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Monday, June 7, 2004

Governor Mitt Romney
State House, Room 360
Boston, MA 02133

RE: Frivolous environmental appeals and permitting

Dear Governor Romney:

My wife and I are facing the loss of our property in Aquinnah on the island of Martha's Vineyard due to an exhaustive and frivolous wetlands appeal, despite recent efforts by Commissioner Robert W. Golledge Jr. of the Department of Environmental Protection (the Department) to streamline the wetlands appeals process.

On May 30, 2000, we requested a Superseding Order of Conditions from the Department to construct a driveway, house, septic system and well. Prior to obtaining the Superseding Order, we endured baseless claims at the office of the Massachusetts Environmental Policy Act (MEPA) Unit over the remote possibility of a threatened orchid propagating on or near our property (EOEA No. 12248). These claims were made by an abutter, and sustained by the lumbering response from the Natural Heritage and Endangered Species Program, even though our property was outside any mapped rare species habitats. The cost of overcoming these allegations was over $25,000 in consultant fees.

On March 26, 2001, we received approval to move forward from Secretary Bob Durand and the Department finally issued the Superseding Order which approved the construction of the driveway, house, septic system and well on July 12, 2001.

Since that time, the project has been stalled due to an appeal from the same neighboring property owner. The appeal, filed with the Department's Office of Administrative Appeals (OAA), alleges that the Superseding Order improperly evaluated wetland resources and that our project would have an adverse impact on abutting wetland resources (Matter of Maria Kitras, Trustee, Gorda Realty Trust, DEP Docket No. 2001-114.)

Providing no substantive basis for their appeal, the appellants have successfully stalled us from building on our property. The appeal makes general allegations of remote violations of the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 and its associated regulations. At no time during this appeal have the abutters attempted to show how they are aggrieved by the Superseding Order (the current regulations do not require appellants to demonstrate harm.) The fact of the matter is that the abutters are not aggrieved from our project.

After a hearing at OAA in February 2004, we continue to await a final decision from the administrative judge. Two local permits, a wetland by-law approval and septic system permit, will expire starting July 12th if they are not utilized. We cannot use the permits without an OAA decision and our property will soon lose all value.

Aside from the point that there has been an abuse of process (which we fully intend to pursue in the superior court for damages), it is unacceptable that it has taken the Department three years to reach this point – ***and still not issue a decision.***

When the appeal was first filed in 2001, we were provided a timeline of twelve (12) months for the resolution of Department appeals. See Commissioner's Directive on Time Limits and Timelines for Adjudicatory Appeals, December 29, 2000.

We hope you recognize the urgency of this matter and would appreciate any support you can provide to expedite our situation. Furthermore, we hope our plight demonstrates the desperate need of the Commonwealth to amend the rules governing frivolous wetlands appeals.
Thank you.

Very truly yours,

James J. Decoulos

cc: Daniel B. Winslow, Chief Legal Counsel, Office of the Governor
Ellen Roy Herzfelder, Secretary, Executive Office of Environmental Affairs
Robert W. Golledge Jr., Commissioner, Department of Environmental Protection