

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**

**July 21, 2025**

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In the Matter of Stephen Cornell

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OADR Docket Number: 2024-023  
Jurisdictional Determination No. WW04-0000031  
RDA App. No. 22-WW04-0000031-APP  
Plymouth, Massachusetts

**RECOMMENDED FINAL DECISION**

Stephen Cornell (“Petitioner”) filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”)<sup>1</sup> to challenge the issuance by the Massachusetts Department of Environmental Protection (“Department”) of a Jurisdictional Determination (“JD”) dated July 12, 2024, pursuant to G.L. c. 91 (“Chapter 91”) and the Waterways Regulations at 310 CMR 9.00, *et seq.* The JD concluded that Island Pond<sup>2</sup> is a Great Pond subject to jurisdiction under Chapter 91 and the Waterways Regulations. The Petitioner contends that this determination was erroneous because the Plymouth County Superior Court determined that Island Pond is a private pond.<sup>3</sup> The Petitioner’s ultimate goal is to build a dock on his property on Island Pond, although at the start of this proceeding he had not yet filed an application for a Chapter 91 license.

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<sup>1</sup> OADR is an independent quasi-judicial office in the Department which is responsible for advising its Commissioner in resolving all administrative appeals of Department Permit Decisions, Environmental Jurisdiction Determinations, and Enforcement Orders.

<sup>2</sup> Island Pond is located in Plymouth and has a surface area of approximately 12 acres.

<sup>3</sup> Smaland Beach Association, Inc. v. Arthur F. Genova and Patricia A. Genova, No. PLCV2005-00088, 2009 WL 7376068 (April 10, 2009); see also Smaland Beach Association, Inc. v. Arthur F. Genova and another, No. 17-P-458, decided September 25, 2018.

In the course of these proceedings, the Petitioner requested an ADR Information Session after which the Chief Presiding Officer served as mediator and the appeal adjudication schedule was stayed until the Parties reached an impasse in the negotiations. As the schedule resumed, the Petitioner filed a Status Report with OADR stating that, based on his discussions with the Department, he had come to understand for the first time on February 21, 2025, that he would not be permitted to build a dock abutting his property on Island Pond under the Waterways Regulations because Island Pond is within an Area of Critical Environmental Concern (“ACEC”).<sup>4</sup> The Department cited 310 CMR 9.32(1)(e), which provides in relevant part that privately-owned structures within an ACEC would be permitted only consistent with a Resource Management Plan (“RMP”) adopted by the municipality and approved by the Secretary of the Executive Office of Energy and Environmental Affairs (“EEA”).<sup>5</sup> The Petitioner’s research indicates that Plymouth has not prepared an RMP and therefore no private structure may be built on Island Pond, if Island Pond is a Great Pond.

The Petitioner noted in his Status Report that if there were no circumstances under which he could construct a dock under the JD, he would not be inclined to continue litigating this appeal, as he “did not file [this appeal] as an academic exercise.” The Petitioner did not seek any specific relief in his Status Report, although he did request that MassDEP investigate whether the other docks on Island Pond were constructed in violation of 310 CMR 9.32 and requested

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<sup>4</sup> Island Pond is in the Herring River Watershed ACEC, which was designated an ACEC in November 1991.

<sup>5</sup> 310 CMR 9.32 states in relevant part as follows: “(1) The Department has determined that in certain situations fill or structures categorically do not meet the statutory tests for approval under M.G.L. c. 91 or are otherwise not in keeping with the purposes of 310 CMR 9.00. Accordingly, a project shall be eligible for a license only if it is restricted to fill or structures which accommodate the uses specified below, within the geographic areas specified in 310 CMR 9.32(1)(a) through (e) . . . . (e) Areas of Critical Environmental Concern (ACECs) . . . 5. privately-owned structures for other water-dependent use below the high water mark, provided that: . . . d. such structures, if built or substantially altered after October 4, 1990 or the effective date of the ACEC designation, whichever is later, are consistent with a resource management plan adopted by the municipality and approved by the Secretary.” The Department argued at the Status Conference that this subsection was most likely to apply to an application for a Chapter 91 license filed by the Petitioner.

enforcement action against docks constructed in violation of this regulation. The Petitioner then moved to withdraw his appeal (“Motion to Withdraw the Petitioner’s Appeal”, April 25, 2025).

A Presiding Officer has the authority to issue a Recommended Final Decision dismissing an appeal when the Petitioner withdraws his Notice of Claim. 310 CMR 1.01(5)(a)15.f.ii; 310 CMR 1.01(6)(e).<sup>6</sup> Here, the Motion to Withdraw the Petitioner’s Appeal was made in good faith. The Petitioner states that he was unaware prior to February 21, 2025, that Island Pond was within an ACEC and that the Department would not permit a dock in that area absent a local RMP. Now knowing that, the Petitioner has concluded that it is impractical for him to continue expending time and resources litigating this matter, as that will not further his ultimate goal of building a dock. I therefore grant the Motion to Withdraw the Petitioner’s Appeal and allow the Petitioner to withdraw his Notice of Claim. In making this recommendation, I offer no opinion on the Petitioner’s request that the Department undertake enforcement actions with respect to the other docks on Island Pond built after it was designated an ACEC in 1991, as that is a matter subject to the Department’s enforcement discretion. DiCicco v. Dep’t of Env’t Prot., 64 Mass. App. Ct. 423, 428 (2005); see In the Matter of Diane Mercadante, OADR Docket No. WET-2009-029, Recommended Final Decision (November 12, 2009), 2009 WL 5698021, \*7, adopted as Final Decision (November 23, 2009), 2009 WL 5865650. I therefore recommend that the

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<sup>6</sup> 310 CMR 1.01(5)(a)15.f.ii provides that:

[t]he Presiding Officer may, on the Presiding Officer’s own initiative or on a party’s motion where appropriate, . . . issu[e] recommended final decisions for the dismissals of appeals, including, but not limited to, where there is . . . the withdrawal of the notice of claim.

310 CMR 1.01(6)(e) provides that “the Presiding Officer may . . . permit any party to . . . withdraw its notice of claim or other pleading upon conditions just to all parties.” “The allowance of an appeal’s withdrawal is therefore discretionary” by the Presiding Officer. In the Matter of Robert Busby, Requester, OADR Docket No. 96-039, Final Decision - Order of Dismissal (January 7, 1997), 1997 WL 91992, \*3.

Department's Commissioner issue a Final Decision granting the Petitioner's Motion to Withdraw the Petitioner's Appeal and affirming the JD.



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Patrick M. Groulx  
Presiding Officer

**Date:** July 21, 2025

**NOTICE OF 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 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 may file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party may communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion, directs otherwise.

## **SERVICE LIST**

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