

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
100 CAMBRIDGE STREET, BOSTON, MA 02114 617-292-5500
THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

July 8, 2026

_____	)	
In the Matter of	)	OADR Docket Number: 2004-030
	)	DEP File No. 035-0823
	)	Hull, Massachusetts
Scott Berry,	)	
Provident Development	)	
_____	)	

RECOMMENDED FINAL DECISION

Scott Berry, Provident Development, LLC (“Applicant”/”Petitioner”), on March 5, 2004, filed an appeal with the Office of Administrative Appeals, now the Office of Appeals and Dispute Resolution (“OADR”),¹ purporting to challenge a Superseding Order of Conditions (“SOC”) denial issued by the Northeast Regional Office of Massachusetts Department of Environmental Protection (“MassDEP” or the “Department”) on August 26, 2003. The Petitioner’s project was for the construction of a 12 foot-wide deck located adjacent to the top of a Coastal Bank (the “proposed Project”) at 29 Reef Point Road in Hull, Massachusetts (the “Property”). The SOC affirmed the denial Order of Conditions issued on March 27, 2003 by the Hull Conservation Commission (“Commission”).

¹ A description of OADR appears in Addendum No. 1.

On February 8, 2006, the Applicant/Petitioner notified OADR that he had elected to file a new Notice of Intent for the work proposed in this appeal stating his intent to decide after receiving a new Order of Conditions whether to pursue this appeal or to continue under a new Order of Conditions. Thereafter, this appeal was stayed consistent with MassDEP Policy 88-3, Multiple Notice of Intent Filings for the Same or Similar Projects on the Same Property ("Policy 88-3").² The Order to Stay placed responsibility on the Applicant/Petitioner to indicate his intentions with respect to the current appeal and the redesigned project under a new Order of Conditions, within twenty-one (21) days after the issuance of a new Order of Conditions by the Commission.

There is no filing in the OADR record following the Order to Stay Proceedings to indicate that the Applicant/Petitioner intended to continue efforts to prosecute this appeal before OADR. Based on the available record, because the Applicant/Petitioner failed to make any further filing with OADR over an extended period, he has demonstrated an intention not to pursue his appeal and a sanction of dismissal is appropriate. I recommend that the Department's Commissioner issue a Final Decision dismissing the appeal and affirming the SOC.

Date: July 8, 2026



Margaret R. Stolfa
Presiding Officer

² Policy 88-3 encourages such refilings at the local level, essentially in the interest of early settlement for an applicant to resolve its differences with the Department and the Conservation Commission, and provides that upon written notice of a refiling, the original appeal will be stayed while the new filing is processed. Policy 88-3 also provides that the Applicant has 21 days from the date of issuance of an Order of Conditions resulting from the refiled NOI to withdraw, in writing, one of the two pending Notices of Intent.

NOTICE-RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for her Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14(d) and/or 14(e), and may not be appealed to Superior Court pursuant to 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 and no other person directly or indirectly involved in this administrative appeal shall neither (1) file a motion to renew or reargue this Recommended Final Decision or any part of it, nor (2) communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

Service List

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ADDENDUM NO. 1

OADR DESCRIPTION

The Office of Appeals and Dispute Resolution (“OADR”) is a quasi-judicial office within the Massachusetts Department of Environmental Protection (“the Department” or “MassDEP”) which is responsible for advising the Department’s Commissioner in resolving all administrative appeals of Department Permit decisions and enforcement orders in a neutral, fair, timely, and sound manner based on the governing law and the facts of the case. In the Matter of Tennessee Gas Pipeline Company, LLC, OADR Docket No. 2016-020 (“TGP”), Recommended Final Decision (March 22, 2017), 2017 MA ENV LEXIS 34, at 9, adopted as Final Decision (March 27, 2017), 2017 MA ENV LEXIS 38, citing, 310 CMR 1.01(1)(a), 1.01(1)(b), 1.01(5)(a), 1.01(14)(a), 1.03(7). The Department’s Commissioner is the final agency decision-maker in these appeals. TGP, 2017 MA ENV LEXIS 34, at 9, citing, 310 CMR 1.01(14)(b). To ensure its objective review of Department Permit decisions and enforcement orders, OADR reports directly to the Department’s Commissioner and is separate and independent of the Department’s program offices, Regional Offices, and Office of General Counsel (“OGC”). TGP, 2017 MA ENV LEXIS 34, at 9.

OADR staff who advise the Department’s Commissioner in resolving administrative appeals are Presiding Officers. Id. Presiding Officers are senior environmental attorneys at the Department appointed by the Department’s Commissioner to serve as neutral hearing officers, and are responsible for fostering settlement discussions between the parties in administrative appeals, and to resolve appeals by conducting pre-hearing conferences with the parties and evidentiary Adjudicatory Hearings and issuing Recommended Final Decisions on appeals to the Commissioner. TGP, 2017 MA ENV LEXIS 34, at 9-10, citing, 310 CMR 1.01(1)(a), 1.01(1)(b), 1.01(5)(a), 1.01(14)(a), 1.03(7). The Department’s Commissioner, as the agency’s final decision-maker, may issue a Final Decision adopting, modifying, or rejecting a Recommended Final Decision issued by a Presiding Officer in an appeal. TGP, 2017 MA ENV LEXIS 34, at 10, citing, 310 CMR 1.01(14)(b). Unless there is a statutory directive to the contrary, the Commissioner’s Final Decision can be appealed to Massachusetts Superior Court pursuant to G.L. c. 30A, § 14. TGP, 2017 MA ENV LEXIS 34, at 10, citing, 310 CMR 1.01(14)(f).