional Office for a further SOC review, specifically for the

¹ See Pre-Hearing Conference Report and Order, November 5, 2024; See also, Amended Issue for Adjudication, November 8, 2024.

² See Ruling and Order, December 23, 2024.

purpose of the Office considering the BLSF newly identified on the FEMA map relative to its issuance of a determination in accordance with the Massachusetts Wetlands Protection Act and the Wetlands Regulations.³

- a. On or before **Monday March 10, 2025**, the Department shall file a Status Report informing me of the status of their review of the BLSF newly identified on the FEMA map, whether they have determined whether it will result it changes to their SOC determination or whether their review is ongoing.
- b. The Department's Status Report shall include the extent to which they have included the Parties in their review the FEMA map, any additional documentation and any resulting site visits, and if not included, an estimated schedule for when they will be prepared to either discuss their review with the Parties, support the SOC, revise the SOC or withdraw the SOC.
- c. If the Department's review is ongoing, the Department's Status Report shall include a reasonable estimate of any additional time needed to complete their review.

Date: January 10, 2025



Margaret R. Stolfa
Presiding Officer

³“ . . . [I]f during the pendency of an administrative appeal, ‘[the Department] becomes convinced’ based on a different legal interpretation of applicable regulatory standards, new evidence, or error in its prior determination, ‘that the interests of [MWPA] require it to take a different position from one that it had adopted previously [in issuing the SOC],’ the Department is authorized to, and should change its position.” In the Matter of Algonquin Gas Transmission, LLC, OADR Docket No. WET-2016-025, Recommended Final Decision (October 16, 2019), 2019 MA ENV LEXIS 106, *15, adopted by Final Decision, (October 24, 2019), 2019 MA ENV LEXIS 104.

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