

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 1, 2026

In the Matter of Timothy Palermo

OADR Docket Number: WET-2026-014
DEP File No. SDA
Essex, Massachusetts

Recommended Final Decision

Timothy Palermo (“Petitioner”), has filed this appeal with the Office of Appeals and Dispute Resolution (“OADR”)¹ challenging a Superseding Determination of Applicability/Negative (“SDA”) issued by the Northeast Regional Office of the Massachusetts Department of Environmental Protection (“Department”) dated April 21, 2026. The SDA was issued in accordance with the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 (“MWPA”), and the Wetlands Regulations, 310 CMR 10.00, et seq. The SDA pertains to a project site located within a common driveway and utility easement shared with Christopher and Emily Mscisz (“Intervenors”), the owners of 15 and 19 Turtleneck Road and 0 Pond Street Rear in Essex. The Department concluded that after-

¹ 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. A description of OADR appears as Addendum 1.

the-fact driveway improvements were conducted within Buffer Zone to Bordering Vegetated Wetland (“BVW”) but did not result in the alteration of BVW. As explained below, the Petitioner’s appeal was not timely filed. I therefore recommend that the Department’s Commissioner issue a Final Decision dismissing this appeal.

I. Facts.

On January 6, 2026, the Petitioner submitted a Request for Determination of Applicability (“RDA”) to the Essex Conservation Commission (“Commission”).² The Petitioner contended that previous grading and the placement of gravel and crushed stone on the Intervenor’s driveway was possibly subject to the MWPA.³ The Commission issued a Negative Determination of Applicability (“DOA”) on February 4, 2026, finding that the work was not subject to the MWPA.⁴

On February 12, 2026, the Petitioner requested the Department issue an SDA.⁵ The Department held a site inspection on March 31, 2026. Based on its review of the information in the Petitioner’s request for SDA and the site inspection, the Department found that the improvements were not subject to the MWPA.⁶ The Department issued a Negative SDA on April 21, 2026.

² SOC Cover Letter, p. 1.

³ Id.

⁴ Id.

⁵ Id. at p. 2.

⁶ Id.

The SDA itself states that any appeal must be made “by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Transmittal Form within ten (10) business days of the date of issuance of” the SDA.⁷ The Petitioner filed an Adjudicatory Hearing Fee Transmittal Form (“Fee Transmittal Form”) and a check for the filing fee postmarked May 7, 2026, but did not include a Notice of Claim. This filing was made 16 days after the date of the Negative SDA.

On June 2, 2026, I issued an Order to Show Cause requiring the Petitioner to show cause why this appeal should not be dismissed for failure to meet the deadline of 310 CMR 10.05(7)(j)2.a. and failure to timely file an Appel Notice. I set a deadline for a response of June 16, 2026. I did not receive a response from the Petitioner. I requested that the Department and Intervenors inform me of their positions on whether the appeal was untimely filed on or before June 27, 2026. The Intervenors filed a statement on June 22, 2026, and the Department filed a statement on June 25, 2026. They all agreed that the appeal was untimely filed.

II. OADR lacks jurisdiction to hear the Petitioner’s appeal.

The ten-day period to appeal the SDA is a jurisdictional element that requires dismissal of the appeal if not fulfilled. The appeal period cannot be extended or modified. In the Matter of Alfred Boyajian, Docket No. WET-2010-030, Recommended Final Decision

⁷ SDA, p. 5.

(February 23, 2011), 2011 WL 942655, *1, adopted as Final Decision (March 9, 2011), 2011 WL 942653. Here, the Petitioner failed to file his appeal within the 10-day deadline.

Under 310 CMR 10.05(7)(j)2.a., an “Appeal Notice must be filed with the Department with a copy sent to the appropriate regional Department office by certified mail or hand delivered within ten days after the date of issuance of the Reviewable Decision” The Reviewable Decision in this instance is the Negative SDA. Thus, the Petitioner was required to submit his Appeal Notice of the Reviewable Decision, the Negative SDA, on or before May 1, 2026. The Petitioner’s filing, 16 days after the date of the Negative SDA, was both late and incomplete. The Petitioner was on notice of the requirement to file an appeal notice in the SDA as discussed above and offered no grounds for tolling the appeal period.

The Petitioner’s failure to submit an Appeal Notice within the 10-day timeframe results in a waiver of his right to appeal the Reviewable Decision. 310 CMR 10.05(7)(j)2.a. (“Any party listed in 310 CMR 10.05(7)(j)2.a. that fails to timely file an Appeal Notice pursuant to 310 CMR 10.05, shall be deemed to have waived its right to appeal the Reviewable Decision.”); In the Matter of Ricardo Baldissera, OADR Docket No. WET-2021-026, Recommended Final Decision (March 7, 2024), 2024 WL 2845058, *2-*3, adopted as Final Decision (May 7, 2024), 2024 WL 2845057 (petitioner timely filed “an Adjudicatory Hearing Fee Transmittal Form and payment but did not include an Appeal Notice depriving OADR of jurisdiction and required dismissing the appeal).

III. Conclusion

For the foregoing reasons, I have concluded that the Petitioner's appeals was not timely filed. I therefore recommend that the Department's Commissioner issue a Final Order dismissing this appeal as untimely.



Date: July 1, 2026

Patrick M. Groulx
Presiding Officer

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

Timothy Palermo
19 Turtleback Road
Essex, MA 01929
palermofence@gmail.com

Petitioner

Essex Conservation Commission
Essex Town Hall
30 Martin Street
Essex, MA 01929
conservation@essexma.org

Conservation Commission

Christopher and Emily Mscisz
13 Turtleback Road
Essex, MA 01929

Intervenor

Aiden Church, Esq.
Seaside Legal Solutions, P.C.
123 Main Street, Suite 301
Gloucester, MA 01930
aiden@seasidelegal.com

Intervenor's Representative

Jill E. Provencal
Wetlands Program
MassDEP NERO
Bureau of Water Resources
150 Presidential Way
Woburn, MA 01801
Jill.Provencal@mass.gov

Department Section Chief

Pamela A. Merrill
Wetlands Program
MassDEP NERO
Bureau of Water Resources
150 Presidential Way
Woburn, MA 01801
Pamela.merrill@mass.gov

Department Analyst

CC: Bruce Hopper, Esq.
MassDEP/Office of General Counsel
100 Cambridge Street, 8th Floor
Boston, MA 02114
Bruce.E.Hopper@mass.gov

Litigation Manager

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Heidi Zisch, Chief Regional Counsel
MassDEP NERO
150 Presidential Way
Woburn, MA 01801
Heidi.Zisch@mass.gov

Chief Regional Counsel

Jakarta Childers, Program Coordinator
MassDEP/Office of General Counsel
100 Cambridge Street
Boston, MA 02114
Jakarta.Childers@mass.gov

Paralegal