



Legislative Action Alert

See page 2

INSIDE

	Page
Government Affairs - Alert	2
New Agricultural Regulations	3
Bylaws & Budgets	4
Helpline	5
New Model Wetlands Bylaw	5
Calendar	6

Massachusetts Association of
Conservation Commissions

*Community Conservation
Since 1961*

MACC Main Office
10 Juniper Rd. Belmont MA 02178
(617) 489-3930

MACCWest Office
2 West Street Hadley MA 01035
(413) 584-2724

*MACC is a Member of the
Environmental Federation
of New England*

Buffer Zones and Filing Fees Survive Court Test State Wins Case Against Homebuilders

The Commonwealth has won a court challenge of the validity of buffer zone regulation and filing fees under the Wetlands Protection Act. Brought by the Massachusetts Homebuilders Association and others, **Baker v. DEP** (#89-3777) was decided in Suffolk Superior Court on June 1.

The original complaint was filed in 1989 and included over a dozen counts. These were related to the state's statutory and constitutional authority over the 1983 Regulations as well as the 1989 filing fees. Most counts were dropped in late 1992 including all claims related to the 1983 Regulations except their challenge to jurisdiction over the buffer zone.

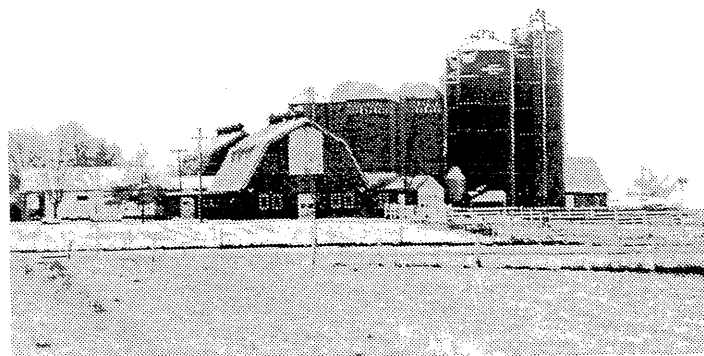
There were three categories of claims which the judge considered. The claims and the Court's reasoning are outlined below.

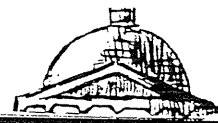
I. The Notice of Intent and Request for Action (appeals) fees are unconstitutional taxes rather than fees. The judge decided the monies charged in both situations are in fact fees as the state claimed. This is for three reasons: they produce specialized benefit to the person paying the fee (the potential for obtaining a permit); they are voluntary (the applicant can forego the benefit, i.e. does not have to do the project); and fees do not on average produce more revenue than is necessary to provide the service. Both Notices of Intent and Requests for Action met all three tests.

II. The Regulations were not issued through proper procedures, i.e. there was not an appropriate comment period or fiscal impact statement as required for all state regulations. The Court found both that the comment period and impact statement were sufficient.

(continued on back page)

New Agricultural Regulations in Effect Summary on page 3





M A C C

Board of Directors

Robert M. Gray, R.S.
President

Judith S. Eiseman
Gary R. Clayton
Gregor I. McGregor, Esq.
Vice Presidents

Treasurer

Judith Pickett, Esq.
Secretary

Helen D. Bethell
Lois J. Bruinooge, Esq.
Frances S. Clark
David J. Dunham, AICP
Edward F. Lawson, Esq.
Jane S. Harris
Ingeborg E. Hegemann
Stanley Humphries
Donald MacIver
Michael J. Marcus
Rita Mathews, Ph.D.
John Rockwell
Kathy Sferra
Robert B. Sherman
Salvatore A. Testaverde, Ph.D.

Staff

Sally A. Zielinski, Ph.D.
Executive Director

Robin L. Reiner
Assistant and Editor

MACC is a private non profit service corporation. Our voting members are the Conservation Commissions of Massachusetts. Non-voting memberships are available to others interested in community resource protection and include receipt of this newsletter.

MACC welcomes letters, articles, drawings and photographs from readers, but reserves the right to edit or reject submissions. Non-staff articles do not necessarily represent the opinions of MACC. Reproduction in whole or in part is permitted with proper credit.

Advertising rates are available upon request. Call MACC at (617) 489-3930.

MACC LEGISLATIVE ACTION ALERT

A number of critical bills affecting the Wetlands Protection Act and local bylaws are moving through the legislature. Some will help Commissions review projects; others weaken the statute. **MACC needs your help.** The articles below explain the issues and what you can do to help. As always if you have any questions or need help, e.g. identifying your legislators, reaching them, or knowing what to say, please call MACC. We can also let you know exactly where a bill is - which can dictate the most appropriate action. The mailing address for all state legislators, as well as the Governor is: State House, Boston, MA 02133.

**Wetlands Act Attacked Through State Budget
Major Coastal Provisions Weakened**

Your help is urgently needed to prevent three weakening amendments to the Wetlands Protection Act from passing via the state budget. All were added to the Governor's original budget on the floor of the House, and are now included in the House version as approved.

Similar provisions will be proposed in the Senate, which prepares a separate budget. Even if these weakening amendments can be kept out of the Senate budget, they could survive in the final version. A conference committee, will negotiate differences between the two versions. The sections (as numbered in the House version) are described below.

Allowing Work to Go Forward During Appeals (section 234). This section allows a wide variety of construction activities, including roads and buildings to begin while appeals are pending. Applies to permits issued under both the Wetlands Act and local bylaws by the Duxbury and Plymouth Conservation Commissions for Duxbury Beach. This could cause irreparable harm to the endangered least tern and piping plover which nest on the beach. The Governor allowed more restrictive legislation for Nauset Beach to become law in 1992. This amendment was proposed by Rep. Mann of Hanson.

Opening Salt Ponds to the Ocean (section 244). This section allows work to reconnect to the ocean any pond which has at some time in the past supported marine fisheries. Under the provision if a Conservation Commission and the Board of Selectmen approve the work and it is done according to DEP's Salt Pond Policy, the decision is unappealable to or enforceable by DEP. The Governor vetoed similar legislation specific to Nantucket last year.

Road and Bridge Construction (section 246). This section permits the Massachusetts Highway Department to undertake any activities to 'preserve' state roads and bridges on barrier beaches if the Conservation Commission permits it. This would provide no appeal to DEP under the Wetlands Act and apparently exempts the project from MEPA, Chapter 91, and any other state law or local bylaw. This amendment was proposed by Rep. Walsh of Agawam.

Every exemption that passes encourages similar and broader exemptions to be sought by applicants and communities. Each is part of the ongoing effort to chip away at a major law protecting water supplies and water quality, controlling storm damage and flooding, and protecting our sensitive fisheries resources.

The budget is expected to reach the Senate floor the week of June 21. MACC urges immediate calls and letters opposing these and any other amendments to the Wetlands Act. Contact your own Senator and Senator Thomas Birmingham, Chair, Senate Ways and Means Committee. Meeting with your Senator can also help. If necessary, call the Governor and request veto of these sections.

(Continued on page 6)

New Agricultural Regulations In Effect

Changes to the agricultural provisions of the Wetlands Protection Act Regulations (310 CMR 10) became effective May 21.

The new regulations only apply to Notices of Intent filed on or after May 21 and are valid for three years. The Departments of Environmental Protection (DEP) and Food and Agriculture will convene a group to monitor the impacts and effectiveness of the new regulations and propose any needed changes at the end of three years. Formation of the group is required by the Secretary of Environmental Affairs' certificate on the ENF.

DEP is sending a complete set of the current regulations to each Conservation Commission.

The discussion below summarizes the current law and Regulations.

Where the Agricultural Provisions are Found

The agricultural exemption appears in the Wetlands Act itself: "the provisions of this section shall not apply to . . . work performed for normal maintenance or improvement of land in agricultural use". This language makes it clear that only land currently in agricultural use is exempt - not land being prepared for agricultural use.

Thus a farmer cannot increase the amount of cropland or clear forested wetland for a grazed field under the exemption. The exemption only applies to certain maintenance and improvement activities in resource areas or the buffer zone.

Agricultural provisions occur in several different places in the Regulations: Definitions (10.04); Emergencies (10.06(6)); and Inland Wetland Limited Projects (10.53(3 & 5)). Changes have been made to all except 10.53(3).

the exemption applies only to commercial agriculture . . .

Land Which is Considered Exempt

Under the definition of "Agriculture" in section 10.04 both the land and activities which are exempt are defined.

The definition of 'land in agricultural use' (LIAU) explicitly states that the exemption only applies to those parts of a farm which are subject to jurisdiction under the Wetlands Protection Act, i.e. the parts which lie

in a resource area or the buffer zone. LIAU contains two distinct types of areas: those on which the crop or animals are raised [e.g. the fenced, grazed field]; and associated areas such as access roads, storage facilities and farm structures.

The Regulations clearly state that the exemption applies only to commercial agriculture - meaning crops or products which are for sale, rather than for the owner's personal use.

The time land can lie fallow and still be considered exempt has been increased from three to five years. It can be longer than five years if there is an agreement in place with the U.S. Department of Agriculture (USDA). The new provision also clarifies that the farmer must provide the Commission with documentation verifying the time that the land has been fallow.

No Determination of Applicability is needed unless there is a question whether an activity is exempt.

The regulations clearly state that activities in the "edge" re not to be done in order to enlarge the area in production.

Exempt Maintenance Activities

A long list of "normal maintenance" or management activities on LIAU are exempt, but only if they are clearly related to the raising of agricultural products, and if they are done in a way that does not cause erosion or siltation. Substantial amounts of fill are prohibited in Bordering Land Subject to Flooding; Salt Marshes cannot be filled or dredged; and Bordering Vegetated Wetland (BVW) cannot be drained to improve growing conditions.

A "field edge" is defined - as an area extending 100 feet from the land in production. The regulations clearly state that activities in the 'edge' are not to be done in order to enlarge the area in production, and topography cannot be altered.

Trees may be cut in order to sell wood or wood products, but only under certain conditions. The farmer must have an approved forest cutting plan from the Department of Environmental Management. The Conservation Commission must receive advance written notice of cutting. New access roads should be avoided and, if not avoidable,

should be minimized, and must be removed within one year.

Farmers may cut wood for their own use. In this case no changes in topography (e.g. no access roads) are allowed. The forest trees must be thinned only, not clear cut, leaving 50% of the original crown area, evenly distributed. This and the above commercial forestry provision may be revised.

Exempt Improvement Activities

Certain "normal improvement" activities to LIAU are permitted. These fall into two categories - neither of which allow alteration of Salt Marsh.

The first includes activities on LIAU or adjacent land not in agricultural use which is unaltered Buffer Zone or Land Subject to Flooding. These must incorporate erosion and sedimentation controls and include, among other things: new dikes in cranberry bogs; new non-habitable farm buildings of up to 4000 square feet in surface area, though no filling of Bordering Land Subject to Flooding other than the structure itself is allowed; and squaring off of field edges is permitted - as long as BVW is not altered.

The second group of activities, which include dike reconstruction, pond reconstruction and expansion, and several other projects, can only be done if the farmer has a farm Conservation Plan (CP) from the USDA Soil Conservation Service (SCS). The plan must be designed according to criteria contained in a January 20, 1993 Memorandum of Understanding (MOU) between DEP and SCS.

There are limits to the size projects which can be done under this provision. If the farmer wants to do work on a somewhat larger scale, the new limited project described below may be applicable.

The regulations do not require the farmer to redesign the project to comply with the MOU.

Even though no permit is issued here and no Notice of Intent or Determination of Applicability is required, the farmer must submit the pertinent parts of the CP to the Conservation Commission before the work is done. The Commission then reviews the CP at a public meeting (no hearing is required). If the CP is not prepared in compliance with the

(Continued on back page)

Protect Your Budget with a Home Rule Bylaw

Many cities and towns adopted "home rule" wetlands ordinances or bylaws in the 1980s to gain an advantage in controlling the intense development pressure that prevailed in Massachusetts at the time.

While that pressure may have eased a bit, there is another compelling reason to adopt a local bylaw, or revise the one you have to secure independent sources of funding.

Since the adoption of "Proposition 2 1/2" there has been a distinct trend towards the imposition of user fees to avoid recourse to the property tax for certain programs. In 1990 and 1991, the Legislature added two key provisions to the General Laws that allow local governments to establish reasonable fees for permits (Chapter 40, section 22(F) and to direct those fees to revolving, special purpose accounts (Chapter 44, section (53)(E)(1/2)). Your bylaw can be tailored to take maximum advantage of those provisions.

In 1990 and 1991, the Legislature added two key provisions to the General Laws that allow local governments to establish reasonable fees for permits...

Establishing a Fee Schedule

The Wetlands Protection Act does not grant authority to local Commissions to promulgate regulations. That authority is granted exclusively to the Department of Environmental Protection (DEP). Consequently, without action by the local legislative authority (the city council or town meeting) a Conservation Commission must be content with the fees provided under the Act.

A Conservation Commission may be authorized to charge fees, however, through a bylaw or ordinance. It is not necessary that these grants of authority be explicit; the authority to make regulations carries with it the implicit power to establish fees "reasonably designed to compensate [the Commission] for its anticipated expenses" in administering the bylaw. **Southview Cooperative Housing Corp. v. Rent Control Board of Cambridge**, 396 Mass. 395, 404 (1985).

No matter how it is conferred, the authority to set fees should not be mistaken for an unlimited right to raise needed revenue. **Southview** makes clear that the application fee must be "commensurate with the reasonable expenses incident to the licensing." The fee need not estimate those expenses

exactly and "doubtless would not be scrutinized too curiously even if some incidental revenue were obtained." If it is clearly excessive in relation to expected costs, however, it can be successfully challenged as a tax. The Commission's expected costs would likely have to account for the fee revenue already generated under the Act. It would therefore be advisable to count the fee paid under the Act as a credit to the local fee.

Southview is fairly generous in defining what "reasonable" expenses might include.

... a Commission might reasonably pass on the cost of a paid agent or administrator who must review each notice of intent, request for determination and request for a certificate of compliance.

In addition to out-of-pocket expenses, such as advertising the hearing, a Commission might reasonably pass on the cost of a paid agent or administrator who must review each notice of intent, request for determination and request for a certificate of compliance. Overhead costs, such as clerical expenses, and expected costs of supervising compliance might reasonably be included as well. If the Commission makes some reasonable assumptions about these costs in advance, a fee schedule that is based on those assumptions is likely to survive a challenge.

Consulting Fees

In many instances, particularly on large projects, the Commission may want to hire an independent consultant to help it review the project. Because the need for a consultant and the scope of service required can vary widely from project to project, it is preferable to charge the actual cost of the consultant to the particular project proponent for whom that consultant is hired, rather than build expected consulting costs into an application. The Act does not authorize this approach, but a local bylaw can.

A bylaw that permits a Conservation Commission to pass consulting costs through to that applicant must be carefully drafted to avoid giving unlimited discretion to the Commission. The Attorney General has disapproved bylaws that did not meet that standard, and will continue to do so.

To meet the standard of limited discretion required for the bylaw's approval, it must

define the circumstances under which a consultant may be hired, and put some limit on the amount of fees that can be charged. In addition, the bylaw may establish minimum qualifications for such a consultant, and provide for notice to the applicant of the Commission's decision to engage a consultant, the identity of the consultant, and the proposed scope and estimated cost of the services. The bylaw should also spell out any right of appeal, whether to court or to a neutral body, such as the selectmen, regarding the selection of a particular consultant. This kind of system is similar to the one zoning boards and boards of health may adopt under General Laws Chapter 44, Section 53G.

Directing the Proceeds to a Revolving Account

In general, all monies received by any city or town must be paid into the general fund and cannot be spent without specific appropriation. There are numerous exceptions to this rule, but unless a payment falls clearly within one of those exceptions, the payment must go into the general fund. Do not be misled into thinking that because money was collected for a particular purpose, it can be spent for that purpose without appropriation.

The fees collected under the Wetlands Protection Act must be appropriated before

With the aid of a "home rule" wetlands ordinance or bylaw, a municipality should be able to establish an effective regulatory program that is largely self-funded.

they can be spent, even though the expenditure of those funds is limited to administration of the Act. If your town has a local bylaw, however, it has the option of directing the local fees to a revolving account established under General Laws Chapter 44, section (53)(E)(1/2). For example, if a Commission charges its consulting fees to the applicant, the applicant's payment of that fee would be placed in the revolving account, and could be disbursed directly to the consultant without appropriation.

A revolving account must be reauthorized annually, and may not be used to pay wage or salaries to full-time employees. Interest on the account is paid to the general fund.

(Continued on back page)

Court Finds Presence of Fill to be Continuing Violation

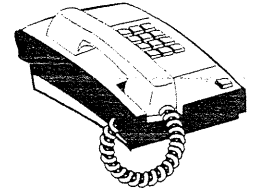
An interesting decision under the Wetlands Protection Act is a "rescript" opinion, meaning the judges thought it was simple and obvious. On the contrary, *City of Worcester v. Gencarelli*, 34 Mass. App. Ct. 907 (1993) really opened my eyes! Gencarelli was required by the lower court to remedy damage for illegal fill on his property. On appeal, he made two arguments: that the city had to go to DEP before suing him; and that the law's two year statute of limitations barred the action, because the city sued more than two years after it started complaining to him about the fill. The court made short work of the first argument, because Gencarelli had never appealed the local Order of Conditions (which he violated). As to the second, the Appeals Court said, "The judge found that the filling of the wetland was continuing to cause significant environmental damage and allowed injunctive relief . . . The presence of the fill is a continuing violation of G.L. Ch. 131, sec. 40 . . ." The gist of this is that the two-year period for bringing legal action does not apply to illegal work in wetlands causing continuing damage! This useful rule would not, however, apply to one-time violations where no further damage is shown; and it might not apply to criminal prosecutions.

Alexandra D. Dawson, Esq.
MACCWest Coordinator



From the MACC Helpline...

MACC's Helpline is available to Commissions and other MACC members from 10-2 on Monday through Thursday. The Helpline assists with questions and problems related to all aspects of Conservation Commissions' responsibilities.



The Helpline number is (617) 489-3930

Limited Projects

- Q. What are "limited" projects?
- A. "Limited" projects are a set of activities listed in the Wetlands Act Regulations at 10.24(7a-c) in Part II and 10.53 in Part III. Examples of "limited" projects in coastal areas are: navigational and coastal engineering structures on coastal banks, beaches, rocky intertidal shores or land under the ocean; and cooling water conduits. Examples in inland areas are: private roadways to uplands of the same owner; and improvement of existing public roadways. The term "limited" is something of a misnomer. Many of these activities involve extensive alterations.
- Q. How do "limited" projects differ from other activities?
- A. They are regulatable, just as any similar project. "Limited" project status is not an exemption. There is, however, one major difference - the usual performance standards for wetland resource areas do not apply. However, there are separate conditions or restrictions with which these projects must comply. For example, a forestry project must be done when the ground is dry or frozen.
- Q. Must the Commission approve "limited" projects?
- A. No. With the exception of the new "limited" project for agriculture (10.53(5)) approval for these projects is at the discretion of the Commission. The regulatory language says "may".
- Q. How should Commissions review "limited" projects?
- A. The Commission should first determine whether the project qualifies for "limited" status. If it does not, the filing should be handled in the usual manner and all performance standards must be met in the design. If "limited" status does apply, then the Commission should make certain that any conditions specified in the Regulations are met in the design. In addition for projects under 10.24(7a-c) & 10.53(3) the Commission has the authority to impose any additional conditions necessary to protect the resource areas. This section says the Commission may impose such conditions as will contribute to the interests of the Act. Thus the Commission should carefully consider whether to impose the normal performance standards and/or any other conditions it feels are necessary. Finally, since rare species habitat must be protected with these projects, the project should be reviewed for this aspect.

Sally A. Zielinski, Ph.D. Executive Director

MACC Updates Model Wetlands Protection Bylaw

MACC has issued an updated Model Wetlands Protection Bylaw. Provisions are included to address the 1991 decision (*DeGrace v. Conservation Commission of Harwich*) (31 MA App. Ct. 132) in which the court decided that when a Conservation Commission denies a project under local bylaw provisions which are less stringent than the Wetland Protection Act, then DEP's superseding order prevails.

Another change in the model is the removal of "aesthetics" as a protectable value, since the Attorney General's office has been disapproving that term in bylaws. Including it can only get Commissions into trouble. In addition, the phrase "with the prior approval of the property owner" has been deleted from the provisions giving the Commission authority to enter private property.

Copies of the new model plus backup article are available from MACC for \$3.00 plus .75 shipping and handling (include tax where applicable).

CALENDAR

June 24: **Stormwater Management for NPS Pollution Control.** Ipswich River Watershed Non-Point Source Prevention Program. Wilmington Town Offices. 10 am-Noon. Provides an overview of Stormwater management on a watershed basis and discusses Best Management Practices. For more information call JoAnne Carr at the Riverways Program (617) 727-1614 x 360.

June 26: **Swamp, Bog & Fen.** New England Wild Flower Society. Examine and compare wetland habitats. Identify characteristics and unusual plants at each habitat. \$20. For registration call (508) 877-7630.

July 14: **Title V Workshop.** MACC Western Outreach Office. Lawrence Memorial Town Hall, Belchertown. 7-9 pm. Workshop will explain the proposed revisions to the Title V Regulations and allow comment to DEP. DATE IS TENTATIVE PENDING RELEASE OF DRAFT REGULATIONS BY DEP. For more information contact Jane Harris at (413) 323-0405 or the Western Outreach Office at (413) 584-2724.

July 15: **Soil Texture Workshop.** AMWS technical workshop presented by Peter Fletcher of the Soil Conservation Service. Limited to 15 participants. \$25 including lunch. For info call Laurie Suda at (617) 647-8493.

September 11: **Coastal Plain Ponds Technical Workshop & Wetland Delineation Issues in Massachusetts.** AMWS daytime workshop and evening discussion presented by Donald Schall & Gary Hollands. Held in the Barnstable area. \$25 includes lunch. Limit 15. For more information contact Don Schall at (508) 888-3900.

September 25: **Floodplain Flora & Ecology.** New England Wild Flower Society. Field program focusing on identification and ecological relationships of representative floodplain vegetation. Held in Concord along the floodplains of the Concord River. An overview of wetland functions and importance of river protection included. Taught by Sally Zielinski, Ph.D. MACC Executive Director. \$36. For registration call (508) 877-7630.

**Title V Workshop
for Central & Western
Regions
see July 14 above**

Action Alert (Continued from page 2)

Essential Natural Heritage Program Funding in State Budget: Half of Staff to Be Cut without General Fund Help

Natural Heritage Program Funding has declined dramatically over the past four years as revenues from the Non-Game Checkoff have dropped. In addition to its important role in protecting and monitoring the state's rare and endangered species, the program is responsible for evaluating impacts from those projects proposed under the Wetlands Act which would affect designated rare species habitat. A provision has been added to the state budget providing 1:1 matching dollars from the General Fund each year. Action similar to that for the above budget amendments is needed immediately to support this funding mechanism.

Both Filing Fee and Design Review Fee Legislation Have Successful Vote in House

Filing Fees. H.2842, the Wetlands Filing Fee legislation, has survived its first vote in the House following debate and a roll call vote! This important bill simplifies release of wetlands filing fee funds to Conservation Commissions following written approval of the selectmen or mayor. Replaces present requirement for a vote of town meeting or city council.

This legislation was filed by MACC and is our top priority for 1993. In several previous years the bill failed to reach the floor. Sponsor Rep. Steven Angelo led the debate in favor, and Rep. DiFilippi led the opposition. The vote was 119-28. MACC is grateful to Representative Angelo for his strong efforts.

Voting against the legislation were Representatives: Barsom, Brenton, Ciampa, Clark, Clevon, Coon, Cousins, Decas, DeFilippi, Flavin, Forman, Goguen, Hyland, Knapik, Kraus, Krekorian, Lewis, Mann, Murray, Poirier, Ranieri, Ruane, Simmons, Sprague, Sullivan, Tarr, Teague, and Walrath. The bill must now have an additional vote in the House and then will go to the Senate. It is important for Commissions to take several steps to secure passage.

If your legislator voted in opposition, call and ask for an explanation then explain how it will help the Commission administer the Wetlands Act. Urge him or her to both bring the bill to the floor for its 'Third Reading' vote and to support it. Stay in touch with MACC to determine where the bill is, and

provide us with feedback. Then plan to contact your Senator as soon as it reaches the Senate. Call MACC if you wish a bill fact sheet.

Design Review Fees. H.2841 creating design review fees for Conservation Commissions, has also received a first favorable vote in the House. This legislation gives Commissions authority to collect reasonable fees (in addition to filing fees) from applicants for professional review of projects and plans under the Wetlands Act. Design review fees are quite common provisions of local wetland bylaws, as well as available to several other municipal boards. Also sponsored by Rep. Steven Angelo, H.2841 passed on a voice vote.

The same actions in support should be taken to secure passage as described for H.2842 above. Legislators opposed to one bill might oppose the other also.

River Protection Act Passes Senate

Legislation to create a Massachusetts River Protection Act has passed the Senate and moved on to House Ways and Means. The vote was 36-3, with Senators Creedon, Lees and Tisei opposing.

Sponsored by Sen. Robert Durand, Rep. Pamela Resor and others, the bill establishes a uniform development setback of 150 feet from certain rivers and streams to provide a buffer, protect water quality and create a wildlife corridor. A number of exceptions exist and variances may be granted by Conservation Commissions in cases of constitutional hardship. Several amendments were added on the Senate floor.

Calls of support to your Representatives are needed, especially if they are members of the House Ways and Means Committee. Urge them to release the bill from Committee with a favorable report, and send it to the House floor for a vote.

Bill to Exempt Golf Course Maintenance to Move Forward

Legislation to exempt 'normal maintenance and improvement' of golf courses from the Wetlands Act is being held by the Natural Resources. The Committee has voted to give H.1707 a favorable report but to redraft it. MACC opposes this legislation, in any form. We urge calls to the Chairs of the Committee, Sen. Robert Durand and Rep. Steven Angelo to oppose H. 1707.

ANDERSON & KREIGER
ATTORNEYS AT LAW

Environmental Law
Hazardous Waste
Wetlands Protection
Land Use Law
Litigation

47 Thorndike Street
Cambridge, MA 02141
(617) 252-6575
FAX (617) 252-6899

20 Federal Street
Greenfield, MA 01301
(413) 774-3392
FAX (413) 772-2558

LELITO ENVIRONMENTAL CONSULTANTS



- Environmental Permitting
- Wetland Analysis
- Site Assessment
- Wildlife Habitat Evaluations
- Environmental Impact Reports

South Shore, Cape and Islands
P.O. Box 1525
N. Falmouth, MA 02556
(508) 564-5606
FAX (508) 563-7669

North Shore
100 Corporate Place, Suite 103
Peabody, MA 01960
(508) 535-7861
FAX (508) 535-0073

Wetlands Delineation/
Restoration

Botanical Surveys/
Habitat Evaluation

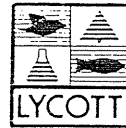
Environmental Permitting/
Engineering/Planning

Coastal Resource
Analyses

Surveying/Mapping/GIS

BSC
The BSC Group

425 Summer Street
Boston MA
02210
617 330 5300



- Pond and Lake Management
- Environmental Management Services
- Groundwater Studies & 21E Assessments
- State-Certified Laboratory
- Wetlands Delineation and Protection
- Underground Tank Management

LYCOTT ENVIRONMENTAL RESEARCH
Southbridge, Massachusetts
(508)765-0101 or (800)462-8211



environmental engineers, scientists,
planners, & management consultants

CAMP DRESSER & MCKEE INC.

Ten Cambridge Center
Cambridge, Massachusetts 02142
617 252-8000
offices nationwide

- Wetlands Assessments
- Watershed Management
- Environmental Studies and Engineering
- Coastal Resource Management
- GIS Mapping and Analysis
- Permitting and Zoning
- Landscape Architecture

McGREGOR & SHEA
Attorneys at Law, P.C.

141 Tremont Street, Suite 200, Boston, MA 02111
(617) 338-6464

- Environmental Law
- Hazardous Waste/Solid Waste
- Air and Water Pollution
- Wetlands/Floodplains
- Zoning/Subdivision Control
- Environmental Impact Statements
- Insurance Claims
- Agency Hearings
- Litigation in all Courts

PATRICK C. GARNER
Company

ENVIRONMENTAL & ENGINEERING SERVICES

- Wetlands & Hydrology Specialists**
- Wetland Delineation & Mitigation
 - Federal, State & Local Permits
 - Municipal Review & Consulting

"Environmentalists Serving the Environmental Community"

89 Halsey Street
Providence, RI 02906

R.I. 401/454-8184
Mass. 508/378-7787

NEW ENGLAND ENVIRONMENTAL, INC.
Environmental Consulting Services

800 Main St. • Amherst, MA 01002 • (413) 256-0202

- Wetland Specialists
- Wildlife Habitat Assessments
- Geology & Hydrology
- Town-wide Wetland Mapping
- Environmental Impact Reports



Environmental Services

One Corporate Drive
Andover, MA 01810
(508)794-9470

Offices Located Nationwide



Growers of Quality Native
Coastal Wetlands Stock

2560 Main Street
West Barnstable, MA 02668
508-362-4595



569 North Street
Georgetown, MA 01833
Tel: (508) 352-7903

- Site Evaluations • Wetlands Delineation
- Local State & Federal Wetlands Permits
- Soils Surveys • Restoration/Mitigation Plans
- Wildlife Habitat Analysis • Wetlands Plant Stock

Court Test (Continued from front page)

III. There is no jurisdiction over the buffer zone, that is, the issuing authority can only regulate activity actually in the wetland or water body. The Court rejected this argument saying that the Wetlands Act allows regulation of activities which "will alter" resource areas, and that it is likely some projects in buffer zones will in fact cause alterations. Therefore, it is within DEP's authority to regulate activities proposed in the buffer zone. Applicants have the option of with filing a Notice of Intent if they concede there will be alteration or filing a Request for Determination if they are uncertain.

In mid 1992 the plaintiffs sought data from Conservation Commissions regarding the levels and use of filing fee monies and indicated that they would possibly seek to make Commissions parties to the suit (this did not ultimately occur). Commission response to the questionnaire was voluntary. About 40 Commissions responded. For those Commissions with staff, expenses to administer the Wetlands Act exceeded fee revenues. For those without staff, revenues exceeded costs. Both parties agreed that on average fee revenues compared realistically with expenses.

Assistant Attorney General Peter Sacks handled the case for the Commonwealth. The plaintiffs have 60 days to decide whether to appeal.

Sally A. Zielinski, Ph.D. Executive Director

Agricultural Regulations (Continued from page 3)

MOU the Commission has 21 days to so inform the applicant. The Regulations do not require the farmer to redesign the project to comply with the MOU.

Emergencies

Certain activities, spelled out in detail in section 10.06(6), are allowed in order to alleviate emergencies such as storm damage. However, the Commission must be notified, and a site visit may be conducted. Neither Salt Marsh nor rare species habitat may be altered under this section.

New "Limited" Project

There are several existing "limited" projects relative to agriculture in 10.53(3) for work on land being prepared for agriculture for cranberries, forest products, or farm ponds. These are unchangeable.

A new "limited" project relative to freshwater resource areas, has been added, creating 10.53(5). This differs from all other limited projects because the Conservation Commission must approve it - if it meets the stated criteria.

This limited project is only available to farmers who have an approved CP from SCS.

There are explicit limits to the amount of alteration which can be proposed under this limited project, e.g. 20,000 square feet for the construction or expansion of a farm pond.

The regulations presume that the work proposed in the Conservation Plan avoids impacts to resource areas when possible, and minimizes impacts if they occur. However, if the Commission can demonstrate that the Conservation Plan does not adequately protect the resource area, it can condition the project to do so. The project also cannot harm rare species habitat.

Home Rule Bylaw (Continued from page 5)

The fund balance may be carried forward from year to year, however (assuming the fund is reauthorized), and monies in the fund can be spent for the programs and purposes for which the fund is established without further appropriation. Proceeds of fees, fines and bonds can be directed to these accounts.

Summary

With the aid of a "home rule" wetlands ordinance or bylaw, a municipality should be able to establish an effective regulatory program that is largely self-funded. Monies from fees can be directed to internal review, hiring consultants, and other enforcement and compliance activities without specific appropriation.

George Hall, Esq. Partner, Anderson & Kreiger

Massachusetts Association of Conservation Commissions

10 Juniper Road
Belmont, MA 02178
(617) 489-3930

Nonprofit Organization
U.S. POSTAGE PAID
Belmont, MA 02178
Permit. No. 56583

