

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

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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

February 4, 2025

In the Matter of
Scott Patrowicz, Patrowicz Land
Development Engineering

OADR Docket No. WET-2024-026
DEP File No. 040-1564
Marblehead, MA

RECOMMENDED FINAL DECISION

Nicholas Mango and Liz Garthe (the “Petitioners”) initiated this appeal to challenge a Superseding Order of Conditions (“SOC”) issued to Scott Patrowicz on behalf of Patrowicz Land Development Engineering and the Glover Landing Condominium Trust (the “Applicant”) by the Massachusetts Department of Environmental Protection’s Northeast Regional Office (“MassDEP”) pursuant to the Massachusetts Wetland Protection Act, G.L. c. 131, § 40 (“MWPA”), and the Wetlands Regulations, 310 CMR 10.00. The SOC authorized the installation of secondary egress structures on Building 21, located at 0 Brackett Place, Marblehead (the “Property”), an ocean fronted building and one of 34 buildings in a condominium complex located in Marblehead, Massachusetts (the “proposed Project”). A portion of the work on Building 21 will take place within the 100-foot Buffer Zone to wetland resource areas as well as within the lateral extent of Land Subject to Coastal Storm Flowage (“LSCSF”). MassDEP determined that the proposed Project will not directly impact wetland resource areas on the Property and that the SOC serves to protect the interests of the MWPA and the Wetlands Regulations.

On October 1, 2024, I ordered the Petitioners to file a More Definite Statement, as their Appeal Notice failed to comply with the pleading requirements of the Wetlands Regulations. On

October 15, 2024, the Petitioners filed a More Definite Statement. The Applicant and MassDEP filed responses contending that the appeal should be dismissed because the More Definite Statement failed to state a claim upon which relief can be granted (“Applicant Response” and “MassDEP Response” respectively). For the reasons that follow, I find that the Petitioners have failed to state a claim upon which relief can be granted and recommend that MassDEP’s Commissioner issue a Final Decision affirming the SOC and dismissing this appeal.

STATUTORY AND REGULATORY FRAMEWORK

1. MWPA and Wetlands Regulations

The purpose of the MWPA and the Wetlands Regulations is to protect wetlands and to regulate activities affecting wetlands areas in a manner that promotes the following eight statutory interests: (1) protection of public and private water supply; (2) protection of ground water supply; (3) flood control; (4) storm damage prevention; (5) prevention of pollution; (6) protection of land containing shellfish; (7) protection of fisheries; and (8) protection of wildlife habitat. G.L. c. 131, § 40; 310 CMR 10.01(2); In the Matter of Kristen Kazokas, OADR Docket No. WET-2017-022, Recommended Final Decision (August 29, 2018), 2018 WL 9847851, *3, adopted by Final Decision (September 18, 2019), 2019 WL 5209254, citing Ten Local Citizen Group v. New England Wind, LLC, 457 Mass. 222, 224 n. 6 (2010).

2. Failure to State a Claim

The Wetlands Regulations require that an Appeal Notice or More Definite Statement include specific information, including “a clear and concise statement of the alleged errors contained in the Reviewable Decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c. 131, § 40, including reference to the statutory or regulatory provisions the Party alleges has been violated by the Reviewable Decision, and the relief sought, including specific

changes desired in the Reviewable Decision.” 310 CMR 10.05(7)(j)2.b.v. If the Appeal Notice or More Definite Statement does not contain this required information, then the appeal should be dismissed. 310 CMR 10.05(7)(j)2.c. In determining whether a petitioner has stated a claim, “the Presiding Officer shall assume all the facts alleged in the [More Definite Statement] to be true,” but “[s]uch assumption shall not apply to any conclusions of law.”

DISCUSSION

The Petitioners’ claims are addressed in the order in which they appear in the More Definite Statement.

1. 310 CMR 10.25, Land Under the Ocean; 310 CMR 10.30, Coastal Bank; 310 CMR 10.31, Rocky Intertidal Shores

The Petitioners’ first claim is that the SOC violates the Wetlands Regulations at 310 CMR 10.25, 310 CMR 10.30, and 310 CMR 10.31. These regulations set forth the performance standards for work in Land Under the Ocean, Coastal Bank, and Rocky Intertidal Shores respectively. The Petitioners contend that the SOC contains no conditions that “require resource-protective capture of materials from the project elements either during or after construction, thus not protecting the interests of storm damage prevention, flood control or pollution prevention.” Acknowledging that the SOC includes erosion control conditions, the Petitioners contend that the SOC should include conditions “to prevent on-building construction materials during or after construction from storm damage, or pollution of the resource areas, or to preserve flood control functions of the in-ground work.” More Definite Statement, p. 2. MassDEP contends, without further elaboration, that most of the issues in the Petitioners’ More Definite Statement are outside the jurisdiction of MassDEP and that none of the issues presented in the Petitioners More Definite Statement demonstrate how the proposed Project would directly impact the jurisdictional wetlands Resource Area. MassDEP Response, pp. 1-2. The Applicant contends that the Wetlands Regulations do not require controls for “on-building construction materials.” Applicant Response, p. 2.

The SOC authorizes portions of the proposed Project that will occur within the 100-foot Buffer Zone to various Resource Areas and above Land Subject to Coastal Storm Flowage (“LSCSF”) and the FEMA Flood Elevation. SOC Cover letter p. 2. The SOC includes several Special Conditions that address erosion and sedimentation controls, proper disposal of construction refuse and debris controls, management of construction-related refuse and debris to prevent wind deposition of dust and debris.¹ The SOC does not authorize any activities in Land Under the Ocean, Coastal Bank, or Rocky Intertidal Shores. The More Definite Statement does not clearly and concisely explain how the proposed Project will alter or adversely affect the aforementioned Resource Areas. The More Definite Statement appears to contend that conditions should be imposed to prevent materials from the proposed Project, after construction, from entering Land Under the Ocean, Coastal Bank or Rocky Intertidal Shores. However, the More Definite Statement does not explain how the proposed Project will result in harms to those wetlands Resource Areas.

At best the Petitioners claims are based on speculation as to what might occur in the event of storm impacts. The case In the Matter of Stephen and Clair Stafford David Hoyle John Murray, Docket Nos. 2007-093, 094, 095, Recommended Final Decision (October 9, 2007), 2007 WL 4752852, *1, adopted by Final Decision (October 19, 2007), 2007 WL 4752851 (“John Murray”), is instructive. In that case, a petitioner appealed an SOC approval to reroute the flow of wastewater from existing cesspools to a tank, which involved excavation of a slope in Buffer Zone. The petitioner argued that the SOC did not contain sufficient conditions to protect the nearby resource areas in the event of slope failure. In concluding that this argument was too speculative to state a claim the decision states that, “[t]he petitioner’s claims do not assert that the activities proposed will violate the [performance] standards for work in the Buffer Zone. Instead, the claims are based

¹ See SOC Special Condition Nos., 33-38.

on speculation as to what might occur in the event of slope failure or construction mishap. Those claims are not facts, but projections of future events that might occur and suppositions of their potential impacts. A claim is properly dismissed when the harm predicted is too speculative, remote or hypothetical.” John Murray, 2007 WL 4752852, * 1. Similarly, the Petitioners’ claim in the present case regarding the possibility of collapse is speculative and hypothetical, involving projection of a future event and the potential impacts of that event.

The Wetlands Regulations require the imposition of conditions “as are necessary to contribute to the protection of” the interests identified in the MWPA. 310 CMR 10.24(1). Thus, for the failure to impose a condition to be a legal error, that condition must be “necessary” for the protection of the interests identified in the MWPA. By failing to explain how the proposed Project could adversely affect those Resource Areas beyond the speculation about hypothetical future events, the Petitioners have not shown that additional conditions would be necessary for the protection of the interests MWPA and Wetlands Regulations interests they identified. Thus, the Petitioners have failed to state a claim that the SOC violates 310 CMR 10.25, 310 CMR 10.30, or 310 CMR 10.31.

2. FEMA² Flood Elevation

The Petitioners next contend in the More Definite Statement that the Applicant has provided the incorrect “FEMA flood elevation” on its plans. More Definite Statement, p. 3. The Petitioners contend that the Applicant has labeled an area on its plans as being at an elevation of 16.92 feet, but that FEMA’s Flood Insurance Rate Map (“FIRM”) labels the same area as having an elevation of 16 feet. MassDEP contends that this issue does not require action or is outside its jurisdiction,³ MassDEP Response, pp. 1-2, while the Applicant contends that it determined that

² “FEMA” stands for the Federal Emergency Management Agency.

³ MassDEP does not elaborate on its contention that this issue does not require action or is outside its jurisdiction.

the FIRM was inaccurate, and the plans depict the actual elevations. Applicant Response, pp. 3-4.

The SOC authorizes the proposed Project within the lateral extent of LSCSF, meaning above the ground, at 20.3'. This elevation is above the FEMA Flood VE elevation of 16', the plan flood elevation of 16.92' and the plan ground elevation of 18.2'. See SOC Cover letter, p 2; SOC, B. Findings, No. 22.⁴

The Applicant explains that the elevations on the SOC plans were determined by an on-the-ground field survey performed in May 2022. Applicant Response, p. 3. By contrast, the FIRM is prepared by analyzing preexisting maps.⁵ FEMA acknowledges that this process may be inaccurate and has procedures for amending the FIRM when a field survey shows it to be erroneous.⁶ The Petitioners provide no explanation for why the Applicant's field survey would not constitute the best available information. The Petitioners have failed to state a claim that the Applicant's plans incorrectly portray the actual flood elevations.

3. Necessary Signatures

The Petitioners next contend that the Applicant's Notice of Intent ("NOI") was deficient under 310 CMR 10.05(4)(a) because it did not contain all the necessary signatures. More Definite Statement, p. 4. The Petitioners allege that the proposed Project will modify walls and

⁴ The More Definite Statement does not explain its use of the phrase "FEMA flood elevation"; that term is not defined in the MWPA or the Wetlands Regulations, nor did the Petitioners define or explain the term in their More Definite Statement. If the Petitioners meant to refer to the Special Flood Hazard Area ("SFHA"), 310 CMR 10.04 defines that as "the area of land in the flood plain that is subject to a 1% chance of flooding in any given year *as determined by the best available information, including, but not limited to*, the currently effective or preliminary Federal Emergency Management Agency (FEMA) Flood Insurance Study or Rate Map" Assuming arguendo that this is the term the Petitioners intended to address, this regulatory provision explicitly states that the FIRM is not conclusive as to the location of the SFHA if better information is available.

⁵ See Flood Maps: Know Your Risk and Take Action Against Flooding, https://msc.fema.gov/portal/images/FEMA_Infographic_022114v2-01.jpg.

⁶ See <https://www.fema.gov/flood-maps/change-your-flood-zone/loma-lomr-f>.

windows owned by the owners of Units 6 and 7A at the Property, but the NOI does not contain their signatures. MassDEP contends that this issue does not require action or is outside its jurisdiction, MassDEP Response, pp. 1-2, while the Applicant does not specifically address this issue.

To the extent that this is a dispute over private property rights, “[a]n adjudicatory hearing before the Department of Environmental Protection is not the proper forum for the resolution of such property disputes.” See In the Matter of Town of Brewster, OADR Docket No. WET-2012-006, Recommended Final Decision (August 10, 2012), 2012 WL 3679963, *15, n.20, adopted as Final Decision (August 16, 2012), 2012 WL 367992 (to establish standing must demonstrate a colorable claim of title to real property, citing Tindley v. DEQE, 10 Mass. App. Ct. 623 (1980)).

Nonetheless, I analyzed the Petitioners’ argument with respect to 310 CMR 10.05(4)(a). This regulation provides: “If the applicant is not a landowner of the Project Locus, the applicant shall obtain written permission from a landowner(s) prior to filing a Notice of Intent for proposed work” The Wetlands Regulations at 310 CMR 10.04 defines “Project Locus” as “the lot on which an applicant proposes to perform an activity subject to regulation under M.G.L. c. 131, § 40,” and defines “lot” as “an area of land in one ownership, with definite boundaries.” Under these definitions, the Project Locus of the proposed Project would be 0 Brackett Place in Marblehead. There is no dispute that the Glover Landing Condominium Trust, on whose behalf the Applicant filed the NOI, is a landowner of 0 Brackett Place. Further, the Petitioners admit that “the condominium association has authority to sign for common areas.” More Definite Statement, p. 4. The Wetlands Regulations at 310 CMR 10.05(4)(a) require additional signatures only if an applicant is not a landowner of the Project Locus. Given that the Applicant is a landowner of the Project Locus, the Petitioners have failed to state a claim for which relief can be granted.

4. LSCSF

The Petitioners contend that the SOC violates the performance standards in the Wetlands Regulations for LSCSF. The SOC finds that the proposed Project will alter 150 square feet of LSCSF but that the work will not adversely affect the interests of the MWPA because it will occur at a higher elevation than the FEMA flood elevation. The More Definite Statement alleges that “the SOC lacks any protective conditions for storm damage prevention and pollution prevention (or flood control).” More Definite Statement, p. 5. MassDEP contends that the Petitioners have not demonstrated how the LSCSF would be impacted by the proposed Project, MassDEP Response, p. 2, while the Applicant does not specifically address this issue.

As with the argument pertaining to Land Under the Ocean, Coastal Bank, and Rocky Intertidal Shores, the More Definite Statement does not actually allege that the LSCSF will be adversely affected. The Wetlands Regulations do not require conditions if such conditions would not be necessary for the protection of the interests identified in the MWPA. See 310 CMR 10.24(1) (“[i]f the issuing authority determines that a resource area is significant to an interest identified in M.G.L. c. 131, § 40 for which no presumption is stated in the Preamble to the applicable section, the issuing authority shall impose such conditions *as are necessary to contribute to the protection of such interests*” (emphasis supplied)). The Petitioners have therefore failed to state a claim with respect to LSCSF.

5. Building Code

The Petitioners contend that the proposed Project violates the Building Code because the design will overload the existing structure. More Definite Statement, p. 5. MassDEP and the Applicant correctly contend that Building Code compliance is outside of MassDEP’s jurisdiction in its application of the MWPA and the Wetlands Regulations. MassDEP Response, pp. 1-2; Applicant Response, pp. 2-3. Thus, the Petitioners have failed to state a claim for which relief

can be granted with respect to the Building Code. However, the Applicant is reminded of Condition No. 3 in the SOC that appears in every SOC issued by the Department which provides that the SOC “does not relieve the [[project proponent] . . . of *the necessity of complying with all other applicable, federal, state, or local statutes, ordinances, bylaws, or regulations*” (emphasis supplied).

6. V-zone and VE-zone

The Petitioners contend that the SOC plans display the contour of the V-zone and VE-zone incorrectly. The Wetlands Regulations at 310 CMR 10.04 define the Velocity Zone (“V-zone”) as “an area within the [SFHA] that is subject to high velocity wave action from storms or seismic sources. The Velocity Zone Boundaries are determined by reference to the currently effective or preliminary [FIRM] prepared by [FEMA], whichever is more recent (except for any portion of a preliminary map that is the subject of an appeal to FEMA), or at a minimum to the inland limit of the Primary Frontal Dune, whichever is farther landward.” The Wetlands Regulations do not contain a definition of VE-zone, but FEMA’s Coastal Construction Manual defines “Zone VE” as “that portion of the coastal SFHA where base flood wave heights are 3 feet or greater, or where other damaging base flood wave effects have been identified, or where the primary frontal dune has been identified.” Coastal Construction Manual (4th ed.), vol. I, p. 3-56 (2011).

The Petitioners contend that the depiction of the contours of the V-zone and VE-zone in the SOC plans differ from those established in the currently effective FIRM. More Definite Statement, pp. 6-9. MassDEP does not specifically address this issue, while the Applicant responds that it determined that the FIRM was inaccurate, and that the SOC plans depict the actual locations of the V-zone and VE-zone boundaries. Applicant Response, pp. 3-4.⁷ Even if

⁷ 310 CMR 10.04 does not allow for the boundaries of the V-zone to be determined by the best available information; it plainly states that they “are determined” by the FIRM and does not allow for other evidence to contradict the FIRM aside from the inland limit of the Primary Frontal Dune, which the Applicant has not alleged is relevant here. The Applicant cites to Sweeney v. Falmouth Conservation Commission, Barnstable Superior Court,

the boundaries of the V-zone and VE-zone are portrayed incorrectly on the Applicant's plans, no Party has cited to a performance standard in the Wetlands Regulations applicable to the V-zone or VE-zone.⁸

The Petitioners contend that “[s]tructures in these zones must be built to higher standards, including elevated foundations and reinforced materials, to handle the impacts of wave forces and minimize the risk of collapse or severe damage,” Petitioners’ Exhibit 6, but do not cite any Wetlands Regulation that imposes these alleged requirements. The Petitioners also assert that the Coastal Construction Manual “provides guidelines for designing buildings that can withstand such conditions,” Petitioners’ Exhibit 6, however, the Coastal Construction Manual is not incorporated into the Wetlands Regulations. In the absence of a performance standard in the Wetlands Regulations for the V-zone or VE-zone, whether these areas are accurately portrayed on the SOC plans does not affect whether the SOC complies with the Wetlands Regulations. Accordingly, the Petitioners have failed to state a claim for which relief can be granted with respect to the locations of the V-zone and VE-zone as identified on the SOC Plan.

7. Fire Code

The Petitioners contend that the proposed Project violates the Fire Code because sea level rise will cause the egress to be obstructed. More Definite Statement, p. 9. Neither MassDEP nor the Applicant specifically addresses this issue. However, as with the Building Code, MassDEP has no jurisdiction to apply the Fire Code and the fire safety concerns that the Petitioner raise are outside the scope of the Wetlands Regulations. The Petitioners have failed to state a claim with

Docket No. 9372-CV-00652, dated December 29, 1995 (O’Neill, J.), 1995 WL 1146230, *2, in which the court held that a conservation commission erred by relying on the FIRM’s depiction of the V-zone when the applicant had shown the V-zone to be located elsewhere. However, Sweeney was decided in 1995, well before the definition of V-zone was added to the Wetlands Regulations, and was a dispute over a municipal by-law, not the Wetlands Regulations. As such, it is distinguishable from the present case.

⁸ As noted above, V-zone is defined in the Wetlands Regulations at 310 CMR 10.04, while VE-zone is neither defined nor mentioned in the Wetlands Regulations.

respect to the Fire Code but the Applicant should be mindful of Condition No. 3 in the SOC previously discussed above.

8. Draft Coastal Resilience Regulations

The Petitioners contend that the proposed Project violates MassDEP's Draft Coastal Resilience Regulations that were submitted for public comment on December 22, 2023. More Definite Statement, p. 10. In response, MassDEP does not specifically address this issue, while the Applicant contends that the existing applicable Wetlands Regulations do not require that proposed projects account for coastal resilience. Applicant Response, p. 2. As the Petitioners acknowledge, MassDEP's Draft Coastal Resilience Regulations have not been formally adopted and as such do not have the force and effect of law. The Petitioners have failed to state a claim with respect to the draft coastal resilience regulations.

9. "Hanging" Elements

The Petitioners contend that there is potential for the "hanging" elements of the proposed Project to fall off into the wetlands Resource Areas. More Definite Statement, pp. 10-11. The Petitioners contend that a previous hanging catwalk attached to Building 21 at the Property collapsed and contends as a result that MassDEP should require a full structural analysis to ensure that the proposed Project will not collapse. Neither MassDEP nor the Applicant specifically addressed this allegation.

The Petitioners' More Definite Statement does not address whether there is a performance standard in the Wetlands Regulations that has been violated. Rather, they speculate about what might occur if the proposed Project is constructed, collapses, and some or all of it falls into a Resource Area. The Petitioners' contention, resting on the possibility of collapse, is speculative and hypothetical, involving projection of a future event and the potential impacts of that event. See John Murray, supra.

The Petitioners additionally contend that if the hanging elements collapse and alter the wetlands Resource Area, MassDEP should issue an order under 310 CMR 10.02(2)(d).⁹ More Definite Statement, pp. 10-11. Neither MassDEP nor the Applicant specifically addresses this issue. Nevertheless, the exercise of MassDEP's enforcement power is discretionary, and whether or how to exercise it is premature in the present instance. It is well settled that the exercise of enforcement discretion resides with the Department and cannot be achieved through permit adjudication. See In the Matter of Bourne Community Boating, Inc., OADR Docket No. WET-2009-031, Recommended Final Decision (November 19, 2009), 2009 WL 5698017, *17, adopted by Final Decision (December 18, 2009); In the Matter of Town of Swansea, OADR Docket No. WET-2014-020, Recommended Final Decision (March 27, 2015), 2015 WL 9998844, *5, adopted by Final Decision (June 1, 2015), 2015 WL 9999165. Accordingly, the Petitioners have failed to state a claim with respect to the hanging elements of the proposed Project.

10. Possible Alternatives

Finally, the Petitioners contend that the proposed Project is unnecessary because the Applicant could instead install a sprinkler system to come into compliance with the Building Code. More Definite Statement, pp. 12-13. MassDEP does not specifically address this issue, while the Applicant contends that it is irrelevant whether there are alternatives when the proposed Project complies with the Wetlands Regulations. Applicant Response, p. 3.

⁹ 310 CMR 10.02(2)(d) states: "Any activity proposed or undertaken outside the areas specified in 310 CMR 10.02(1) and outside the Buffer Zone is not subject to regulation under M.G.L. c. 131, § 40 and does not require the filing of a Notice of Intent unless and until that activity actually alters an Area Subject to Protection under M.G.L. c. 131, § 40. In the event that the issuing authority determines that such activity has in fact altered an Area Subject to Protection under M.G.L. c. 131, § 40, it may require the filing of a Notice of Intent and/or issuance of an Enforcement Order and shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the protection of the interests identified in M.G.L. c. 131, § 40."

The Applicant is correct that the Wetlands Regulations do not require MassDEP to deny a proposed project just because an alternative exists.¹⁰ MassDEP's role when issuing an SOC is to determine if a proposed Project will comply with the relevant Wetlands Regulations performance standards governing the proposed Project, and if it will or can be conditioned to do so, MassDEP may approve the project.¹¹ As discussed above, the Petitioners have failed to state a claim that the proposed Project violates the Wetlands Regulations. As a result, it was not error for MassDEP to approve the proposed Project despite the alleged existence of an alternative. Thus, the Petitioners have failed to state a claim regarding the necessity of the proposed Project.

CONCLUSION

In sum, as discussed above, the Petitioners have failed to state a claim that the proposed Project violates the Wetlands Regulations and upon which relief can be granted. Accordingly, for the above reasons, I recommend that the Commissioner issue a Final Decision affirming the SOC and dismissing this appeal.

Date: February 4, 2025



Margaret R. Stolfa
Presiding Officer

¹⁰ Some provisions of the Wetlands Regulations do require that an applicant analyze alternatives and select the alternative with the fewest adverse effects, such as the performance standard for Riverfront Area, 310 CMR 10.58(4)(c). However, none of those provisions are applicable to the proposed Project in this case.

¹¹See 310 CMR 10.05(7)(i), "Based upon its review of the Notice of Intent, the Order, any informal meeting or site inspection, and any other additional plans, information, or documentation submitted under 310 CMR 10.05(7)(f) or (g), the Department shall issue a Superseding Order for the protection of the interests identified in M.G.L. c. 131, § 40. The Superseding Order shall impose such conditions as are necessary to meet the performance standards set forth in 310 CMR 10.21 through 10.60 and stormwater standards set forth at 301 CMR 10.05(6)(k) for the protection of those interests. The Superseding Order shall prohibit any work or any portions thereof that cannot be conditioned to protect such interests. The Department may issue a Superseding Order which affirms the Order issued by the conservation commission.").

NOTICE-RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to MassDEP's 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 may not be appealed to Superior Court pursuant to G.L. c. 30A. The MassDEP Commissioner's Final Decision is subject to rights of reconsideration and court appeal and will contain notice to that effect. Once the Final Decision is issued "a party may file a motion for reconsideration setting forth specifically the grounds relied on to sustain the motion" if "a finding of fact or ruling of law on which a final decision is based is clearly erroneous." 310 CMR 1.01(14)(d). "Where the motion repeats matters adequately considered in the final decision, renews claims or arguments that were previously raised, considered and denied, or where it attempts to raise new claims or arguments, it may be summarily denied. . . . The filing of a motion for reconsideration is not required to exhaust administrative remedies." Id.

Because this matter has now been transmitted to MassDEP's Commissioner, no Party to this appeal shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the MassDEP Commissioner's office regarding this decision unless MassDEP's Commissioner, in her sole discretion, directs otherwise.

SERVICE LIST

*OADR Docket # 2024-026
DEP File #040-1564*

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