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Laura Johnson
Massachusetts Audubon Society
208 South Great Road
Lincoln, MA 01773

Bob Zimmerman
Charles River Watershed Association
190 Park Road
Weston, MA 02493

Dear Laura and Bob:

I write in response to our recent discussions relative to the Department of Environmental Protection's proposed regulatory changes to the wetlands appeals process. Thank you for your thoughtful input on the draft regulations during the public comment period.

As you know well, environmentalists and the regulated communities alike have expressed universal dissatisfaction with the lengthy administrative appeals process for wetlands permits – notably the intermediate adjudication process that takes in between an appeal to MassDEP for review of a local Conservation Commission decision and an ultimate appeal of a MassDEP decision to Superior Court. We have heard a strong desire from environmental advocates for greater and earlier access to case information, less procedural delay in the adjudication process, and a stronger requirement for early access for site visits. Governor Patrick has also set a goal of rendering permit decisions within six months. In addition, the current adjudication process is extraordinarily time consuming for MassDEP staff and serves to divert resources away from enforcement and other priority regulatory matters.

In light of persistent concern from all parties, Acting Commissioner Arleen O'Donnell and I convened an advisory committee of lawyers from the environmental and regulated communities to review the wetland appeal process and recommend improvements. The committee's recommendations included several important reforms that will strengthen

and formalize the process for all parties. These include measures to promote the timely flow of information between the parties, more definitive timeframes that still allow flexibility for review of major and complex projects, and increased transparency.

The committee's recommendations also included a provision to address the potential misuse of the adjudicatory process by parties who are not directly impacted by the given project. This provision would no longer give any ten citizens residing in the community where the land is located the right to initiate an adjudicatory review of a MassDEP wetlands decision. This change would bring the regulation into closer conformity with the Wetlands Protection Act and the Administrative Procedures Act, in which the Legislature granted ten citizens the right to appeal Conservation Commission decisions, but did not give ten citizens the right to initiate appeals of superseding DEP wetland decisions. This recommendation received the majority of public comments and expressions of concern.

We take the concerns raised by the environmental community seriously. Furthermore, Governor Patrick places a high priority on citizen participation in governmental decisions. Therefore, I have chosen not to accept this provision of the draft regulation regarding ten citizen appeals. The final regulations, which will be issued by late September, will maintain the ability of ten residents to request an adjudication process and will retain the other reform recommendations made by the advisory committee.

The Patrick Administration will continue to focus on improving the wetlands appeals process for all parties as we move forward. Thank you for your support of this important set of reforms.

Sincerely,



Ian A. Bowles
Secretary