

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

February 3, 2017

In the Matter of
Suffolk Square Associates III
Limited Partnership

OADR Docket No. 2016-031
DEP File No.: Waterways Application
No. W16-4721-N, Written Determination
Malden, MA

RECOMMENDED FINAL DECISION

INTRODUCTION

In this appeal, the Friends of the Malden River (“FoMR”) and Teresa Bello (“Bello”) (collectively “the Petitioners”), challenge a Written Determination (“the Determination”) that the Boston Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to Suffolk Square Associates III Limited Partnership (“the Applicant” or “SSA III”) on October 31, 2016, pursuant to the Massachusetts Public Waterfront Act, G.L. c. 91 (“Chapter 91” or “c. 91”), and the Waterways Regulations at 310 CMR 9.00. The Determination authorized the Applicant’s proposed project, including demolition of an existing unlicensed single-story industrial building partially located on filled tidelands (the Department approved the demolition on March 14, 2016) and redevelopment of the project site to include a five-story, 65-foot tall office/retail building, 171 surface parking spaces, internal roadway circulation, underground utilities and stormwater system, public open space with landscaping, and a ten-foot wide by approximately 423-foot long publicly accessible waterfront walkway

along the Malden River (“the Project”). Written Determination at 1-2. The office/retail building will be located outside of c. 91 jurisdiction; only a portion of the parking spaces are located within c. 91 jurisdiction. Id. The walkway will connect an existing waterfront walkway on an abutting property to the existing sidewalk on Medford Street near the Malden River Bridge. Id. Only a portion of the proposed walkway is within c. 91 jurisdiction. The Applicant also proposes to build a five-foot by 93-foot connecting walkway through a portion of the property outside of c. 91 jurisdiction. Id. at 2.

The project site is located at 295 Canal Street aka 171 Medford Street in Malden, Massachusetts. The project site consists of 2.24 acres, of which approximately 14% is filled tidelands within c. 91 jurisdiction, with the remaining approximately 86% of the project site located outside of c. 91 jurisdiction on uplands. Id. at 1. The site includes unlicensed existing fill in historic tidelands. Revised Chapter 91 License Application Cover Letter, July 11, 2016, at 1. The project site was used for industrial purposes for over seventy years.

FoMR and Bello object to the Determination, contending that the Project affords insufficient public benefits, to the detriment of: (1) underserved communities and the local community’s need for open space, (2) ease of access to the Malden River, and (3) a walkway consistent with other development along the Malden River. Specifically, FoMR and Bello want the Department to revise the Determination to require the Applicant to provide more amenities and design improvements that would make the proposed waterfront walkway consistent with “the existing and planned area network of multi-use public walkways.” FoMR/Bello Pre-Hearing Statement at 1. Among these additional amenities and design changes are:

- A paved walkway instead of stone dust;
- Significant and appropriate landscaping;

- An informational kiosk describing the history of the river and nearby historic areas;
- Signage at the entrance to the walkway providing rules for use and hours;
- A trash receptacle;
- Adequate lighting to ensure safe nighttime use;
- At least two benches; and
- A minimum of two parking spaces dedicated for the exclusive use of walkway users.

Id. at 1-2. Additionally, in their Notice of Claim for Adjudicatory Hearing (“Notice of Claim” or “Appeal Notice”), FoMR and Bello state “[w]e feel strongly that the rights of the community are not limited to the minimum access path proposed by the Applicant, and understand that other public benefits have been required by Chapter 91 in other instances.” Notice of Claim at 1. Among the benefits they request are public boat landings, public restrooms, public waterfront transportation facilities and services, parkland and boat ramps. Id. FoMR and Bello request that similar benefits be included in the c. 91 license for the proposed project. Id.

The Applicant has moved to dismiss the appeal on the grounds that the Petitioners lack standing and have failed to state a claim for which relief can be granted. The Department concurs. For the reasons discussed below, I recommend that the Department’s Commissioner issue a Final Decision dismissing the appeal and directing the Waterways program to issue the Chapter 91 License for the project consistent with the Written Determination. FoMR, as an unincorporated association, lacks the capacity to file the appeal. Additionally, FoMR has failed to present facts demonstrating that it is aggrieved by the Written Determination. Bello has now stated that she does not wish to argue that she has standing, effectively voluntarily withdrawing

her appeal as an individual, and therefore I also recommend that the Department's Commissioner issue a Final Decision incorporating Bello's voluntary withdrawal and dismissing her appeal. Finally, I recommend that the Department's Commissioner dismiss the appeal for failure to state a claim for which relief can be granted. The Petitioners fail to plead specific facts describing how the project as approved in the Written Determination does not comply with the applicable regulations.

BACKGROUND/FACTS

Because the Project will be built on land subject to the Massachusetts Public Waterfront Act, M.G.L. c. 91, SSA III was required to obtain the Chapter 91 License from the Department authorizing the development project at issue. The Department issued a Jurisdictional Determination on January 28, 2016 that established the extent of historic tidelands at the Property. See DEP File No. JD15-4541, referenced at page 1 of the SSA III's Application for Chapter 91 License and Variance, April 7, 2016. SSA III filed its Chapter 91 License Application with the Department on April 7, 2016. SSA III concurrently filed an Environmental Notification Form with the Secretary of Energy and Environmental Affairs pursuant to the Massachusetts Environmental Policy Act (MEPA) regulations, 301 CMR 11.03(3)(b)5, because the Property includes filled tidelands. A Public Notice of the license application was published in the Malden Evening News on July 19, 2016 and the Department conducted a public hearing on the application on July 28, 2016 at Malden City Hall. A public comment period remained open until August 19, 2016. FoMR submitted written comments on the application jointly with the Mystic River Watershed Association (MyRWA) on August 19, 2016. The Massachusetts Division of Marine Fisheries also submitted written comments, as did Bello on her own behalf. SSA III responded to the comments in a letter to the Department dated August 25, 2016.

In its Written Determination issued on October 31, 2016, the Department made the following findings:

- The project consists of both water-dependent and non-water dependent uses; the application was processed as a nonwater-dependent project;
- 14% of the 2.24-acre project site consists of filled Private Tidelands; 86% consists of non-jurisdictional uplands;
- The required public notice was published in the Malden Evening News and the Environmental Monitor;
- The Applicant submitted relevant documentation of compliance with other regulatory requirements;
- The project site is a “disposal site” as defined by the MCP;
- The project as conditioned complies with all applicable standards of the Waterways regulations, including the provisions for nonwater-dependent use projects at 310 CMR 9.51 through 9.52;
- The project as conditioned serves a proper public purpose that provides greater benefit than detriment to the rights of the public in tidelands in accordance with 310 CMR 9.31(2)(b); and
- The project as conditioned will incorporate appropriate feasible measures to avoid or minimize potential environmental impacts from the construction and operation of the project.

The Department intends to approve the proposed structures and uses with conditions, in a final C. 91 license. Written Determination at 4.

On November 21, 2016 the Petitioners filed this appeal. The Appeal Notice was filed jointly by Hubert Holley for the Friends of the Malden River and by Teresa Bello, a City of Malden Resident.¹ It indicates that public comments were filed by them with the Department prior to the Department issuing the Written Determination. There are no facts in the Appeal Notice describing how the Petitioners are aggrieved by the Written Determination. Additional facts set forth in their pre-hearing statement and their opposition to SSA III's Motion to Dismiss are described below, and I have included those in my analysis.

DISCUSSION

I. Applicable Law

A. Standard of Review

In deciding a Motion to Dismiss, I assume that all of the facts alleged in the Appeal Notice are true. 310 CMR 1.01(11)(d)(2). I include within my review the allegations in the Appeal Notice and the assertions made within FoMR's response to the Motion to Dismiss and its pre-hearing statement. 310 CMR 9.17(1) describes who may bring an appeal of the Department's waterways decisions. 310 CMR 1.01(6)(b) and 310 CMR 9.17(3) set forth the pleading requirements applicable to this appeal.

B. Aggrievement

310 CMR 9.17(1)(b) affords appeal rights to "any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period." 310 CMR 9.02 defines an "aggrieved person" as:

any person who, because of a decision by the Department to grant a license or permit, may suffer an injury in fact, which is different either

¹ Bello has stated her intent not to pursue the appeal as an individual. The discussion below, therefore, pertains only to the standing of FoMR.

in kind or magnitude, from that suffered by the general public and which is within the scope of the public interests protected by M.G.L. c. 91 and c. 21A.

Id. 310 CMR 9.17(3)(b) requires a person claiming to be aggrieved to include in their Appeal Notice “...the specific facts that demonstrate that the party satisfies the definition of ‘aggrieved person’ found in 310 CMR 9.02.”

C. Stating a Claim for Relief

310 CMR 1.01(6)(b) requires that every Notice of Claim (Appeal Notice) state “specifically, clearly and concisely the facts which are grounds for the appeal, the relief sought, and any additional information required by applicable law or regulation.” 310 CMR 9.17(3) sets forth the additional pleading requirements for an Appeal Notice challenging the Department’s decision involving a Waterways license. Subsection (d) of this regulation makes clear that the contents of an Appeal Notice must contain

a clear and concise statement of the facts which are grounds for the proceeding, the specific objections to the Department's written determination, draft license, draft permit, license or permit, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written determination, license, or permit.

II. Standing

A. The Jurisdictional Nature of Standing

Standing “is not simply a procedural technicality.” Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667, 672 (1975); In the Matter of Sawmill Development Corporation, OADR Docket No. 2014-016, Recommended Final Decision (June 26, 2015), at 13, adopted as Final Decision (July 7, 2015). Rather, it “is a jurisdictional prerequisite to being allowed to press the merits of any legal claim.” R.J.A. v. K.A.V., 34 Mass. App. Ct. 369, 373 n.8 (1993); Ginther v. Commissioner of Insurance, 427 Mass. 319, 322 (1998) (“[w]e treat standing as an issue of

subject matter jurisdiction [and] . . . of critical significance”); see also United States v. Hays, 515 U.S. 737, 115 S.Ct.2431, 2435 (1995) (“[s]tanding is perhaps the most important of the jurisdictional doctrines”). As noted above, FoMR claims to have standing as a “person aggrieved” by the Written Determination. As I noted in the Pre-Hearing Conference Report and Order issued on December 23, 2016, if FoMR satisfies the jurisdictional condition then the case may proceed to the merits. Conversely, if the condition is not met, then the appeal will be dismissed for lack of standing.

B. FoMR does not have standing as a “person aggrieved”

1. FoMR is not a “person”

FoMR claims standing to appeal as a “person aggrieved” as defined in the Waterways regulations at 310 CMR 9.17(1)(b). FoMR argues that the following facts support its claim. FoMR is an unincorporated association. It has a mission statement, holds regular meetings and keeps minutes of those meetings. FoMR’s Arguments Against Applicant’s Motion to Dismiss at 1. It presents itself to the public as an organization, is an organizational member of the Mass. Rivers Alliance, and maintains an active website. Its comments on the Project were submitted jointly with the Mystic River Watershed Association (“MyRWA”); MyRWA is FoMR’s fiscal agent. In 2015, FoMR petitioned Honeywell to initiate a Public Involvement Process for a property on the Malden River. FoMR argues that it should not be penalized as a relatively new organization “simply because it hasn’t yet invested time and money to incorporate or seek 501(c)(3) nonprofit status....” Id. FoMR asserts that its recent minutes “will reflect an interest in prioritizing corporate organization.” Id. at 2.

SSA III argues that affording FoMR the rights but not the responsibilities of incorporation would be contrary to established precedent, especially where there has been no effort to incorporate. As noted above, FoMR acknowledges that it is not a legal entity.

As a starting point, the law is well established that an unincorporated association such as FoMR cannot be a party to litigation. Save the Bay, Inc. v. Department of Public Utilities, 366 Mass 667, 675 (1975); Board of Health of Sturbridge v. Board of Health of Southbridge, 461 Mass. 548, 560-61 (2012); see also In the Matter of Massachusetts Department of Transportation Highway Division, Recommended Final Decision, 2012 MA ENV LEXIS 54 (April 26, 2012). Even though the definition of “person” in 310 CMR 9.02 includes an association, the case law is clear that an unincorporated association is not included within the definition. The Presiding Officer in the MassDOT case cited above noted that the rules related to standing do not necessarily reward the involvement of engaged citizens. There is no question that Mr. Holley, Ms. Bello, and the members of FoMR have a sincere interest in realizing additional benefits for the community in Malden from the Project above and beyond those required by the Written Determination. They have been engaged in the licensing process through their submission of written comments and their appearance at public hearings, and it is clear that they believe that a riverfront walkway with significantly more amenities and more akin to other walkways created by other developers along the Malden River should be required. Notwithstanding their deeply felt commitment to the community and to the Malden River and its surroundings, the applicable law is clear. I find that as an unincorporated association, FoMR lacks standing to appeal the Written Determination because it is not a “person” with the capacity to initiate an appeal. As a result of this finding it is not necessary to discuss aggrievement, but I do so below in order to

make clear that even if FoMR could bring the appeal, it has failed to demonstrate that it is aggrieved.

2. FoMR has not alleged facts supporting a claim of aggrievement

310 CMR 9.17(1)(b) allows “any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period” to file an administrative appeal challenging the Department’s grant of a c. 91 License.

310 CMR 9.02 defines an “aggrieved person” as

any person who, because of a decision by the Department to grant a license or permit, may suffer an injury in fact, which is different either in kind or magnitude, from that suffered by the general public and which is within the scope of the public interests protected by M.G.L. c. 91 and c. 21A.

Id.

“A ‘person aggrieved’ as that term is used in [310 CMR 9.02 and 310 CMR 9.17(1)(b)] must assert ‘a plausible claim of a definite violation of a private right, a private property interest, or a private legal interest. . . . Of particular importance, the right or interest asserted must be one that the statute . . . intends to protect.’” In the Matter of Entergy Nuclear

Operations, Inc. and Entergy Nuclear Generation Co., OADR Docket No. 2015-009,

Recommended Final Decision (February 5, 2016), 2016 MA ENV LEXIS 3, at 25, adopted as

Final Decision (February 25, 2016); In the Matter of Ronald and Lois Enos, OADR Docket

No. WET-2012-019, 2013 MA ENV LEXIS 21, at 16-17, adopted as Final Decision, 2013 MA

ENV LEXIS 20; In the Matter of Norman Rankow, OADR Docket No. WET-2012-029, 2013

MA ENV LEXIS 45, at 26-27, adopted as Final Decision, 2013 MA ENV LEXIS 79; In the

Matter of Town of Southbridge Department of Public Works, OADR Docket No. WET-2009-

022, Recommended Final Decision, at p. 4 (September 18, 2009), adopted as Final Decision

(October 14, 2009); In the Matter of Onset Bay Marina, OADR Docket No. 2007-074,

Recommended Final Decision (January 30, 2009), 16 DEPR 48, 50 (2009), adopted as Final Decision (April 1, 2009); Compare, Standerwick v. Zoning Board of Appeals of Andover, 447 Mass. 20, 27-28 (2006) (definition of “person aggrieved” under G.L. c. 40B).

“To show standing, a party need not prove by a preponderance of the evidence that his or her claim of particularized injury is true.” Entergy Nuclear Operations, Inc., *supra*, 2016 MA ENV LEXIS 3, at 27. As the Massachusetts Appeals Court explained in Butler v. Waltham, 63 Mass. App. Ct. 435 (2005):

[t]he “findings of fact” a judge is required to make when standing is at issue . . . differ from the “findings of fact” the judge must make in connection with a trial on the merits. Standing is the gateway through which one must pass en route to an inquiry on the merits. When the factual inquiry focuses on standing, therefore, a plaintiff is not required to prove by a preponderance of the evidence that his or her claims of particularized or special injury are true. “Rather, the plaintiff must put forth credible evidence to substantiate his allegations. [It is i]n this context [that] standing [is] essentially a question of fact for the trial judge.”

63 Mass. App. Ct. at 441; see also In the Matter of Hull, Docket No. 88-22, Decision on Motion for Reconsideration of Dismissal, 6 MELR 1397, 1407 (July 19, 1999) (party must state sufficient facts which if taken as true demonstrate the possibility that injury alleged would result from the allowed activity); Enos, 2013 MA ENV LEXIS 21, at 17-18; Rankow, *supra*, 2013 MA ENV LEXIS 45, at 28-29; compare Standerwick, *supra*, 447 Mass. at 37 (plaintiffs’ case appealing zoning decision cannot consist of “unfounded speculation to support their claims of injury”).

To survive a Motion to Dismiss for lack of standing as a “person aggrieved” pursuant to 310 CMR 9.17(1)(b), FoMR was required to allege that it submitted written comments on SSA III’s application for the c. 91 license within the public comment period (which it did) and plead specific facts demonstrating aggrievement. Simply, FoMR was required to allege facts that, if

true, demonstrate that the Project as approved by the Department's Determination might cause FoMR to suffer an injury in fact which would be different either in kind or magnitude from an injury, if any, that the general public could suffer and which is within the scope of the public interest protected by G.L. c. 91 and G.L. c. 21A. 310 CMR 9.02; 310 CMR 9.17(1)(b). If FoMR met that threshold, then it could proceed to a hearing on the merits of whether the Department properly issued the c. 91 License to SSA III. Butler v. Waltham, 63 Mass. App. Ct. 435, 441 (2005). FoMR has not met that threshold.

FoMR claims that it is aggrieved because the Written Determination favors the Applicant and

prevents FoMR from achieving its longstanding goal of achieving, for the environmental justice community, for which [it] advocate[s], an inviting, well designed, well maintained and continuous river path in Malden that is consistent with the path now designed for the Everett section of the Malden River, and that under review by National Grid for its site at 170 Medford Street directly across from 295 Canal Street, and that described in the Urban Land Institute report of June 2015, and that exists at RiversEdge in Medford.

FoMR further argues, in support of its claim of aggrievement, that the project lacks proper lighting that would enable nighttime use, the proposed path is too narrow for side by side walking or passing in opposite directions, and the lack of dedicated handicap parking discriminates against persons with physical disabilities. The primary basis for this appeal is the design of the publicly accessible walkway. See Petitioners' Prehearing Statement, December 15, 2016 at 1. As its Prehearing Statement makes clear, FoMR seeks a significantly more robust walkway than what is proposed by SSA III and what the Department intends to require in the c. 91 license.

In moving to dismiss, SSA III argues that FoMR is neither a "person aggrieved" nor a "Ten Residents" group. On the first point, SSA III argues that FoMR cannot show that it will

suffer an injury in fact different in kind or magnitude from an injury suffered by the general public resulting from the Written Determination. Motion to Dismiss at 2. The Applicant cites to the Petitioner's failure to plead specific facts to support a claim of a specific and special injury that it will suffer. Id. On the second point, the Applicant argues that the Notice of Claim is signed by only two people, Hubert Holly and Teresa Bello. Holley claims to be signing on behalf of FoMR but provides no support for that assertion. Id. at 4. According to SSA III, even if Holley were able to show that he properly signed the Notice of Claim on behalf of FoMR, only five members of that group signed the comment letter submitted to the Department, a number insufficient to satisfy the requirement of 310 CMR 9.17(1)(c). Id.²

The Department supports the Motion to Dismiss. Like SSA III, the Department argues that FoMR has not offered any evidence of any injury it has suffered or might suffer as a result of the Written Determination, much less an injury unique and different from an injury suffered by the public at large, and therefore it has not demonstrated that it have standing as a "person aggrieved". Department's Response to Applicant's Motion to Dismiss at 2.

SSA III and the Department correctly identify the deficiencies in FoMR's pleadings. Notably absent from them are specific factual allegations of injury. Such allegations are essential for a claim of standing based on aggrievement to survive a motion to dismiss. The allegations and assertions in the Appeal Notice, FoMR's pre-hearing statement, and in its opposition to the motion to dismiss present purported claims of injury to the Malden community at large, but no claims specific to FoMR, and even those claims fail to specify any injury. FoMR has not set

² Although it seemed clear to me that the Notice of Claim was filed by Holley as a representative of FoMR and not in his individual capacity, at the Pre-Hearing Conference Holley discussed amending the Appeal Notice by motion to include additional petitioners and it was reasonable, therefore, in that context, for SSA III to interpret FoMR's response to the Motion to Dismiss as an amendment to the Notice of Claim to try to add a party. From the outset I considered FoMR to be one of two petitioners bringing this case as that is how the Notice of Claim was captioned. Regardless, SSA III clearly made the point noted above that FoMR is not a legal entity with the right to bring an appeal.

forth a plausible claim of a definite violation of a private right, a private property interest, or a private legal interest that c.91 is intended to protect. See In the Matter of Entergy Nuclear Operations, Inc. and Entergy Nuclear Generation Co., supra. Neither does FoMR allege any damage to the environment. Therefore, I find that FoMR cannot demonstrate that it is aggrieved by the Written Determination.

III. FoMR Has Failed To State A Claim For Which Relief Can Be Granted

In Section I, above at p. 7, I set forth the pleadings requirements contained in 310 CMR 9.17(3)(d). To state a claim upon which relief can be granted, a Petitioner in an appeal must satisfy two requirements. First, it must state in its Appeal Notice the specific objections to the Department's written determination. Then, it must state the relief it seeks through the adjudicatory hearing, including the specific changes desired in the final written determination. A Petitioner cannot obtain those desired changes if it does not identify any specific ways in which the Written Determination does not comply with the regulations. In this case, FoMR has made plain what it wants. What it has not done is set forth specific objections to the Written Determination, other than a belief that the Department should have required more from the Applicant.

The regulatory standards applicable to the proposed project are contained in 310 CMR 9.31(2)(b) and 310 CMR 9.51 through 9.52. 310 CMR 9.31(2) provides in part:

Proper Public Purpose Requirement. No license or permit shall be issued by the Department for any project on tidelands or Great Ponds, except for water-dependent use projects located entirely on private tidelands, unless said project serves a proper public purpose which provides greater benefit than detriment to the rights of the public in said lands.

Subsection (b) states in relevant part that the Department shall presume the foregoing standard is met if the project is a nonwater-dependent use project which

complies with the standards for conserving and utilizing the capacity of the project site to accommodate water-dependent use, according to the applicable provisions of 310 CMR 9.51 through 9.52; and complies with the additional standard for activating Commonwealth tidelands for public use, according to the applicable provisions of 310 CMR 9.53.

In moving to dismiss for failure to state a claim for which relief can be granted, SSA III points out that FoMR has not stated in its Appeal Notice how the Written Determination is inconsistent with the regulations cited above, or what particular rights will be impaired by the granting of this license. Motion to Dismiss at 5; Opposition to Amending the Appeal at 5-6. The Department likewise cites these deficiencies in the pleadings. Department's Response to Motion for Dismissal at 3. In the Department's view, the list of desired amenities sought by the Petitioners does not state with any clarity how the terms and conditions of the Written Determination are inconsistent with the applicable regulations. "Without asserting how the Written Determination falls short of the regulations and without a clear listing of conditions to correct any alleged deficiencies, the Petitioners have failed to state a claim cognizable under c. 91. Department's Response to Applicant's Motion to Dismiss at 3. The Department correctly notes that while FoMR alleges that the project's walkway does not comply with the requirements of 310 CMR 9.52(1)(b)1 because it is only 7'6" wide, the Written Determination in fact requires the walkway to be 10' wide by 423' long.

FoMR has not offered any argument in opposition. I agree with SSA III and the Department that FoMR's pleadings, including the Notice of Claim and the pre-hearing statement, are deficient because they lack a clear and concise statement of the shortcomings in the Written Determination. Absent allegations describing how the Written Determination fails to meet the requirements of any regulation, FoMR has failed to state a claim for relief.

IV. CONCLUSION

For all of the foregoing reasons, I recommend that the Department's Commissioner issue a Final Decision (1) dismissing FoMR's appeal for lack of standing and for failure to state a claim upon which relief can be granted; (2) incorporating Bello's voluntary withdrawal, and dismissing her appeal; and (3) approving the issuance of a Final c. 91 license consistent with the Written Determination, as conditioned.

Date: 2/3/2017



Jane Rothchild
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 his 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 his sole discretion, directs otherwise.

SERVICE LIST

IN THE MATTER OF:

**SUFFOLK SQUARE ASSOCIATES III
LIMITED PARTNERSHIP**

Docket No. 2016-031

MALDEN

REPRESENTATIVE

PARTY

Friends of the Malden River
c/o Hubert E. Holley
28 Avon Street
Malden, MA 02148
hueholley@aol.com

PETITIONER

Teresa Bello
28 Avon Street, Apt. 2
Malden, MA 02148
maldenteresa@gmail.com

PETITIONER

Brian G. Cafferty, Esq.
Combined Properties, Inc.
300 Commercial Street, Suite 25
Malden, MA 02148
bcafferty@combinedproperties.com

APPLICANT

Stacy Minihane
Beals & Thomas, Inc.
32 Court Street
Plymouth, MA 02360
sminihane@bealsandthomas.com

APPLICANT

David Bragg, Esq.
Senior Counsel
MassDEP Office of General Counsel
One Winter Street
Boston, MA 02108
david.bragg@state.ma.us

DEPARTMENT

Cc:

Ben Lynch, Section Chief
Waterways Regulation Program
MassDEP
Bureau of Water Resources

DEPARTMENT

One Winter Street
Boston, MA 02108
ben.lynch@state.ma.us

Frank Taormina, Regional Planner
Waterways Regulation Program
MassDEP
Bureau of Water Resources
One Winter Street
Boston, MA 02108
frank.taormina@state.ma.us

Leslie DeFillipis, Paralegal
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108
Leslie.defillipis@state.ma.us