

August 13, 2007

Hon. Deval Patrick
State House
Room 360
Boston, MA 02133

Re: *Protection of Citizens Rights under the Wetland Protection Act*

Dear Governor Patrick:

The undersigned organizations are writing to urge you to retain the longstanding right of ten residents to appeal wetlands decisions for an adjudicatory hearing. We believe the administration's proposed changes to the wetlands regulations are counter to your stated commitment to increase civic engagement and, in fact, send a strong message that citizen involvement in wetlands decision-making is to be discouraged. The proposed change eliminating resident appeals is both unwarranted and unwise.

The example that has been used to explain this action is the length of time the administrative appeal decision took in Hoosac Wind. The delays in that case, however, were not the fault of the ten-resident group, whose attorney responded in a timely manner to filing, hearing and briefing schedules by the Division of Administrative Appeals (DALA). The solution lies in tightening up the administrative appeals process and adequately funding DALA and the Department of Environmental Protection, rather than targeting citizen appeals for elimination. All appeals should be heard and decided within a reasonable time.

But regardless of whether a project that will alter wetland resources is considered "good" or "bad" by your administration, townspeople should be able to seek review of DEP's actions by an independent administrative magistrate. Citizen participation is only truly meaningful if there is a right to seek review of faulty agency decisions, and as one person wrote on your website about this issue, "the citizens appeal is really the last check left on developers."

Our wetlands support vital public interests. To quote DEP: "the public interests [wetlands] served include flood control, prevention of pollution and storm damage, and protection of public and private water supplies, groundwater supply, fisheries, land containing shellfish, and wildlife habitat." We cannot understand the focus on abridging the capacity of the *public* who are served by these interests to protect them.

Massachusetts has a proud and important tradition of according adjudicatory hearings to those seeking review of agency decisions as a fail-safe for bad resource management decisions that can harm us all. Ten residents (as well as abutters) have had the right to appeal DEP wetlands decisions for 35 years; we believe it is bad policy to single them out for elimination now. The ability of citizens to challenge DEP wetland decisions results in better permits and is integral to strong environmental protection.

In reality, the aggressive timeframes and procedural requirements being proposed for wetland appeals will pose significant hurdles for residents, who are already outgunned by the legal and financial resources of developers. Citizens will have to expend substantial resources at the outset for consultants and experts because production of full proof -- all testimony and exhibits -- to support the appeal will be required soon after the appeal is filed. In our experience, citizens do not lightly exercise their right to administrative appeals, which are both time-consuming and costly. Nor are they responsible for the delays at DALA. Notably, the prescreening process adopted two years ago by DEP has resulted in 60% of wetland cases being resolved at this initial stage.

Allowing conservation commissions, but not residents, to appeal is not an adequate substitute. Because conservation commissions need approval to appeal and retain counsel, political considerations and local fiscal constraints often come into play. Moreover, while their interests can align with those of residents, this is not always the case. Additionally, non-profit environmental groups, even if able to meet the legal requirement of "aggrieved" in a wetland case, can not be expected to fill the shoes of citizens: they simply do not have the resources.

Massachusetts, which was the first state in the nation to adopt a wetlands protection law, has always invested its citizens in the process of wetlands protection. We should continue to ensure strong wetlands protection by providing ten residents of a town the right to challenge inadequate permit conditions by DEP. We ask you to step in to prevent the elimination of citizens' administrative appeal rights.

Sincerely,

Heather Clish, Deputy Director of Conservation Appalachian Mountain Club	Korin N. Petersen, Advocacy Director The Coalition for Buzzards Bay
Maggie Geist, Executive Director Association to Preserve Cape Cod	Chelsea Reiff Gwyther, Executive Director Connecticut River Watershed Council
J. Grant Monahan, President Belmont Citizens Forum	Peter Shelley, Vice President, Conservation Law Foundation
Jane Winn, Executive Director Berkshire Environmental Action Team	Mettie Whipple, Executive Director Eel River Watershed Association, Ltd.
Robert L. Zimmerman, Jr., Executive Director Charles River Watershed Association	Nancy Goodman, Vice-President for Policy Environmental League of Massachusetts
Becky Smith, Water Organizer Clean Water Action	Mike Ryan, Executive Director Friends of the Middlesex Fells Reservation
	Tom Palmer, President Friends of the Blue Hills

Kerry Mackin, Executive Director
Ipswich River Watershed Association

Pine duBois, Executive Director
Jones River Watershed Association

Deborah M. Dineen, Vice-President,
MA Association of Municipal Conservation
Professionals

E. Heidi Ricci, Senior Policy Analyst
Mass Audubon

Bernard J. McHugh, Coordinator
Mass. Land Trust Coalition

Lora Wondolowski, Executive Director
Massachusetts League of Environmental
Voters

James Bryan McCaffrey, Director
Massachusetts Sierra Club

Christine Tabak, Executive Director
Merrimack River Watershed Council, Inc.

Caroline Broderick, Executive Director
Mystic River Watershed Association.

Elizabeth Ainsley Campbell, Executive
Director
Nashua River Watershed Association

Ian Cooke, Executive Director
Neponset River Watershed Association

Kyla Bennett, Director
N. E. Public Employees for
Environmental Responsibility

William E. Brumback, Conservation Director
New England Wild Flower Society

Samantha Woods Executive Director
North and South Rivers Watershed Association

Forsyth Kineon, Executive Director
Organization for the Assabet River

Donald H. Bade, President
Parker River Clean Water Association

Polly Bradley
Safer Waters in Massachusetts (SWIM)

Nancy Bryant, Executive Director
SuAsCo Watershed Community Council

Frederica Gillespie
Sudbury River Watershed Organization

Kristin DeBoer, Executive Director
The Kestrel Trust

Robert W. Davis, Vice-President Advocacy
Taunton River Watershed Alliance, Inc.

Wesley T. Ward, Acting President
The Trustees of Reservations

Eileen R. Simonson and Alexandra Dawson,
Co-Executive Directors
Water Supply Citizens Advisory Committee

Gay Gillespie, Executive Director
Westport River Watershed Alliance

cc: Ian A. Bowles
Arleen O'Donnell