

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

June 18, 2026

**In the Matter of
Town of Milton**

**OADR Docket No. WET-2025-004
MassDEP File No. 046-0630
Milton, MA**

RECOMMENDED FINAL DECISION

INTRODUCTION

A 10-Resident Group (the “Petitioners”) initiated this appeal with the Massachusetts Department of Environmental Protection’s Office of Appeals and Dispute Resolution (“OADR”) to challenge 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 Petitioners who requested review of the Order of Conditions issued by the Milton Conservation Commission (“MCC” or the “Commission”) to the Town of Milton (“Applicant”) approving a renovation of Milton High School’s football field located at 25 Gile Road, Milton, Massachusetts (“Property”). The renovation includes replacing its natural grass surface with a pervious synthetic turf, improvements to walkways and viewing areas, constructing a grandstand and press box, installing native plants, paving an existing gravel parking area, and replacing existing paved area with a narrower pedestrian path (“proposed Project”). The Petitioners contend that

MassDEP erred in finding there are no per- or polyfluoroalkyl substances (“PFAS”) in the artificial turf, and that the proposed Project will result in untreated discharges to wetland resource areas, will damage a nearby cold-water fishery, inadequately addresses microplastic pollution, improperly determined major portions of the proposed Project to be redevelopment rather than new development, violates Environmental Justice principles, fails to consider alternatives, and fails to consider Article 97 land requirements.

As discussed in detail below, based on a preponderance of the evidence submitted by the Parties and the governing wetlands statutory and regulatory requirements, I find that the Department properly issued the SOC approving the proposed Project and accordingly I recommend that the Department’s Commissioner issue a Final Decision in the appeal affirming the SOC.

EVIDENCE¹

The evidence in the administrative record includes the Department’s basic records and the pre-filed, sworn written testimony and exhibits submitted by witnesses on behalf of the Parties. The witnesses below were available for cross-examination at the Hearing.²

For the Petitioners:³

1. Susan Chapnick: Ms. Chapnick is the President and Principal Scientist at New Environmental Horizons, Inc. (“NEH”), a private environmental chemistry consulting

¹ Throughout this Recommended Final Decision, the witnesses’ Pre-Filed Direct Testimony is referred to as “[Witness] PFT, ¶ X” and Pre-Filed Rebuttal Testimony will be referred to as “[Witness] PFR, ¶ X.” Exhibits to testimony are referred to as “[Witness] Ex. X.”

² Throughout this Recommended Final Decision, the witnesses’ cross-examination testimony at the Hearing is referred to as “[Witness], time.”

³ Kristen Mello filed Pre-Filed Testimony on behalf of the Petitioners but did not participate in the Hearing. Her testimony is therefore excluded from the record. 310 CMR 1.01(12)(f); 310 CMR 1.01(13)(h)3.

firm. She holds a Bachelor's degree in Biological Sciences and a Master's in Marine Science. Ms. Chapnick has 35 years of experience in the environmental field working in both federal and state regulatory compliance, wetland regulations and permitting, quality assurance and control, and analytical chemistry. She has served on the Arlington Conservation Commission for eleven years and has reviewed over one hundred Notices of Intent ("NOI") for compliance with the Massachusetts Wetland Protection Act ("MWPA") and Stormwater Handbook. Ms. Chapnick is qualified as an expert witness.

2. Kyla Bennett: Dr. Bennett serves as Director of Science Policy for Public Employees for Environmental Responsibility ("PEER"). Dr. Bennett holds a PhD in Ecology and Evolutionary Biology, a Juris Doctor, and a Master Herpetologist certificate from the Amphibian Foundation. She served as the Conservation Commissioner for the Town of Easton for six years, applying both the MWPA and Easton's Local wetland bylaws. Before that she worked for the U.S. Environmental Protection Agency ("EPA") as a Wetlands Permit Reviewer and the Wetlands Enforcement Coordinator for New England. Dr. Bennett is qualified as an expert witness.
3. Paul Makishima: Mr. Makishima is a member of, and the representative of, Petitioners' 10-resident group. Mr. Makishima's testimony is limited to his affidavit authenticating the photographs and videos included in Petitioners' testimony and documents included in Petitioners' testimony.

For the Applicant:

1. Christian Huntress: Mr. Huntress is the principal and founder of Huntress Associates, a landscape architecture planning and engineering firm that specializes in sports and recreation land planning and historic preservation projects. He has a Bachelor of Science in Environmental Design and a Master in Landscape Architecture. He has 30 years of experience in project management in recreational, residential, and institutional developments. Mr. Huntress is qualified as an expert witness.
2. Gregory Hochmuth: Mr. Hochmuth is a Senior Scientist at Epsilon Associates, Inc., and is responsible for conducting wildlife habitat evaluations, wetland resource area delineations, wetland functions and value assessments, and other environmental analyses. He holds a Bachelor of Science in Environmental Biology. He is a Certified Wetland Scientist, a Registered Sanitarian, a Licensed Soil Evaluator, and a Designer of Subsurface Disposal Systems. Mr. Hochmuth has over 25 years of experience in wetland ecology and regulatory compliance. Mr. Hochmuth is qualified as an expert witness.
3. Ronald Myrick: Mr. Myrick is the Vice President of the Environmental Group of Tetra Tech, Inc., an engineering consulting firm. He is a licensed Professional Engineer in the state of Massachusetts, a Licensed Site Professional, and Certified Hazardous Materials Manager. He holds a Bachelor of Science in Civil Engineering, a Masters in Science in Environmental Engineering, and a Masters in Science in Civil Engineering, Construction Management). His work centers on assessment and remediation of environmental contamination under the Massachusetts Contingency

Plan (“MCP”) and he has experience in managing PFAS. Mr. Myrick is qualified as an expert witness.

4. Kevin Chrisom: Mr. Chrisom has been the Parks Director for the Town of Milton since 2019.

For the Department:

1. Tyler Ferrick: Mr. Ferrick is an Environmental Analyst in the Wetlands Program with MassDEP. He has 13 years of experience applying the MWWA and Regulations. Mr. Ferrick is a certified Professional Wetland Scientist. His duties include reviewing NOIs, reviewing 401 Water Quality Certification applications, and preparing comments on Massachusetts Environmental Policy Act (“MEPA”) filings. Furthermore, he is responsible for assessing projects for the issuance of SOC’s, Superseding Determinations of Applicability (“SDA”), and Superseding Orders of Resource Area Delineation (“SORAD”), and acts as an expert witness in administrative adjudicatory appeals. He conducts site investigations to determine the location of wetland resource areas, identifies the extent of potential impacts, reviews online resources, collects evidence, and prepares enforcement cases. Mr. Ferrick is qualified as an expert witness.

The Property

The Property is located at 25 Giles Road in Milton, Massachusetts, specifically the “Lower Giles Field” (Parcel ID D-65-10), part of the Milton High School campus. Ferrick PFT, ¶ 4; SOC Cover Letter, p. 1. The Property is bound by Pine Tree Brook, a perennial stream, and residential properties to the north, residential properties and Gulliver Street to the east, Milton High School and Giles Road to the south, and Brooks Field and Pine Tree Brook

to the west. SOC Cover Letter, p. 1. The Property is approximately 60 acres and is comprised of the Milton High School building, a football field, baseball field, asphalt and gravel parking areas, outbuildings, and forested land. Id. Lower Giles Field is located in the northwest corner of the campus and includes an asphalt and gravel drive/parking area, two grass athletic fields, and forested land. Id. The Property contains the following Areas Subject to Protection Under the Act: Bordering Vegetated Wetlands (“BVW”), Bank, and Riverfront Area (“RA”) associated with Pine Tree Brook. Id., at p. 3. Pine Tree Brook is designated as a Cold-Water Fishery. Id. There is no stormwater management infrastructure currently present for the impervious surfaces at Lower Giles Field. Ferrick PFT, ¶ 4. Lower Giles Field is unfenced and open to the public and will remain so. Chisolm PFT, ¶ 5.

The Proposed Project

The proposed Project is the renovation of Lower Giles Field. Ferrick PFT, ¶ 5; SOC Cover Letter, p. 1. Stormwater currently flows overland to BVW which eventually flows into Pine Tree Brook. SOC Cover Letter, p. 1. The proposed Project includes replacement of the natural grass field surface with a synthetic turf field, ADA and handicapped accessibility improvements to walkways and viewing areas, a grandstand/pressbox, installation of native plants, and a split rail fence to improve the Buffer Zone to BVW. Ferrick PFT, ¶ 5; SOC Cover Letter, pp. 1-2.

The artificial turf field will be comprised of a tufted synthetic turf, organic infill, and a shock pad. SOC Cover Letter, p. 2. The turf field is designed to store and retain approximately 2/3 of a one-acre foot of stormwater discharge in the gravel base of the turf field to provide detention and infiltration in accordance with MassDEP Stormwater Management Standards 2 and 3. Ferrick PFT, ¶ 5; SOC Cover Letter, p. 2. During the MCC’s

review of the proposed Project, a trench drain was added to the northwest side of the turf field that will receive stormwater from the turf field panel drains in which it can infiltrate and overflow/sheet flow to downgradient wetland resource areas. Huntress PFT, ¶ 12; SOC Cover Letter, p. 2.

The project proposes to remove the current gravel parking area, add soil, and revegetate the area with native plant species to improve the Buffer Zone to the BVW. The existing paved roadway will be removed and replaced with a narrower 12-foot-wide asphalt pedestrian path that connects to the existing gravel path at the project site. Improvements to the existing pedestrian ramp and concrete walkways will be performed and include the addition of new concrete walkways and retaining walls for improved access to the field. Existing impervious surfaces on the Property will be reduced from 14,700 square feet to 13,600 square feet. Ferrick PFT, ¶ 5; SOC Cover Letter, p. 2. Mr. Ferrick testified that the project will not result in any permanent impacts to wetland resource areas on the Property. Ferrick PFT, ¶ 6.

No part of the proposed Project will occur within BVW, RA, or Bank. Hochmuth PFT, ¶ 14; Ferrick PFT, ¶ 10; SOC Cover Letter, p. 3. Portions of the proposed Project will occur within the 100-foot Buffer Zone to BVW. Hochmuth PFT, ¶ 15; Ferrick PFT, ¶ 10; SOC Cover Letter, p. 3. Portions of the Property are located in Zone X, the 0.2% annual chance floodplain based on the FEMA Flood Insurance Map 25025C0089K, effective July 3, 2024. SOC Cover Letter, p. 3.

The Applicant provided analytical reports to demonstrate that the synthetic turf, organic infill, and resilient shock pad do not contain PFAS constituents. Huntress PFT, ¶

13;⁴ Ferrick PFT, ¶ 11.⁵ In response to the MCC's and the Department's request for data regarding treatment of micro- and nano plastics, or PFAS from stormwater, the Applicant reported that the stormwater systems are intended to remove sediment, trash and petroleum products typically found in pavement runoff, recognizing that contamination risk from other surfaces is less. Huntress PFT, ¶ 14. The Applicant reported that the artificial field is not likely a pollutant source but designed the artificial field drainage system to discharge to the wetland rather than to the existing drainage system because discharge through the wetland increases travel time and natural treatment prior to reaching Pine Tree Brook. Huntress PFT, ¶ 14.

Following the Department's inquiries the Revised Stormwater Report characterized the proposed Project as redevelopment. Ferrick PFT, ¶¶ 12-13; Ferrick Ex. 10, Revised Stormwater Report, September 17, 2024. The Department concluded that the proposed Project has a two-foot separation between the bottom of the turf profile and the Estimated Seasonal High Groundwater ("ESHGW"). Ferrick PFT, ¶¶ 14-15; Ferrick Ex. 12, Response to Information Request #2; SOC Cover Letter, p. 4.

Procedural Background

The Applicant filed a Notice of Intent ("NOI") for the proposed Project with the Commission on March 28, 2023. On December 11, 2023, the Commission issued an Order of Conditions ("OOC") approving the proposed Project. On December 20, 2023, the

⁴ Citing Huntress Ex. 9, Synthetic Turf Laboratory Testing Analysis Summary, February 26, 2021; Tetra Tech Peer Review Letter to Commission, October 4, 2023. This report states that analysis of a sample from a similar project in 2021 was far below current projected PFAS standards.

⁵ Citing Ferrick Ex. 7, manufacturer letters representing that the artificial turf projects are PFAS free, and do not intentionally contain any PFAS, and are tested and verified by third parties to be PFAS free.

Petitioners sought review by the Department contending that the proposed Project could not be conditioned to protect the interest of the MWPA. Ferrick PFT, ¶ 8; SOC Cover Letter, p. 2. MassDEP conducted a site inspection on February 11, 2024, at which the proposed Project was discussed with members of the Petitioners' Resident Group, the Applicant and their representatives, and representatives from the MCC. Ferrick PFT, ¶ 9; SOC Cover Letter, pp. 2-3. In the course of its review, the Department issued two Information Request Letters to the Applicant. The Department reviewed the Applicant's responses and on March 4, 2025, issued an SOC determining that the proposed Project qualifies as a redevelopment project in accordance with 310 CMR 10.05(6)(k), that those portions of the project located within the jurisdiction of the MWPA meet Stormwater Standards 1, 2, 3, and the structural stormwater best management practice ("BMP") requirements for Standards 4, 5, and 6 to the maximum extent practicable. Ferrick PFT, ¶ 16; SOC Cover Letter, p. 4.

The Petitioners initiated this appeal on March 16, 2025, and I issued a Scheduling Order directing the parties to confer regarding settlement and if not possible, to file a joint statement of issues and proposed adjudicatory schedule.⁶ On May 2, 2025, the Parties filed a Joint Status Report. The Parties were not able to agree on Issues for Adjudication, a proposed schedule, or whether to hold the Hearing in-person or remotely. On May 21, 2025, I conducted a Pre-Hearing Conference at which the issues for adjudication were determined, the Parties' witnesses were confirmed, and we determined that the Hearing could proceed remotely to accommodate the Petitioners' witnesses who could not attend

⁶ See Scheduling Order, March 24, 2025.

the Hearing in-person due to medical issues.⁷ The Pre-Hearing Conference Report and Order established dates for the Parties to file their Pre-Filed Testimony, including documentary evidence and Memoranda of Law, for a Site View,⁸ and for the Hearing. The Hearing was conducted on October 15, 2025, and the Parties filed their Closing Memoranda of Law on November 20, 2025.

Makishima Exhibits

The Petitioners filed their Pre-Filed Testimony and Memorandum of Law on July 22, 2025. Thereafter, on August 6, 2025, the Applicant and MassDEP filed a Motion to Strike from the record multiple exhibits included in the Petitioners' Memorandum of Law, any legal argument made that related to those exhibits, and testimony by any of Petitioners' witnesses that utilized them (referred to in the briefs as "Makishima Exhibits"). On August 11, 2025, the Petitioners opposed the Motion to Strike and requested that Mr. Makishima be added as a witness for the limited purpose of authenticating the Makishima Exhibits. By order issued on September 5, 2025, I ruled that "Mr. Makishima filed an Affidavit to authenticate the exhibits, will be at the Hearing, and therefore, will be available for cross-examination as a witness for the limited purpose of authenticating the Makishima Exhibits."

⁷ See Pre-Hearing Conference Report and Order, June 5, 2025, which included a requirement for the Petitioners to file affidavits from those witnesses identified as having a hardship to support their request for accommodation of a remote or virtual Hearing.

⁸ See 310 CMR 1.01(5)14; see also 310 CMR 1.01(13)(j) which provides as follows:

The parties may request and the Presiding Officer may order that a view be taken of a site, property or other places and things that are relevant to an appeal to promote understanding of the evidence that has been or will be presented. Notice and a reasonable opportunity to be present shall be given to all parties. Parties shall not present evidence during the view, but may point out objects or features that may assist the Presiding Officer in understanding evidence. The Presiding Officer may rely on the Presiding Officer's observations during a view as evidence to the same extent permissible as if observed in the hearing room.

September 5, 2025 Ruling and Order (the “September 5th Ruling”).

MassDEP and the Applicant requested that I reconsider the September 5th Ruling, arguing that most of the exhibits should be stricken because the Petitioners’ witnesses do not rely on them in their Pre-Filed Testimony. For the exhibits which are referenced by the Petitioners’ witnesses, MassDEP and the Applicant argued that the titles of the exhibits should be stricken because they contain substantive testimony about wetlands despite Mr. Makishima not being a wetlands expert, and the audio of Mr. Makishima speaking in the video exhibits should also be stricken for the same reason. The Petitioners stipulated that several exhibits could be stricken entirely, and the titles and audio of the remaining exhibits could also be stricken. The Petitioners also submitted a document purporting to identify the paragraphs in the Pre-Filed Testimony of their witnesses which reference the Makishima Exhibits.

In accordance with my discretion as Presiding Officer 310 CMR 1.01(11)(a)⁹ to reconsider interlocutory rulings,¹⁰ I considered the motion and agreed that exhibits not

⁹ 310 CMR 1.01(11)(a)1 provides that “[a] person may request of the Presiding Officer any order or action consistent with law and 310 CMR 1.01 that will assist in resolving issues expeditiously by filing a motion,” and “[a] motion to modify an interlocutory order . . . falls within the purview of this rule.” In the Matter of Geochem, Inc. d/b/a Jet-Line of Lowell, Docket Nos. 87-005 & 007, Memorandum Decision and Order on Petitioner’s Motion to Modify Discovery Orders (November 10, 1988), 1988 WL 363342, *2. Whether to consider a motion to reargue an interlocutory order is within the discretion of the Presiding Officer. In the Matter of Massachusetts Highway Dept. and Metropolitan District Commission (Central Artery/Tunnel Project-Charles River Crossing), Docket No. 96-079, Decision and Order on Cambridge’s Motion to Renew and Reargue Claims Dismissal and Cambridge City Manager’s Motion for Leave to Intervene (January 8, 1997), 1997 WL 71993, *3 (“[a]s a matter of discretion, interlocutory decisions may be revisited by a motion to reargue . . . or by a motion to renew”).

¹⁰ The Adjudicatory Proceedings Rules for the Department of Environmental Protection (the “Rules”) provide at 310 CMR 1.01(14)(d) that “[w]here a finding of fact or ruling of law on which a *final decision* is based is clearly erroneous, a party may file a motion for reconsideration setting forth specifically the grounds relied on to sustain the motion.” (Emphasis added.) The Rules do not provide for reconsideration of interlocutory rulings such as the September 5th Ruling.

referenced by any witness should not be in the record and struck all documentary and photographic exhibits submitted by Mr. Makishima except Exhibits 9, 10, 22, 23, 23b, 25, and 30. I denied the motion without prejudice with respect to all video exhibits submitted by Mr. Makishima because MassDEP and the Applicant could renew their motion following the adjudicatory Hearing.¹¹

In its Closing Brief, MassDEP argued that all references to the Makishima Exhibits should be stricken from the record because the Petitioners did not present Paul Makishima as a witness at the evidentiary hearing to authenticate his affidavit and exhibits. However, Mr. Makishima attended the Hearing and while the Petitioner did not formally present him for cross-examination, neither MassDEP nor the Applicant sought to cross-examine Mr. Makishima at the Hearing or raised any objection.¹² Nothing impeded the Department or the Applicant from cross-examining Mr. Makishima. Their silence at the Hearing does not invalidate the Makishima Exhibits, filed with an affidavit signed under pains and penalties of perjury, by a witness available for cross-examination. In these circumstances it would be unfair to strike the Makishima Exhibits. See In the Matter of JD Raymond Transport, Inc., OADR Docket No. WET-2024-019, Recommended Final Decision (November 26, 2025), 2025 WL 4759363, *8, adopted as Final Decision (May 19, 2026), 2026 WL 1579443 (declining to strike improperly authenticated photographs when the witness presenting the photographs was available for cross-examination). The Makishima Exhibits are admissible

¹¹ Ruling and Order, October 14, 2025.

¹² See 310 CMR 1.01(12)(f), 310 CMR 1.01(13)(h)3.

and remain in the record and are accorded the weight that they are due within my discretion. 310 CMR 1.01(13)(h)1.¹³

ISSUES FOR ADJUDICATION

The Issues for Adjudication as discussed at the Pre-Hearing Conference are as follows:

1. Whether the proposed Project has been conditioned to meet the requirements of 310 CMR 10.53(1) for proposed work in the Buffer Zone to the BVW.
2. Whether the Department correctly determined that the Property qualifies as “Redevelopment” as set forth in 310 CMR 10.04.
 - i. If yes, does the SOC satisfy the requirements for a Redevelopment project at 310 CMR 10.05(6)(k)7.
 - ii. If no, does the proposed Project as approved by the SOC satisfy the stormwater requirements as new development?
3. Whether the Department correctly determined that the project complies with 310 CMR 10.05(6)(k)1, 2 and 3 and Standard 1, 2, and 3 as stated in Volume I, Chapter 1 of the Department’s Stormwater Handbook.
4. Whether in issuing the SOC the MassDEP reasonably considered the environmental justice principles set forth in the EEA Environmental Justice Strategy of 2024 and MassDEP’s Environmental Justice Policy as implemented pursuant to the 2021 EEA Environmental Justice Policy, both of which the Climate Road Map Act (An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy: Acts of 2021 Chapter 8).

¹³ See Carvalho v. Tripp, Land Court Docket No. 307203 (June 26, 2008), 2008 WL 2563373, *1 n.2 (plaintiff has sufficient training and experience to testify; the defendants' challenges to his training, experience and self-interest/bias go to the credibility and weight of his testimony, not its admissibility).

STATUTORY & REGULATORY FRAMEWORK

I. THE MWPA AND THE WETLANDS REGULATIONS

The MWPA and the Wetlands Regulations “do[] not prohibit development in wetlands areas; [they] create[] a procedure requiring the [D]epartment to condition activities in certain [wetlands] areas so as to protect [the MWPA’s] statutory mandate.” Ten Local Citizen Group v. New England Wind, LLC, 457 Mass. 222, 224 (2010). The MWPA’s statutory mandate is to protect wetlands areas and to regulate activities affecting those areas in a manner that promotes the following 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); see 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 New England Wind, at 224.

The MWPA and the Wetlands Regulations provide that “[n]o person shall remove, fill, dredge[,] or alter any [wetlands] area subject to protection under [the MWPA and Wetlands Regulations] without the required authorization, or cause, suffer or allow such activity.” G.L. c. 131 § 40; 310 CMR 10.02(2)(a); Kazokas, 2018 WL 9847851, *4. “Any activity proposed or undertaken within [a protected wetlands] area . . . which will remove, dredge or alter that area, is subject to Regulation under [the MWPA and the Wetlands Regulations] and requires the filing of a Notice of Intent” with the permit issuing authority. 310 CMR 10.02(2)(a); Kazokas, 2018 WL 9847851, *4. The “[permit] issuing authority” is either the local Conservation Commission when initially reviewing the applicant’s proposed work in a

wetlands resource area protected by the MWPA and the Wetlands Regulations, or the Department when it assumes primary review of the proposed work or review on appeal from a local Conservation Commission decision. Kazokas, 2018 WL 9847851, *4, citing Healer v. Department of Environmental Protection, 73 Mass. App. Ct. 714, 717-19 (2009).

APPEAL ADJUDICATION PROCEDURE

I. PETITIONER’S BURDEN OF PROOF

As the party challenging the Department’s issuance of the SOC, the Petitioner had the burden of proof in this *de novo* appeal, to produce credible evidence from a competent source to support its positions.¹⁴ Specifically, the Petitioner was required to present “credible evidence from a competent source in support of each claim of factual error [made against the Department], including any relevant expert report(s), plan(s), or photograph(s).” 310 CMR 10.05(7)(j)3.c. “A ‘competent source’ is a witness who has sufficient expertise to render testimony on the technical issues on appeal.” In the Matter of Diamond Development Realty Trust, OADR Docket No. WET-2018-016, Recommended Final Decision (April 2, 2019), 2019 WL 4735457, *5, adopted as Final Decision (April 8, 2019), 2019 WL 4735456. Whether the witness has such expertise depends “[on] whether the witness has sufficient education, training, experience and familiarity with the subject matter of the testimony.” Commonwealth v. Cheromcka, 66 Mass. App. Ct. 771, 786 (2006) (internal quotations omitted). See also In the Matter of Carl Carulli, Docket No. 2005-214, Recommended Final Decision (August 10, 2006), 2006 WL 4211673, adopted by Final Decision (October 25, 2006) (dismissing claims regarding flood control, wetlands

¹⁴ See 310 CMR 10.03(2); 310 CMR 10.05(7)(j)2.b.iv; 310 CMR 10.05(7)(j)2.b.v; 310 CMR 10.05(7)(j)3.a; 310 CMR 10.05(7)(j)3.b.

replication, and vernal pools for failure to provide supporting evidence from competent source); In the Matter of Indian Summer Trust, Docket No. 2001-142, Recommended Final Decision (May 4, 2004), 2004 WL 3973695, adopted by Final Decision (June 23, 2004) (insufficient evidence from competent source showing that interests under MWPA were not protected); In the Matter of Robert Siegrist, Docket No. 2002-132, Recommended Final Decision (April 30, 2003), 2003 WL 21202599, adopted by Final Decision (May 9, 2003) (insufficient evidence from competent source to show wetlands delineation was incorrect and work was not properly conditioned).

II. STANDARD OF REVIEW

My review is *de novo*, meaning that my review will be anew, irrespective of any prior determination of the Department in issuing the SOC or WQC denial. In the Matter of John Soursourian, OADR Docket No. WET-2013-028, Recommended Final Decision (June 13, 2014), 2014 WL 2996120, *11, adopted as Final Decision (June 19, 2014), 2014 WL 2996126; In the Matter of Francis P. and Debra A. Zarette, Trustees of Farm View Realty Trust, OADR Docket No. WET-2016-030, Recommended Final Decision (February 20, 2018), 2018 WL 2002978, *4, adopted as Final Decision (March 1, 2018), 2018 WL 2002977; In the Matter of Brockton Power Co., LLC, OADR Docket Nos. 2011-025 and 026, Recommended Final Decision (July 29, 2016), 2016 WL 8542559, *10, adopted as Interlocutory Decision (March 13, 2017), 2017 WL 1063662; In the Matter of Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, OADR Docket No. 2016-025, Recommended Final Decision (March 27, 2017), 2017 WL 1656437, adopted as Final Decision (April 13, 2017), 2017 WL 1656447. Put another way, as the Presiding Officer responsible for adjudicating this appeal, "[I am] not bound by MassDEP's prior orders or statements [in the case], [but]

instead [am] responsible . . . for independently adjudicating [the] appeal[l] and [issuing a Recommended Final Decision] to MassDEP’s Commissioner that is consistent with [the governing statutory and regulatory requirements]” In the Matter of Christopher N. Colby, OADR Docket No. WET-2016-012, Recommended Remand Decision (October 12, 2018), 2018 WL 6844318, *9, adopted as Remand Decision (October 26, 2018), 2018 WL 6844317. Additionally, because these proceedings are *de novo*, the Department “is authorized to, and should change its position” on any Issue for Adjudication it had taken previously in issuing the SOC or WQC denial “if during the pendency of [the] appeal, ‘[it] becomes convinced’ based on [1] a different legal interpretation of applicable regulatory standards, [2] new evidence, [and/or] [3] error in its prior determination,” that a change in position is warranted. See Soursourian, 2014 WL 2996120, *11; Zarette, 2018 WL 2002978, *4.

It is well-established principle that “[t]he interpretation of a statute by the agency charged with primary responsibility for administering it is entitled to substantial deference” giving “due weight to the experience, technical competence, and specialized knowledge” of the agency. Arrowood Indemnity Company v. Workers’ Compensation Trust Fund, 496 Mass 222, 229 (2025).¹⁵ However, deference “does not suggest abdication.” Id. “An ‘incorrect interpretation of a statute is not entitled to deference.’” Id., at 230; In the Matter of Edwin Mroz, OADR Docket No. 2017-021, Recommended Final Decision (June 7, 2019),

¹⁵ See also In the Matter of Pioneer Valley Energy Center, LLC, OADR Docket No. 2011-010, Recommended Final Decision (September 23, 2011), 2011 WL 6019097, *8, adopted in part by Final Decision (November 9, 2011), 2011 WL 6019096 (citing Commerce Insurance Co. v. Commissioner of Insurance, 447 Mass. 478, 481 (2006); Massachusetts Medical Society v. Commissioner of Insurance, 402 Mass. 44, 62 (1988) (“[w]here the [agency’s] statutory interpretation is reasonable . . . [we do] not supplant [its] judgment”)).

2019 WL 4735471, *17, adopted by Final Decision (June 18, 2019), 2019 WL 4735469 (citing NSTAR Electric Co. v. Department of Public Utilities, 462 Mass. 381, 386-87 (2012); Warcewicz v. Department of Environmental Protection, 410 Mass. 548, 550 (1992); Moot v. Department of Environmental Protection, 448 Mass. 340, 346 (2007)). Accordingly, a Presiding Officer in an administrative appeal owes no deference to the Department's interpretation or construction of a statutory or regulatory requirement that is arbitrary, unreasonable, or inconsistent with the plain terms of the governing statutory and regulatory requirements. Mroz, 2019 WL 4735471, *17.

The relevancy, admissibility, and weight of the evidence that all parties sought to introduce at the Hearing was governed by G.L. c. 30A, § 11(2) and 310 CMR 1.01(13)(h).

Under G.L. c. 30A, § 11(2):

[u]nless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

Under 310 CMR 1.01(13)(h), “[t]he weight to be attached to any evidence . . . rest[ed] within the discretion of the Presiding Officer.” Speculative evidence was accorded no weight given its lack of probative value in resolving the issues in the case. In the Matter of Sawmill Development Corporation, OADR Docket No. 2014-016, Recommended Final Decision (June 26, 2015), 2015 WL 5758252, *29, adopted as Final Decision (July 7, 2015), 2015 WL 5758285 (petitioners’ expert testimony “that pharmaceuticals, toxins, and other potentially hazardous material would be discharged from effluent generated by . . .

proposed [privately owned wastewater treatment facility] . . . was speculative in nature and not reliable”).

DISCUSSION

Issue 1: The Department correctly determined that the proposed Project has been conditioned to meet the requirements of 310 CMR 10.53(1) for proposed work in the Buffer Zone to the BVW.

Some wetlands resource areas protected by the MWPA and the Wetlands Regulations, including BVW, have a Buffer Zone that is defined as an area of land extending 100 feet horizontally outward from the resource area boundary.¹⁶ The purpose of the Buffer Zone is to provide for notification of projects located outside wetlands boundaries but near enough to pose potential environmental impacts.¹⁷ The Wetlands Regulations address work in the Buffer Zone “which, in the judgment of the issuing authority, will alter wetlands resource areas and requires the filing of a Notice of Intent.” In the Matter of Diane Mercadante, OADR Docket No. WET-2009-029, Recommended Final Decision (November 12, 2009), 2009 WL 5698021, *5, adopted as Final Decision (November 23, 2009), 2009 WL 5865650. As a result, the Buffer Zone may generally be altered if it will not alter a Resource Area, as determined by the issuing authority. Work in the Buffer Zone does not invoke the performance standards applicable to adjacent Resource Areas as a matter of law. See In the Matter of Burley Street, LLC, OADR Docket No. 2005-228, Final Decision (October 17, 2008), 2008 WL 5071124, *4. An activity occurring outside of any resource area or Buffer Zone “is not subject to regulation under” the MWPA “unless and until that activity actually

¹⁶ See 310 CMR 10.02(2)(a); 310 CMR 10.02(2)(b)3; 310 CMR 10.03(1)(a).

¹⁷ New England Wind, 457 Mass. at 225, citing Preface to the Wetlands Regulations—1983 Regulatory Revisions, 310 CMR 10.00 (1997).

alters an Area Subject to Protection under M.G.L. c. 131, § 40.” 310 CMR 10.02(2)(d).¹⁸ In contrast, any alteration of a Resource Area is generally subject to jurisdiction under the MWPA and Wetlands Regulations. See 310 CMR 10.02(2)(a).

The Wetlands Regulations at 310 CMR 10.53(1) govern the conditioning of Buffer Zone work to avoid Resource Area alterations that will adversely affect the ability of such areas to contribute to the protection of one or more of the interests of the WMPA. The regulation, in pertinent part, provides the following:

For work in the buffer zone subject to review under 310 CMR 10.02(2)(b)3., the issuing authority shall impose conditions to protect the interests of the Act identified for the adjacent resource area. The potential for adverse impacts to resource areas from work in the buffer zone may increase with the extent of the work and the proximity to the resource area. The issuing authority may consider the characteristics of the buffer zone, such as the presence of steep slopes, that may increase the potential for adverse impacts on resource areas. Conditions may include limitations on the scope and location of work in the buffer zone as necessary to avoid alteration of resource areas. The issuing authority may require erosion and sedimentation controls during construction, a clear limit of work, and the preservation of natural vegetation adjacent to the resource area and/or other measures commensurate with the scope and location of the work within the buffer zone to protect the interests of [the Act]. (Emphasis supplied.)

Within this statutory and regulatory structure, the Department’s wetlands jurisdiction over the proposed Project is limited to the components in the Buffer Zone to jurisdictional resource areas. The work in the Buffer Zone is conditioned in the SOC for the purpose of protecting the wetlands resource area subject to the MWPA and the Wetlands Regulations. SOC Cover Letter, p. 3. The Applicant and the Department contend that these conditions adequately protect the interests of the MWPA and the Wetlands Regulations. Ferrick PFT, ¶ 19; Hochmuth PFT, ¶¶ 4, 28; Barrows PFT, ¶ 10; Huntress PFT, ¶ 7. The

¹⁸ See New England Wind, 457 Mass. at 225.

proposed Project will not be located any closer to the BVW than the existing developed conditions. Hochmuth PFT, ¶ 15.¹⁹ The proposed work activities authorized by the SOC within the Buffer Zone occur no closer than 25 feet, preserving a naturally vegetated buffer to the BVW, which will be enhanced with a 1,234-square-foot planting area to increase the buffer width. Ferrick PFT, ¶ 19; Hochmuth PFT, ¶¶ 19-20. See also SOC Plan, Sheet L-3, Planting Plan.

Work proposed within the Buffer Zone to BVW includes replacing the existing asphalt roadway with a narrower bike/pedestrian path, converting disturbed or non-native areas to native plantings, fencing, erosion prevention measures and sediment controls, and post-construction monitoring. Ferrick PFT, ¶ 19; Hochmuth PFT, ¶¶ 19-20. As a result, the proposed Project will reduce impervious area. Huntress PFT, ¶¶ 11, 13; Barrows PFT, ¶ 11; Ferrick PFT, ¶ 28. Before work begins, the SOC is conditioned to require pre-construction meetings with the Commission and MassDEP (Special Condition 33) and protocols are to be approved for monitoring any migration of infill material and synthetic grass blades to Buffer Zone and associated wetland resource areas (Special Conditions 34, 35). Monitoring will be conducted by a qualified Environmental Monitor before, during and after all work and after every 24-hour rain event of greater than 2.5 inches for the first year of operation, with future frequency to be determined by MassDEP (Special Conditions 29, 30, 33, 34, 42, 43, 45) and with regular reporting to MassDEP (Special Conditions 42, 43). All work must conform to the approved SOC Plans (Special Condition 20), which detail the limit of work bound by erosion control devices of a mulch sock with a siltation fence to

¹⁹ Citing SOC Plan, Sheet S-1, Existing Conditions; Sheet L-1, Layout Plan; Sheet L-2, Grading and Drainage; Sheet L-3, Planting Plan.

prevent erosion (Special Condition 37, 40, 41, 44, 46, 47, 49, 52) and to prevent sediment or construction activities from impacting downgradient wetland resource areas as detailed on the site development plans included in the NOI. Ferrick PFT, ¶ 23.²⁰

On behalf of the Petitioners, Ms. Chapnick testified that the work proposed in the Buffer Zone is an alteration of the Buffer Zone. Chapnick PFT, ¶¶ 13-15, Chapnick PFR, ¶ 30. However, as discussed above, the Wetlands Regulations do not prohibit alteration of Buffer Zone and “alter” as used in the Wetlands Regulations does not apply to Buffer Zone.²¹ Nor do resource area performance standards extend to work in a Buffer Zone; such work is allowed if conditioned so that it will not alter a Resource Area, as determined by the issuing authority. Ms. Chapnick’s analysis, that the Department should use its judgment to determine that Buffer Zone alteration impacts its capacity to protect the resource area, would inappropriately extend MWPA jurisdiction beyond wetlands resources.²²

Additionally, as discussed below, the Petitioners have not demonstrated that the work in the Buffer Zone as approved and conditioned in the SOC would alter the Resource Area. Ms. Chapnick and Ms. Bennet have sufficient training and experience to testify as experts, but their testimony lacks factual foundation, resulting in conclusory and unsupported statements and opinions.²³

²⁰ Citing SOC Plan, Sheet Sp-1, Site Preparation.

²¹ The Wetlands Regulations provide that “alter” means to change the condition of any Area Subject to Protection under M.G.L. c. 131, § 40. See 310 CMR 10.04: Alter.

²² Buffer Zones “were added to the department’s regulations in 1983, ‘not to expand jurisdiction automatically beyond the boundaries of [] wetlands, but to provide a mechanism by which local conservation commissions can be notified of projects located outside these boundaries but sufficiently close thereto to pose a potential environmental threat.’” New England Wind, 457 Mass. at 225.

²³ See In the Matter of P.T. Realty Investors, LLC, OADR Docket No. WET-2023-011, Recommended Final Decision (November 14, 2024), 2024 WL 5445831, *10, adopted as Final Decision (February 12, 2025), 2025 WL 714507 (expert testimony from competent source but testimony lacks proper factual foundation resulting

Ms. Chapnick’s testimony alleges that the proposed Project will affect the “character of the Buffer Zone” but does not demonstrate that the proposed work in the Buffer Zone would alter the resource area. Chapnick PFT, ¶¶ 15, 23-27. For example, Ms. Chapnick testified that the artificial turf field will result in loss of wildlife habitat in the Buffer Zone because wildlife will not pass over the turf as they do grass. Chapnick PFT, ¶ 23.²⁴ However, this unsupported conclusion does not demonstrate that the work in the Buffer Zone would alter the BVW. Further, Ms. Chapnick testified that mature tree canopy would be removed from the Buffer Zone, but Mr. Hochmuth testified on behalf of the Applicant that no trees or mature tree canopy will be removed from the Buffer Zone and that the removal of only one tree, outside the Buffer Zone at the south end of the Property near the proposed seating area, is proposed. Chapnick PFT, ¶ 23; Hochmuth PFT, ¶ 16.

Ms. Chapnick contends that the SOC is not adequately conditioned to protect the Buffer Zone itself because of the disturbance in the Buffer Zone. She concludes that the “buffer enhancement”²⁵ and prohibiting mechanical snow removal on the artificial turf

in conclusory and unsupported opinion); In the Matter of Sawmill Development Corporation, OADR Docket No. 2014-016, Recommended Final Decision (June 26, 2015), 2025 WL 5758252, *29, adopted as Final Decision (July 7, 2015), 2015 WL 5758285 (petitioners' expert testimony “that pharmaceuticals, toxins, and other potentially hazardous material would be discharged from effluent generated by . . . proposed [privately owned wastewater treatment facility] . . . was speculative in nature and not reliable”). Contrast In the Matter of Michael Newman and Polly Kornblith, Docket No. WET-2010-016, Recommended Final Decision (October 8, 2010), 2010 WL 4912396, *10-11, adopted as Final Decision (November 16, 2010), 2010 WL 4912397 (expert testimony provided fact-based evidence and a model showing how pollutants would travel from Buffer Zone to Resource Areas in sufficient concentrations to alter and adversely affect those areas).

²⁴ While Mr. Hochmuth testified, also without factual proof, that the artificial turf field does not remove or fragment critical habitat in adjacent wetland resource areas, wildlife habitat in the Buffer Zone is not subject to the resource area performance standards. See Hochmuth PFT, ¶ 27.

²⁵ Chapnick PFT, ¶¶ 24-25, citing Special Condition 20. However, her analysis appears to disregard the existing developed areas. See Hochmuth PFT, ¶ 26.

field²⁶ are inadequate conditions. However, her focus on whether these two conditions protect the character of the Buffer Zone fails to demonstrate that the SOC is not conditioned to protect the BVW.

The Petitioners contend that the artificial turf field will exacerbate heat stress in already stressed urban resource areas, causing negative environmental impacts that are not protective of cold-water fisheries. Chapnick PFT, ¶ 18; Bennett PFR, ¶ 13. To support their position, Dr. Bennett cites a “State of Wisconsin document” describing impervious surfaces as contributing warmth to stream flow. Bennett PFR, ¶ 13. Ms. Chapnick also contends that the loss of the character of the grass buffer zone, due to removal of topsoil and attendant beneficial microbes, will result in excessive heat and change the hydrology. Chapnick PFT, ¶ 15. She does not, however, provide any factual information to support the conclusion that these changes will alter the resource area.²⁷

On behalf of the Applicant, Mr. Huntress testified that heat carried in stormwater will not affect the temperature of either the existing groundwater or the stormwater that is discharged through the system. Huntress PFT, ¶ 11.²⁸ This conclusion is based on the Property conditions, including the fact that overcast conditions typically precede rainfall; any elevated surface temperature is quickly cooled by the initial rainfall so only a small percentage of runoff is affected; runoff moving through subsurface drains allows it time to cool before discharge; and the volume of runoff from the artificial field represents a tiny

²⁶ Chapnick PFT, ¶ 27, citing Special Condition 39.

²⁷ Ms. Chapnick’s reference to an artificial turf proposal denied by the Sharon Conservation Commission in 2020 does not address the facts presented in this case. Chapnick PFT, ¶ 16.

²⁸ Citing Huntress Ex. 8, Tetra Tech Response Letter, October 4, 2023.

fraction of the runoff discharging from the Property, further mitigating any changes in discharge temperature at Pine Brook. Huntress PFT, ¶ 11. On behalf of the Department, Mr. Ferrick agreed that the proposed Project would not result in increased temperature in stormwater runoff. Ferrick PFT, ¶ 22. Mr. Ferrick testified that runoff from the field currently is untreated and sheet flows into the Buffer Zone and associated wetland resource areas. Ferrick PFT, ¶ 22. The proposed BMPs that are part of the stormwater controls reduce pollutants in and temperature of stormwater, improving the water quality before it reaches the downgradient resource areas. Ferrick PFT, ¶ 22.

The Petitioners' conclusory statements do not outweigh the testimony offered by the Applicant and the Department. In sum, the Petitioners have failed to demonstrate that the proposed Project will result in heat impacts that would alter the resource area.

The Petitioners contend that the artificial turf field will shed materials containing PFAS, plastics, and other pollutants which will "more likely than not" migrate into the BVW and Pine Brook. Bennett PFT, ¶¶ 26, 34, 38, 43; Bennett PFR, ¶ 10; Chapnick PFT, ¶¶ 19, 21-22. Ms. Chapnick testified that weathered artificial turf components are significant sources of plastic pollution to rivers and oceans and are consumed by aquatic organisms impacting the ecosystem. Chapnick PFT, ¶ 19.²⁹ She further testified that toxic chemicals could migrate to wetlands resources from infill particles. Chapnick PFT, ¶ 20. The Petitioners contend that the SOC conditions do not take this migration into consideration. See Petitioners' Memorandum, pp. 6-10. Dr. Bennett testified that there is more evidence supporting their position that turf components do have PFAS than that it does not. Bennett

²⁹ Citing William P. de Haan, et al., The dark side of artificial greening: Plastic turfs as widespread pollutants of aquatic environments, 334 Environmental Pollution 122094 (2023).

PFT, ¶ 26. To support her testimony, she cited a letter put forth by the Applicant to the MCC which acknowledged that testing of synthetic turf systems may show trace amounts of PFAS but asserted that such detections are less than the PFAS levels occurring in most surficial surfaces. Bennett PFT, ¶ 26.³⁰ Dr. Bennett asserted that the materials identified by Mr. Huntress for use in the proposed Project are the same as those used in a project in Martha's Vineyard which "reports show very clearly that there are PFAS, and metals, in the turf components and those were not taken into consideration" when conditioning the Project. Bennett PFT, ¶ 26. See also Chapnick PFT, ¶¶ 20-21.

On behalf of the Applicant, Mr. Myrick, the Tetra Tech Project Manager and professional engineer who managed the Martha's Vineyard project, testified that "PFAS were either not detected or detected at only trace levels in artificial turf only after testing via the highly aggressive Synthetic Precipitation Leaching Procedure (SPLP) test." Myrick PFT, ¶ 6. Mr. Myrick testified that the SPLP analysis method is an aggressive low pH test being performed on a new material and likely does not represent an actual or sustained condition and that summing the SPLP results likely oversimplifies the contribution from each material during a rain event. Myrick PFT, ¶ 7. He testified that the source of such low amounts of PFAS could be attributed to cross-contamination, exposure to ambient air conditions, or even the laboratory analysis process itself. Myrick PFT, ¶ 7. Mr. Myrick opined that "the presence of PFAS, especially at very low concentration, does not directly represent risk," let alone suggest that PFAS was "intentionally added or even used in the manufacturing process" for artificial turf. Myrick PFT, ¶ 8. Further regarding PFAS, the

³⁰ Citing Huntress Ex. 8, Tetra Tech Response Letter, October 4, 2023.

Applicant and the Department contend that the Applicant's updated PFAS testing of the turf materials concludes that the synthetic turf, organic infill, and resilient shock pad did not contain PFAS constituents. Ferrick PFT, ¶ 11; Ferrick Ex. 7.

Regarding potential migration of materials from the artificial turf field, the Applicant contends that the stormwater infiltration systems under the plastic turf carpet will prevent any direct discharge to an aquatic environment. See Myrick Ex. 2; Huntress PFT, ¶ 14; On behalf of the Department, Mr. Ferrick testified that given the design, it is unlikely that the proposed Project will result in plastic grass blades entering the gravel base beneath the artificial turf field. The design includes three (3) screen cleanout areas that filter and collect any infill or plastic grass blades, preventing migration to downgradient wetland resources. Ferrick PFT, ¶ 21. Mr. Ferrick testified that “[b]ased on the field design, stormwater management, screen cleanout areas, and special conditions incorporated in the SOC, it is my opinion the infill and plastic turf blades will not migrate to downgradient wetland resource areas or create an adverse impact to those resource areas.” Ferrick PFT, ¶ 21.

No Party alleged that the MWPA or the Wetlands Regulations prohibit the use of materials containing PFAS, metals, or other chemical compounds in projects constructed in Buffer Zone. The MassDEP Stormwater Handbook (2008) (“Handbook”), does indicate that some pollutants can be toxic to aquatic life, specifically referencing road salt. Handbook, Vol. 1, c. 1, pp. 17-18. The Handbook provides guidance for minimizing use, with additional requirements in Critical Areas, although the record here does not identify any

Critical Areas associated with the Property.³¹ In the absence of specific requirements or factually supported evidence that PFAS, metals, or other chemical compounds leaching from this proposed Project in the Buffer Zone will alter the resource area, I must conclude that the Petitioner has not demonstrated that the proposed Project will result in alteration of the resource area.

In sum, the Petitioners' testimony fails to demonstrate that the design of the proposed Project and the SOC conditions are inadequate to prevent the work in the Buffer Zone from altering the resource area. As a result, I find that the SOC has been conditioned to meet the requirements of 310 CMR 10.53(1) for proposed work in the Buffer Zone to the BVW.

Issue 2: The Department correctly determined that the Property qualifies as "Redevelopment" as set forth in 310 CMR 10.04.

Redevelopment is defined in 310 CMR 10.04 as follows:

Redevelopment means replacement, rehabilitation, or expansion of existing structures, improvement of existing roads or reuse of degraded or previously developed areas for purposes of 310 CMR 10.58, governing work in the riverfront area. For purpose of the Stormwater Management Standards as provided in 310 CMR 10.05(6)(k) through (q), redevelopment is defined to include the following projects:

- (a) maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving;

³¹ Critical Areas include Outstanding Resource Waters as designated in 314 CMR 4.00, Special Resource Waters as designated in 314 CMR 4.00, recharge areas for public water supplies as defined in 310 CMR 22.02 (Zone Is, Zone IIs and Interim Wellhead Protection Areas for groundwater sources and Zone As for surface water sources), bathing beaches as defined in 105 CMR 445.000, cold-water fisheries as defined in 310 CMR 10.04 and 314 CMR 9.02, and shellfish growing areas as defined in 310 CMR 10.04 and 314 CMR 9.02. Handbook, Vol. 1, c. 1, p. 3.

(b) development, rehabilitation, expansion and phased projects on previously developed sites provided the redevelopment results in no net increase in impervious area; and

(c) remedial projects specifically designed to provide improved stormwater management such as projects to separate storm drains and sanitary sewers and stormwater retrofit projects.

During its review, MassDEP inquired whether the proposed Project was redevelopment, new development, or a combination. The Revised Stormwater Report characterized the proposed Project as redevelopment. Ferrick PFT, ¶¶ 12-13; Ferrick Ex. 10, Revised Stormwater Report, September 17, 2024. See also Ferrick PFT, ¶ 25.³²

The Petitioners contend that the proposed Project does not constitute redevelopment because it includes new development and redevelopment, citing Ferrick Ex. 8, Information Request #1, July 25, 2024. Chapnick PFT, ¶ 28. MassDEP and the Applicant contend that the proposed Project qualifies as “redevelopment” because it entails the development and rehabilitation of a previously developed area, and, contrary to the Petitioners’ conclusion, will create no increase in impervious area. SOC Cover Letter, p. 4; Huntress PFT, ¶ 8; Barrows PFT, ¶ 13; Ferrick PFT, ¶ 29. The Applicant and the Department testified that the artificial turf field design is porous, not impervious. Huntress PFT, ¶ 8;³³ Ferrick PFT, ¶ 44. As a result, the proposed Project will reduce impervious area. Huntress PFT, ¶¶ 11, 13; Barrows PFT, ¶ 11; Ferrick PFT, ¶ 28.

³² The Stormwater checklist states that the project is considered a redevelopment project but the narrative to the stormwater report states that it has not been considered a redevelopment project. Ferrick PFT, ¶ 5, citing Ferrick Ex. 3.

³³ Citing Huntress Ex. 4, Response Letter to MCC, November 13, 2023.

On behalf of the Department, Mr. Ferrick testified that the existing conditions of the Property include an asphalt and gravel drive/parking area, concrete walkways, two grass athletic fields, and forested land, and that the existing impervious surfaces, approximately 14,700 square feet, have no stormwater management infrastructure. Ferrick PFT, ¶ 28. The proposed Project will reduce impervious surfaces to 13,600 square feet, which will include a walkway and view areas, a pedestrian path upgraded to include ADA and handicapped accessibility, and a grandstand/press box. Ferrick PFT, ¶ 29. See also Barrows PFT, ¶ 13.

The Petitioners contend that the artificial turf field is impervious and therefore the proposed Project will result in an increase in impervious area. Chapnick PFT, ¶ 29. Ms. Chapnick testified that the United States Environmental Protection Agency (“USEPA”) defines artificial turf as an impervious surface, citing the Massachusetts Municipal Separate Storm Sewer System (“MS4”) General Permit, Appendix A. Chapnick PFT, ¶ 17. As a result, she contends that the artificial turf field will also impact groundwater. *Id.* Regarding her contention that the proposed artificial turf field is impervious, on cross-examination, Ms. Chapnick conceded that USEPA does not conclude that an artificial turf field with the ability to infiltrate stormwater means that all artificial turf fields are impervious; nonetheless, she continued to assert that the proposed Project is impervious.³⁴

³⁴ Ms. Chapnick testified that the draft revisions to the Wetlands Regulations adopt this USEPA definition, specifically including artificial turf as an example of an impervious surface. Chapnick PFT, ¶ 29, citing <https://www.mass.gov/doc/310-cmr-1000-wetlands-proposed-revisions-clean/download>. The referenced draft includes the following definition of impervious surface: “for purposes of stormwater management (310 CMR 10.05(6)(k)-(q)), any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including, but not limited to artificial turf, Compacted Gravel or Soil, roads, building rooftops, solar arrays, parking lots, Public Shared Use Paths, bicycle paths, and sidewalks paved with concrete, asphalt, or other similar materials. For purposes of this definition, porous pavements are Impervious Surfaces in order to size the depth of the underlying reservoir course to meet recharge and Total Suspended

The applicable Wetlands Regulations do not define artificial turf fields, nor include artificial turf fields as impervious surfaces in the Stormwater Handbook. Ferrick PFT, ¶¶ 5, 33. Nor does the proposed Project discharge to a MS4 system or directly to a waterbody. Ferrick PFT, ¶ 44. Mr. Huntress points to the language in the Massachusetts MS4 General Permit which states that an impervious surface is one “created using non-porous material.” Huntress PFT, ¶ 8. MassDEP agrees that the artificial tuft field as designed is porous because it does not impede infiltration and allows stormwater/rainfall to infiltrate through the artificial turf field materials into the underlying soils. Ferrick PFT, ¶ 44.

Mr. Ferrick also testified that Ms. Chapnick’s comparison of leachate pollutants from a different turf field discharging directly to a waterbody is misplaced because the proposed Project does not discharge to a waterbody. The proposed Project is designed for rainfall to be treated through a stormwater structure, infiltrating to subsoils, with any overflow directed to an infiltration trench. See Ferrick PFR, ¶¶ 44-45; Chapnick PFT, ¶ 21.

Ms. Chapnick’s testimony as discussed above, contending both that federal definitions consider artificial turf fields to be impervious, while also acknowledging that that the definition she cites does not make that assumption, is contradictory and does not support a finding that the proposed artificial turf is impervious. Nor does her testimony also support a finding that the proposed artificial turf field, located in the Buffer Zone, would alter groundwater in the resource area.

Mr. Ferrick reasonably concluded that the proposed Project will result in no net increase in impervious area and therefore he concluded it meets the definition of redevelopment.

Solids/Total Phosphorus removal requirements pursuant to 310 CMR 10.05(6)(k)3. and 4.” (Emphasis supplied.)

Ferrick PFT, ¶ 29. The Property is currently developed; the proposed Project will replace the existing field, walkway, roadway, and parking area and will reduce the existing impervious area. Therefore, the proposed Project is a redevelopment project, does not need to satisfy the stormwater requirements as new development, but must satisfy the stormwater standards for redevelopment projects as set forth at 310 CMR 10.05(6)(k)7, and discussed below in Issue 3.

Issue 3: The Department correctly determined that the project complies with 310 CMR 10.05(6)(k)1, 2 and 3 and Standard 1, 2, and 3 as stated in Volume I, Chapter 1 of the Department's Stormwater Handbook.

Standard 7: Redevelopment

Stormwater Standard 7 provides that a redevelopment project is required to meet Standards 1, 2, and 3 to the maximum extent practicable. A redevelopment project shall also comply with all other requirements of the Stormwater Management Standards and improve existing conditions. Handbook, Vol. 1, c. 1, p. 20 (emphasis supplied).

The Handbook provides the meaning of maximum extent practical for purposes of Standard 7 as follows:

- (1) Proponents of redevelopment projects have made all reasonable efforts to meet the applicable Standard;
- (2) They have made a complete evaluation of possible stormwater management measures including environmentally sensitive site design that minimizes land disturbance and impervious surfaces, low impact development techniques, and stormwater BMPs; and
- (3) If not in full compliance with the applicable Standard, they are implementing the highest practicable level of stormwater management.

Standard 1: Treatment and Erosion Prevention

Stormwater Standard 1 allows the direct discharge of stormwater to waters and wetlands provided the discharge is adequately treated. Handbook, Vol. 1, c. 1, p. 4. Standard 1 provides, “No new stormwater conveyances (e.g. outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or waters of the Commonwealth.” 310 CMR 10.05(6)(k)1. To avoid erosion,³⁵ BMPs and associated pipes and other conveyances must be properly designed and installed in accordance with Volume 2 of the Handbook. Handbook, Vol. 1, c. 1, p. 5. Directing runoff from roof tops to landscaping or undisturbed areas is encouraged.

Mr. Ferrick testified that the proposed Project satisfies this standard, without reference to maximum extent practicable, because it reduces impervious surfaces and treats stormwater discharges. Ferrick PFT, ¶ 38. On behalf of the Applicant, Mr. Barrows testified that the proposed Project complies with the stormwater standards to “the maximum extent practicable” and that “every effort was made to meet Standards 1, 2, and 3 to the ‘highest practicable of stormwater management.’” Barrows PFT, ¶ 14, citing Stormwater Report & Checklist, dated September 17, 2024. The Applicant and the Department testified that the stormwater management systems and conveyance (e.g. outfall) are designed to treat and manage the stormwater discharge from impervious surfaces. Ferrick PFT, ¶ 34; Barrows PFT, ¶ 15. The Stormwater Report details that the

³⁵ Avoiding erosion means there must be no wearing away of the soil or land surface in excess of natural conditions. Handbook, Vol. 1, c. 1, p. 5.

system is designed to remove debris and Total Suspended Solids (“TSS”),³⁶ then route stormwater runoff to a bio-retention area/filter strip BMP³⁷ that is equipped with a subsurface crushed stone trench to infiltrate the stormwater. As a result, the proposed discharge within wetland jurisdiction will not discharge untreated stormwater directly to, or cause scour or erosion, in wetlands or waters of the Commonwealth. Ferrick PFT, ¶ 34. See also Huntress Ex. 7A, Stormwater Report Narrative, Rev. 9/17/2024.

Ms. Chapnick contends that she observed steep slopes during the site visit of June 25, 2025, on the northern portion of the Buffer Zone down to the BVW and RA to Pine Tree Brook. Chapnick PFT, ¶ 24. However, no work is proposed in this area. Hochmuth PFT, ¶ 20. Based upon my review of the record, including the Parties’ expert testimony, I find that the SOC includes adequate erosion control measures and conditions to protect the wetlands resources consistent with Stormwater Standard 1.

Standard 2: Control of Peak Rates

To prevent storm damage and downstream and off-site flooding, Stormwater Standard 2 requires that post-development peak discharge rates do not exceed pre-development peak discharge rates. 310 CMR 10.05(6)(k)(2); Handbook, Vol. 1, c. 1, p. 5. In calculating runoff rates from pre-existing and post-development conditions, Applicants are to measure peak discharge rates at a design point, typically the lowest point of discharge at

³⁶ TSS are the particles in runoff, as opposed to dissolved pollutants. In the Matter of M.G. Hall Company, OADR Docket No. WET-2012-023, Recommended Final Decision (May 7, 2013), 2013 WL 8473953, *20, adopted as Final Decision (March 19, 2014).

³⁷ Some BMPs are “non-structural” and relate to site design practices, source control and pollution prevention. Others are structural components incorporated into site design to address pretreatment, treatment, conveyance and infiltration of stormwater. Handbook, Vol. 2, c. 1, p. 22. BMPs are implemented in a sequence to maximize pollutant removal and are often referred to as a treatment train. Handbook, Vol. 2, c. 1, p. 32.

the downgradient property boundary. Id. Applicants must also evaluate the impact of peak discharge from the 100-year 24-hour storm. BMPs are used to lower runoff rates through storage and gradual release. Id.

The Applicant and the Department contend that the proposed Project complies with Stormwater Standard 2 because it has reduced impervious surfaces by 1,110 square feet compared to existing conditions and uses a bioretention area, thereby reducing post-development peak discharge rates. Ferrick PFT, ¶ 36; Barrows PFT, ¶ 16. Mr. Ferrick testified that the proposed Project is an improvement because the existing developed area has no stormwater treatment at all. Ferrick PFT, ¶ 28.

Mr. Ferrick testified that the crushed gravel base of the artificial turf field is designed to provide detention and infiltration for the field and any potential overflow. Ferrick PFT, ¶ 36. He testified that any potential overflow will discharge to a trench drain on the northwest side of the field where overflow will infiltrate into the ground and further reduce post-peak discharge rates. Ferrick PFT, ¶ 36. Mr. Ferrick testified that the Stormwater Report shows the pre-development and post-development discharge rates to demonstrate that the proposed Project will reduce the peak runoff at the design point to at or below the pre-existing rates for the 2-, 10-, 25-, and 100-year, 24-hour storm events, meeting Stormwater Standard 2. Ferrick PFT, ¶ 36, citing Ferrick Ex. 10, Stormwater Report, Table 1, p. 13.

Ms. Chapnick testified that the artificial turf field is new development, is impervious, and does not meet Standard 2. Chapnick PFT, ¶ 29. As discussed above, the artificial turf field is redevelopment and is pervious. She also testified that the bike path is redevelopment but does not appear to meet Standard 2 to the maximum extent practicable, but did not expand upon this argument. Chapnick PFT, ¶ 29. The Petitioners

have failed to demonstrate by a preponderance of the evidence that the project fails to comply with Stormwater Standard 2 and results in an adverse impact to the wetlands resource area.

Standard 3: Recharge to Groundwater

Stormwater Standard 3 is intended to address the creation of impervious surfaces such as roofs and pavements which reduce water infiltration into the ground. Standard 3 requires that an Applicant must minimize or eliminate loss of annual recharge to ground water, so that the annual recharge from the post-development site approximates the annual recharge from pre-development conditions based on soil type. 310 CMR 10.05(6)(k)(3); Handbook, Vol. 1, c. 1, p. 5. The required recharge volume that must be infiltrated is determined by multiplying the recharge volume for the soil group by the total impervious area within the soil group. Handbook, Vol. 1, c. 1, p. 6; Vol. 3, c. 1, pp. 15-16.³⁸ Where infiltration of the entire recharge volume may not be possible for sites comprised solely of C and D soils and bedrock, Applicants are required to infiltrate the required recharge volume only to the maximum extent practicable for those conditions. Handbook, Vol. 1, c. 1, p. 7.

The Department and the Applicant testified that Standard 3 will be satisfied through the implementation of infiltration BMPs. Ferrick PFT, ¶ 38; Barrows PFT, ¶ 17; Huntress 17. Rainfall on the pervious turf field will drain through the turf and into the crushed gravel base of the field. Ferrick PFT, ¶ 38. Further, Mr. Ferrick testified that the crushed gravel base in

³⁸ Recharge may be maintained at a site through infiltration measures and site design. Soil groups are classified into four hydrologic groups, A through D. Group A soils typically have the lowest runoff and the highest infiltration rates, while Group D soils have the highest runoff and the lowest infiltration rates. Handbook, Vol. 1, c. 1, p. 6.

the pervious artificial turf field is designed to provide detention and infiltration for the functionality of the field and that any potential overflow will discharge to a trench drain on the northwest side of the field where overflow will infiltrate into the ground. Ferrick PFT, ¶ 38. On behalf of the Applicant, Mr. Barrows testified that soil observation holes in the area of the proposed field revealed a seasonal high water level approximately six feet below existing grades. Barrows PFT, ¶ 17. Mr. Ferrick testified that the proposed Project is required to provide 680 cubic feet of groundwater to be recharged to the proposed impervious surfaces. Ferrick PFT, ¶ 38, citing Ferrick Ex. 10, Stormwater Report, pp. 87-90. Mr. Ferrick testified that the gravel base of the artificial turf field provides 9,400 cubic feet and the bioretention swale/filter strip with an infiltration trench provides 1,171 cubic feet for a total of 10,571 cubic feet of groundwater recharge being provided. Ferrick PFT, ¶ 38. Mr. Ferrick testified that as a result, the proposed Project fully meets and exceeds the required recharge volume for Stormwater Standard 3. Ferrick PFT, ¶ 38. Mr. Huntress also testified

Citing the Department's second information request issued to the Applicant during the SOC review, Ms. Chapnick testified that there is inadequate separation between the bottom of the structures and the groundwater. Chapnick PFT, ¶ 31.³⁹ Ms. Chapnick contends that the stormwater structure from which the 2 feet of separation must be measured goes significantly deeper than the bottom of the turf profile. Id. The proposed Project has a 2-foot separation between the bottom of the turf profile, which is at a depth of 10 inches, and the ESHGW. Ferrick PFT, ¶¶ 14-15; Ferrick Ex. 12, Response to Information Request #2; SOC Cover Letter, p. 4. Consistent with Mr. Ferrick's testimony

³⁹ Citing Ferrick Ex. 11, Information Request #2, November 22, 2024.

that the gravel base provides sufficient infiltration and recharge,⁴⁰ Mr. Huntress testified that the crushed gravel base provides sufficient recharge volume to meet Standard 3 by the bottom of the turf profile and that any structures below that depth are not being credited as providing additional recharge volume. Huntress PFT, ¶ 17.3.⁴¹ Given that the calculations provided for recharge volume only credit the crushed gravel base as providing recharge to a depth of 10 inches, that depth is considered the bottom of the infiltration structure. Because the separation between that depth and ESHGW is greater than 2 feet, the proposed Project does satisfy the 2-foot separation requirement.⁴²

After reviewing all witness testimony, the preponderance of the evidence demonstrates that the Petitioners failed to provide relevant evidence to support their position that the Property is not previously developed. Regardless of how the Property was developed, the Department's and the Applicant's experts testified convincingly that the proposed Project is a redevelopment project designed to reduce impervious surface and to improve the stormwater management on the Property consistent with 310 CMR 10.05(6)(k)7. In sum, the evidence in the record demonstrates that the SOC satisfies the requirements of Stormwater Standard 7 because the project improves existing conditions, meets Standard 1, meets Standards 2 and 3 to the maximum extent practicable.

⁴⁰ Ferrick PFT, ¶ 38.

⁴¹ See Ferrick Ex. 10, Revised Stormwater Report, App'x 2. Standard 3 requires two feet of separation between ESHGW and the structure that is being used to meet Standard 3; see also Handbook, Vol. 1, c. 1, p. 7 ("there must be at least a two-foot separation between the bottom of the *infiltration structure* and the seasonal high groundwater table" (emphasis added)).

⁴² The separation to ESHGW from the bottom of the stormwater structures range from 4.62' to 5.13'. Huntress PFT, ¶ 17.3.

Issue 4: In issuing the SOC MassDEP reasonably considered the environmental justice principles set forth in the EEA Environmental Justice Strategy of 2024 and MassDEP’s Environmental Justice Policy as implemented pursuant to the 2021 EEA Environmental Justice Policy, both of which the Climate Road Map Act (An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy: Acts of 2021 Chapter 8).

Environmental Justice communities (“EJ Community”) are those whose residents are low-income, minority, and/or English Isolated within the ambit of Chapter 8 of the Acts of 2021 (“the 2021 Climate Act”), the 2021 Environmental Justice Policy of the Massachusetts Executive Office of Energy and Environmental Affairs (“EEA”) (“EEA’s 2021 EJ Policy”), and the EEA Environmental Justice Strategy of 2024 (“EEA 2024 EJ Strategy”) governing the regulatory actions of all EEA agencies, including those of MassDEP.⁴³ The Property is not located within an EJ Community but is located within 1 mile from four (4) EJ Communities, specifically minority, income, minority and English isolation, and minority and income isolation. Ferrick PFT, ¶ 41.

The EEA 2024 EJ Strategy is “the guiding document to embed environmental justice and equity into the work of EEA and its agencies.” 2024 EJ Strategy, p. 3. MassDEP’s EJ Strategy “outlines actions for promoting and integrating EJ considerations across MassDEP’s programs, policies, activities, and other strategies as well as meeting MassDEP’s EJ goals to ensure the equal protection and meaningful involvement of all

⁴³ See In the Matter of Palmer Renewable Energy, LLC, OADR Docket No. 2021-010, Final Decision (November 28, 2022), 2022 WL 17479443, *1 (MassDEP changed its permit review process to ensure both that people living in EJ Communities have a genuine opportunity to participate in decision-making impacting their health and environment and that environmental burdens are considered); In the Matter of Brockton Power Co., LLC, OADR Docket Nos. 2011-025 and 026, Recommended Final Decision (July 29, 2016), 2016 WL 8542559, *1, adopted as Final Decision (March 13, 2017), 2017 WL 1063662 (“Environmental Justice is based on the noble principle ‘that no group of people, because of race, ethnicity, class, gender, or handicap [should] bear an unfair share of environmental pollution from industrial, commercial, state and municipal operations or have limited access to natural resources, including greenspace (open space) and water resources’” (citing Title VI of the Federal Civil Rights Act of 1964 (“Title VI”) and a 2002 Environmental Justice Policy applicable to state agencies under its jurisdiction (“2002 EJ Policy”))).

people residing in the Commonwealth with respect to environmental protection and the equitable development, implementation, and enforcement of environmental laws, regulations and policies. This strategy aligns with and complements the agency's non-discrimination and civil rights program." *Id.*, pp. 90-91.

The 2024 EJ Strategy states that MassDEP has established internal guidance for developing Public Involvement Plans ("PIPs") for projects seeking permits located in or that may potentially impact an EJ population. *Id.*, p. 99. MassDEP is to consider concerns or ideas about a project, including changes and mitigation to the extent applicable and allowed by law, tailored to the needs of the impacted EJ populations. *Id.*

Mr. Ferrick testified that MassDEP considered all comments submitted regarding the proposed Project, many of which raised environmental justice concerns, and those addressing issues within the Department's jurisdiction were considered. Ferrick PFT, ¶ 42. Included in this consideration were comments regarding the change from a grass athletic field to an artificial athletic turf field which the Department determined was not a change in use. Ferrick PFT, ¶ 42. MassDEP did not exercise its discretion to implement a PIP, having determined that it would not be necessary "because the purpose of the project is to improve the existing field's usability to provide more opportunities for the local communities to continue to practice, play, and view their sports/games on the school property while minimizing impacts to the Buffer Zone to the BVW." Ferrick PFT, ¶ 42.

The Petitioners did not offer any testimony on this issue which constitutes a waiver by the Petitioners to any further administrative review before the Department as well as appeal to court of this issue. As a result, the Petitioners have not demonstrated by a preponderance of the evidence that MassDEP failed to reasonably consider

environmental justice principles set forth in the EEA Environmental Justice Strategy of 2024 and MassDEP's Environmental Justice Policy as implemented pursuant to the 2021 EEA Environmental Justice Policy.

CONCLUSION

Based upon my review of the administrative record, as detailed above, the Petitioners have not met their burden to demonstrate by a preponderance of the evidence that the SOC fails to comply with MWPA and the Wetlands Regulations. I find that the Department has (1) adequately conditioned the proposed Project such that the activities in the Buffer Zone to BVW will not adversely affect the BVW; (2) correctly determined that the Project qualifies as "Redevelopment" as set forth in 310 CMR 10.04, and that the SOC satisfies the requirements for a Redevelopment project at 310 CMR 10.05(6)(k)7; (3) correctly determined that the project complies with 310 CMR 10.05(6)(k)1, 2, and 3, and Standards 1, 2, and 3 as stated in Volume 1, Chapter 1 of the Department's Stormwater Handbook, and as a matter of law, to the extent applicable, Standards 4, 5, 6, 8, 9, and 10 are met because these standards were not challenged by the Petitioners; and (4) reasonably considered the environmental justice principles set forth in the EEA Environmental Justice Strategy of 2024 and MassDEP's Environmental Justice Policy as implemented pursuant to the 2021 EEA Environmental Justice Policy. Accordingly, I recommend that the Department's Commissioner issue a Final Decision affirming the SOC.

Date: June 18, 2026



Margaret R. Stolfa
Presiding Officer

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

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