



Advocacy Department

Six Beacon Street, Suite 1025 ▲ Boston, Massachusetts 02108
tel 617.962.5187 ▲ fax 617.523.4183 ▲ email jclarke@massaudubon.org

October 2, 2015

Martin Suuberg, Commissioner
The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Department of Environmental Protection
100 Cambridge St., Suite 900
Boston, MA

Re: Executive Order No. 562

Dear Commissioner Suuberg:

Thank you for appointing Mass Audubon to the Department of Environmental Protection (DEP) *Executive Order Number 562* (EO) Stakeholder Advisory Group; convening the first meeting on September 4, 2015; and providing the opportunity to comment on the EO as issued by Governor Baker on March 31, 2015. Mass Audubon supports periodic transparent public review of state agency regulations which play a significant role in protecting the public health, safety, environment, and welfare of the residents of the Commonwealth

As we recommended to you at the September 4th meeting and as you agreed, DEP:

1. Will not amend or rescind any of its regulations solely because their provisions exceed federal standards; and
2. Will adhere to the nine “guiding principles” used by DEP as an essential component to its *Regulatory Reform* project in 2012. The principles were agreed to by a diverse group of advisory stakeholders, including Mass Audubon, and are repeated for emphasis below:
 - *Proposed reforms will not weaken or undermine environmental protection standards. Changes that reduce direct oversight will be coupled with robust compliance and enforcement mechanisms.*
 - *Proposed regulatory or permitting changes are aimed primarily at helping MassDEP manage its responsibilities within our current staffing levels, and every proposed reform measure will result in some time savings for the agency.*
 - *All identified reforms can be implemented directly by MassDEP, without the need for legislative changes.*

- *None of the proposed reforms will transfer new responsibilities to municipalities, as our cities and towns are also strained by budget decreases.*
- *None of the proposed reforms will alter our obligations under our federal funding agreements with the United States Environmental Protection Agency (U.S. EPA) and therefore proposed reforms are largely concentrated on “state-only” programs such as wetlands, waterways, wastewater, and solid waste.*
- *None of the proposed reforms are intended to reduce public process, and no reforms to appeals processes have been proposed. MassDEP is committed to maintaining opportunities for public involvement and to upholding established rights to citizen appeals. In addition, MassDEP has already made significant success in reducing timelines for adjudicatory appeals, including wetlands appeals in particular, as part of the agency’s prior streamlining efforts.*
- *Many of the proposed reforms incentivize better environmental outcomes by reducing permitting procedures for environmentally beneficial projects or for avoiding areas with sensitive environmental resources.*
- *Many of the proposed reforms seek to eliminate duplication in current permitting reviews. Some of the proposed ideas eliminate duplication within MassDEP’s own programs, and several others reduce duplication with municipal approvals.*
- *Several of the selected reforms seek to reduce direct staff oversight of activities that are routine and that do not pose the most significant environmental protection concerns. This will allow MassDEP staff to instead focus on those activities that deserve the most scrutiny. As noted above, and throughout this Action Plan, changes to reduce direct oversight (e.g., moving from an individual to a general permit process and shifting oversight to external third parties) will be coupled with robust oversight and enforcement measures.*

These principles are well-founded and ensure that the important public health, safety, environmental, and welfare benefits of regulations are upheld while providing clear and consistent standards that do not impose undue burdens on municipalities, regulated entities, or other affected parties.

In addition, Mass Audubon supports and reiterates the September 10, 2015 recommendations to Administration and Finance Undersecretary Madden, and cc’d to you, made by our colleagues at the Massachusetts Rivers Alliance (of which we are a member), the Massachusetts Association of Conservation Commissions, and the Massachusetts Land Trust Coalition Alliance (of which we are a member) regarding standards for managing and protecting the Commonwealth’s water resources, river basins, wetlands, and endangered species. These and other state environmental regulations protect the public interests embodied in natural resources that comprise important aspects of the “common wealth.” As you know, these regulations have been carefully crafted, with substantial input from a wide range of stakeholders, to provide clear standards for protecting these shared natural resources while allowing for reasonable and appropriate uses.

Finally, Mass Audubon recommends that the Wetlands Protection Act (WPA) and related Mass Environmental Policy Act (MEPA) regulations work together to provide the necessary flexibility for the implementation of Ecological Restoration (ER) projects especially in wetlands, over half of which have been substantially degraded or lost since colonial times.

The focus of Mass Audubon's comments to the Executive Office of Energy and Environmental Affairs (EEA) are on the legality of the executive branch rescinding or amending regulations that exceed federal standards. We therefore request, due to the relationship of the DEP-administered WPA and MEPA regulations, that DEP moves the following request forward.

Mass Audubon recommends that EEA, in conjunction with DEP, establish an appropriate MEPA regulatory exemption for ER projects that are permitted under the WPA through a valid ER Order of Conditions that is not appealed to DEP. This change would achieve the original intent of the recent DEP regulatory streamlining initiative referenced above and that Mass Audubon participated in focusing on ER activities. We encourage DEP to work with EEA to eliminate MEPA review for all pro-active ER projects permitted by an ER Order of Conditions. As you know and to our disappointment, the original regulatory streamlining goal of MEPA exemption for these projects was not achieved due to other MEPA review triggers that these projects trip beyond the WPA. Other triggers can include state financing, Ch. 91, Mass Endangered Species Act, and Ch. 253. The proposed MEPA regulatory provision would give a blanket exemption from MEPA review for qualifying ER projects.

DEP's new WPA regulatory structure accommodates this as-is (e.g., notice of ecological restoration applications under the WPA is required in the *Environmental Monitor*).

It appears that the MEPA statutory language specifically allows the EEA Secretary to exempt certain types of projects and permits from MEPA review:

M.G.L. Chapter 30: Section 62E. *Categories of projects and permits not requiring environmental impact reports; establishment Section 62E. With the approval of the secretary of the executive office having jurisdiction over an agency, or if an agency is not within an executive office, with the approval of such agency, the secretary of environmental affairs shall establish general and special categories of projects and permits which shall or shall not require environmental impact reports based upon the scope and duration of potential impacts from the nature, size and location of said projects or portions thereof which require permits.*

Key justification:

- ER projects are noticed in the environmental monitor already, as required under new WPA provisions;
- Eligible ER projects have been screened by DEP and other regulatory and NGO stakeholders for their low potential to have adverse environmental impacts;
- Saves each project money;
- Shortens project timelines by up to two months – valuable for ER projects that are often subject to tight grant funding timelines, and also for those that address public safety and failing infrastructure (most of them); and

- ER projects are already reviewed in great detail by environmental agencies under other authorities (WPA, 401 Water Quality Certification, Chapter 91, Chapter 253, etc.) that include extensive public notification and input opportunities.

Thank you for your attention to these early comments and I look forward to continuing our “stakeholder” dialogue as the department moves forward with its regulatory review under the EO.

Sincerely,



Jack Clarke
Director

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Mass Audubon works to protect the nature of Massachusetts for people and wildlife. Together with more than 100,000 members, we care for 35,000 acres of conservation land, provide school, camp, and other educational programs for 225,000 children and adults annually, and advocate for sound environmental policies at local, state, and federal levels. Founded in 1896 by two inspirational women who were committed to the protection of birds, Mass Audubon is now one of the largest and most prominent conservation organizations in New England. Today we are respected for our science, successful advocacy, and innovative approaches to connecting people and nature. Each year, our statewide network of wildlife sanctuaries welcomes nearly half a million visitors of all ages, abilities, and backgrounds and serves as the base for our work. To support these important efforts, call 800-AUDUBON (283-8266) or visit www.massaudubon.org.

Protecting the Nature of Massachusetts