



MACC ANNUAL MEETING WORKSHOPS AND REGISTRATION

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Massachusetts Association of Conservation Commissions

*Community Conservation
Since 1961*

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

Wetlands Permitting Would Remain in DEP under Governor's Reorganization Plan

All Current State Regulations Would Be Voided

Governor Weld has modified a proposal to downsize and reorganize state government which he plans to file with the Legislature as part of his Fiscal Year 1997 budget. Under his revised plan environmental permitting would remain in DEP and the MEPA program would continue to sit in the Executive Office of Environmental Affairs (EOEA).

The Governor's proposal would eliminate many permits, licenses and inspections (such as motor vehicle inspections) and place the issuance of those remaining state permits and licenses in a central Department of Licensing and Regulation. As originally announced DEP permitting and MEPA review would have been included in this shift. **MACC argued that it would be inappropriate and disastrous for permits on complex technical subjects such as wetlands to be written by individuals with no environmental background and who were located in a separate office from the legal and scientific experts at DEP.**

Other major changes proposed by the Governor include: elimination of five cabinet secretariats, 76 state agencies and 263 boards and commissions (7,500 employees); sunseting all state regulations at the end of 1996, with agencies required to justify each regulation before it would be reauthorized; privatization of some state functions; and 12-year term limits for most agency managers.

EOEA would remain as a separate secretariat but its structure would change dramatically. There would be two departments: one related to resource conservation and recreation, and the other to public health and environmental quality. The Departments of Environmental Management and the Metropolitan District Commission would be merged; this, along with the Departments of Fisheries Wildlife and Environmental Law Enforcement, Food and Agriculture, the Division of Conservation Services, and the Water Resources Commission would be combined in a new Department of Conservation and Recreation. DEP would continue as a separate agency. CZM and the Office of Technical Assistance would remain in EOEA.

MACC suggested to Governor Weld in a recent meeting that sunseting environmental regulations, particularly those related to wetlands, would be counterproductive. We pointed out that the environmental and development communities have worked closely with the administration over the past four years to streamline wetlands-related permitting programs. We further indicated that occupying all agency personnel with rewriting regulations would detract from other critical responsibilities such as enforcement.

Sally A. Zielinski Ph.D.
Executive Director

MACC

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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.

For advertising rates and membership information call MACC at (617) 489-3930.

Wetland Permit Fees Survive Challenge Appeals Court Upholds Earlier Decision

On November 22, 1995, the Massachusetts Appeals Court upheld the validity of filing fees imposed on applicants under the Wetlands Protection Act (the Act). Accordingly, the Department of Environmental Protection (DEP) and local Conservation Commissions may continue to collect the fees pursuant to 310 CMR 10.03(7) and 801 CMR 4.02 to cover state and local administrative costs.

The fees were challenged by Donald Baker and two others, acting as trustees of two realty trusts, and the Home Builders Association of Massachusetts (**Baker v. Department of Environmental Protection**). The plaintiffs initially sought a ruling from Suffolk Superior Court that fees paid in conjunction with applications for wetland development permits were not actually fees. Instead, the challengers argued that these fees were actually "unconstitutional and unauthorized taxes." The Superior Court held the filing fees required under the Act are legally permitted fees and not unlawful taxes. The plaintiffs appealed this decision to the Appeals Court which affirmed the Superior Court's decision.

In its decision, the Appeals Court relied on previous court decisions which reviewed the differences between fees and taxes. The Court applied a three-part test to assess whether the filing fees were either unlawful taxes or lawful fees.

First, the Court evaluated whether the filing fee is for a "governmental service which benefits the party paying the fee in a manner 'not shared by other members of society.'" In this case, the Court reasoned that the general public does not typically seek to develop wetlands. Instead, individual members of the public pursuing financial gain typically seek to develop wetlands. Thus, the government service benefits the payor of the fee required by the Act differently from the benefit to the general public. Accordingly, developers are the parties who should bear the administrative costs associated with processing permit applications. The Court found that the filing fees meet this first part of the test.

... the regulatory fees under the Act flow from the Commonwealth's policy of preserving wetlands.

Second, the Court evaluated whether the filing fee is "compulsory" or "voluntary." The Court found that developers or landowners seeking permission to develop in wetlands are not required to develop wetlands. They choose to do so. Accordingly, the Court found the filing fee to be voluntary. The Court noted that the fee required under the Act may discourage the selection of a particular option for developing a piece of property. However, the regulatory fees under the Act flow from the Commonwealth's policy of preserving wetlands. Thus, the filing fees meet the second part of the test.

Finally, the Court assessed whether the filing fees "raise revenue" or "offset the cost of governmental services." The Court looked to the statutory language of the Act and found that the Legislature specifically sanctioned the fees to offset the financial burden of administrative costs. Money generated from the filing fees could support either general agency expenses or specific costs of services. The Court found that this money "reimburse[d] the [government agency] for all expenses imposed upon it by the business sought to be regulated." The Court noted that money generated by the filing fees did not totally defray the DEP's expenses in administering the Act. Thus, the fees charged under the Act offset the costs of administration and so meet the final prong of the test.

Since the Court held that the filing fee imposed by the Act on developers seeking permission to develop wetlands satisfies all three prongs of the applicable legal test, it qualifies as a lawfully imposed regulatory fee and not a tax. This decision means the fees have been validly imposed by DEP and Conservation Commissions. Persons filing for permission to develop wetlands cannot challenge the imposition of regulatory fees, but must simply pay them. Although the plaintiffs may appeal this Appeals Court decision to the Supreme Judicial Court of Massachusetts, it is unlikely.

Heidi M. Zisch
McGregor & Shea, P.C.

5. How far from a resource area should a project be to come under a "general" permit (25', 50', 75', other)? Explain.

6. Are there projects (e.g. type or size), sites or situations (e.g. rare species, vernal pools) where a "general" permit should not apply? If so, please list them and explain your reasons.

7. Should projects be subject to a "general" permit only if certain performance standards are met? If so, list what should be required.

8. Should the Conservation Commission receive notice/plans etc. of projects eligible for a "general" permit? If so, list items you would require.

9. Should the Commission have the authority to impose conditions/inspect projects/enforce violations? If so, how should this be structured?

10. What are the financial implications of a revised approach for Conservation Commissions — weighing fees, less work, need to monitor and enforce violations, etc.?

11. How might the BVW boundary be determined under such an approach?

12. What percent of the projects before your Commission are located entirely in the buffer zone?
Circle closest number: 25% 50% 75% 100%

Comments:

Name: _____

Please check applicable categories: Conservation Commissioner Other Municipal Official
 Conservation Administrator Consultant

MACC 1996 ANNUAL MEETING

Saturday, March 9, 1996

Holy Cross College, Worcester, MA

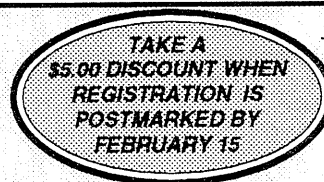
8:00 - 8:30	Registration, Coffee and Doughnuts
8:30 - 9:00	Opening Session: President's Address, Business Meeting, Elections, Environmental Service Awards & Remarks
9:00 - 9:30	Keynote Address
9:45-11:00	Workshop Series A
11:15-12:45	Workshop Series B or Lunch
1:00 - 2:15	Workshop Series C or Lunch
2:30 - 3:45	Workshop Series D
4:00 - 4:45	President's Reception & Raffle Drawing

- Advance registration is required. Payment **must** accompany registration.
- Please register early to guarantee your workshop choice.
- No confirmation will be sent. Your cancelled check is your confirmation.
- Take a \$5.00 discount when registering before February 15th (postmark date).
- No refunds will be made after February 29. Cancellations must be received in writing.

Registration Fees

(PER PERSON—INCLUDES REFRESHMENTS AND LUNCH)

Member* \$48 Non-member \$78



* **Member fee applies to:** All MACC members; Conservation Commissioners and staff whose Commission's dues have been paid or accompany this registration; other municipal officials, employees of government agencies and non-profit organizations whose fee is paid by agency or organization check.

Group Discount: With six registrations from the same town, a seventh person will be admitted free. For group registration please attach separate sheet listing names and workshops.

REGISTRATION FORM

NAME _____

COMMISSION/ORGANIZATION _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

PHONE (W) _____ (H) _____ TOTAL ENCLOSED \$ _____

Workshop Choice: You may register for 3 or 4 workshops. Lunch is served throughout Blocks B and C in a separate building. Please mark your choice of lunch block with an L. Indicate below the *number* of each workshop you wish to attend.

BLOCK A B C D

Example: BLOCK 1 A 14 B L C 34 D

Return with check payable to: MACC, 10 Juniper Road, Belmont, MA 02178

MACC 1996 Annual Meeting Workshops

Workshop Series A — 9:45-11:00 a.m.

- | | |
|--|---|
| Science/Technology | 1. Understanding and Managing Wildlife Populations:
Beaver, Canada geese, deer and more |
| | 2. The Scientific Basis for Protecting Buffer Zones:
Analyzing functions, determining setbacks, etc. |
| | 3. Erosion Control & Bioengineering:
Techniques to prevent sedimentation and protect water quality |
| Effective Conservation Commissions | 4. Fundamentals for New Commissioners (No WPA)
Meetings, hearings, finances, etc. (Series 1) |
| Open Space/Resource Conservation | 5. Updating Your Open Space Plan:
The text (Series 3) |
| | 6. Agriculture on Conservation Land:
Management issues and solutions [Panel discussion] |
| | 7. Protecting Water Quality and Controlling Non-point Source Pollution:
Inland — Central and Western Regions |
| Wetlands Protection Act/Regulations | 8. Enforcement:
Town counsel, special counsel, state help |
| | 9. Reviewing Drainage Calculations for Subdivision proposals:
Peak flow, 100-year storm, graphs |
| Other Law/Regulation/Policy | 10. Dredging under Chapter 91:
Beach nourishment |

Workshop Series B — 11:15 a.m.-12:45 p.m.

- | | |
|--|--|
| Science/Technology | 11. The Wildlife Habitat Function of Wetlands:
Includes habitat assessments (Series 2) |
| | 12. Ecology and Control of Invasive Plants:
Phragmites, purple loosestrife, water chestnut, etc. |
| | 13. Wetland Restoration and Mitigation:
Coastal and Inland |
| Effective Conservation Commissions | 14. Carrying the Conservation Commission's Agenda to Your Community:
Getting good appointing authorities, working with other boards |
| | 15. Property Rights and Responsibilities |
| Open Space/Resource Conservation | 16. Updating Your Open Space Plan:
The maps (Series 3) |
| | 17. Preserving Your Community's Character:
Case studies |
| | 18. Protecting Isolated Wetlands:
Expanding your bylaw; certifying vernal pools |
| Wetlands Protection Act/Regulations | 19. Intro to the Act/Regulations:
Jurisdiction, values, performance standards, procedures. (Series 1) |
| | 20. Locating the Wetland Boundary Using Hydrology and Vegetation:
How to use the new regulations |
| Other Law/Regulation/Policy | 21. Wetland Restoration in the Context of the MA Watershed Approach |

Workshop Series C — 1:00-2:15 p.m.

- | | |
|-------------------------------------|---|
| Science/Technology | 22. Basic Wetland Plant I.D.:
Key characters/slides of common MA plants |
| | 23. Understanding and Evaluating Hydric Soils (continued in Series D)* |
| | 24. MassGIS:
Mapping open space and wetlands (Series 3) |
| Effective Conservation Commissions | 25. Media Relations:
Working with local reporters/building support for your issue (Series 4) |
| Open Space/Resource Conservation | 26. Trails and Greenways:
Building support/planning & design |
| | 27. River and Stream Protection:
Practical steps toward protection |
| | 28. Protecting Water Quality and Controlling Non-Point Source Pollution:
Coastal — Northeast and Southeast Regions |
| Wetlands Protection Act/Regulations | 29. Limited Projects:
Does the proposal qualify? Requiring performance standards |
| | 30. Highway and DPW Projects:
BMPs, Multi-site OOCs, exemptions, water quality certification |
| Other Law/Regulation/Policy | 31. How the New Title 5 Regulations Affect Conservation Commissions:
Setbacks and wetland boundary disputes |

Workshop Series D — 2:30-3:45 p.m.

- | | |
|-------------------------------------|---|
| Science/Technology | 32. Wetlands Functions and Values:
Fisheries, pollution control, flood/stream damage prevention |
| | 23. Understanding and Evaluating Hydric Soils (continued from Series C) |
| Effective Conservation Commissions | 33. Making the Most of Your Wetlands Bylaw:
Effective administration and enforcement |
| | 34. Grants and Proposal Writing:
Funds available to Conservation Commissions and how to get them (Series 3) |
| Open Space/Resource Conservation | 35. Managing Conservation Land:
Habitat diversity, conflicting uses, rules and regulations |
| | 36. Local Action for Environmental Protection:
Building a constituency, moving from goals to action (Series 4) |
| Wetlands Protection Act/Regulations | 37. Wetland Replication:
How to make it work |
| | 38. Meet your DEP |
| Other Law/Regulation/Policy | 39. Forestry:
New FCPA and WPA regulations |
| | 40. <i>Workshop to be determined</i> |

* **Please note:** Workshop number 23 will be limited to the first 50 people who **pre-register** and will run for two sessions (C & D).

We are offering four series of workshops this year. These are: Series 1 — For New Commissioners (Wksp. 4 & 19); Series 2 — Wetland Functions & Values (Wksp. 11 & 32); Series 3 — Open Space Planning (Wksp. 5, 16, 24 & 34); Series 4 — Community Activism (Wksp. 25 & 36).

Exhibitor and Advertiser Registration

MACC's Annual Meeting offers environmental businesses, agencies and organizations an excellent opportunity to reach more than 1,000 Conservation Commissioners, their staff, other local, state and federal officials, attorneys and environmental consultants. You may:

- Advertise in the Program Book which is given to every participant to use during the meeting and pass along to colleagues later. It contains the meeting and workshop agenda, annual reports and articles. MACC also distributes copies throughout the year.
- Exhibit during Annual Meeting to directly reach this large audience. You will be listed in the Program Book and receive free workshop admission, including lunch and refreshments, for one person.

To reserve space please use the forms below; or, for more information contact Rose LaQuaglia at (617) 489-3930.

EXHIBITOR REGISTRATION FORM

Company/Organization _____ Contact Person _____

Address _____ City _____ State _____ Zip _____

Phone (_____) _____

Person overseeing booth _____

Phone (_____) _____

If you have audio equipment (video or slides with soundtrack) describe your exhibit: _____

Amount enclosed: \$ _____

(Fee covers exhibit space and registration for ONE person who will be overseeing exhibit booth).

Additional "Exhibit Only" Registrations \$20

Name _____ Name _____

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Check appropriate items: <input type="checkbox"/> Half Table (30" x 48")	\$165	\$65
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	Business	Agency/ Non-Profit	Space Desired:
1/8 page (3.75" x 2.5")	\$100	\$50	<input type="checkbox"/> 1/8 page <input type="checkbox"/> 1/2 page
1/4 page (3.75" x 5")	\$150	\$75	<input type="checkbox"/> 1/4 page <input type="checkbox"/> Full page
1/2 page (7.5" x 5")	\$200	\$100	
Full page (7.5" x 10")	\$250	\$125	

Sizes given as width x height (1/8 page is approximately business card size)

POSITION AVAILABLE

The Belchertown Conservation Commission is seeking a Conservation Administrator. The Conservation Administrator is responsible for administration and coordination of all Commission activities including: permitting procedures under the Wetlands Protection Act; resource protection and management including town conservation lands; public assistance and education; coordination with other town boards and officials; and office management.

Position requires advanced knowledge of the MA Wetlands Protection Act and a minimum two years' experience in wetlands management, land conservation, natural resource planning or related field. Experience with land-use planning and grant writing a plus.

Position is currently 25-hours per week. The Commission is negotiating for a full-time position with added planning and grant-writing responsibilities beginning July, 1996. Salary starting at \$16,500 for 25 hours plus benefits.

Send resume and cover letter to K. Ruhf, Belchertown Conservation Commission, Town Hall, Belchertown, MA 01007. Deadline is January 30, 1996.

CALENDAR ITEM

Municipal Officials Program

Framingham State College announces development of an instructional program for appointed and elected members of town boards.

The program consists of four modules: Local Application of Environmental Laws, Land Use Law, Negotiation and Advocacy, and Hot Issues. A 10-hour module may be completed by attendance at four (2-1/2 hour) sessions one time per week for four weeks.

The first module of this program begins Feb. 10, 1996. Sessions will be held at Framingham State College.

For additional information contact: Dr. Chet Roskey, Director, Graduate and Continuing Education, Framingham State College, phone (508) 626-4557, fax (508) 626-4040, e-mail: croskey@frc.mass.edu

From the MACC Helpline...

MACC's Helpline is available to Conservation Commissions and other MACC members from 10 a.m. to 2 p.m. on Monday through Thursday. We assist with questions and problems related to all aspects of Commissions' responsibilities and encourage calls. The Helpline number is (617) 489-3930.



Helpline Correction Conservation Commissions and Municipal Charters

In our Late Summer issue, the MACC Helpline advised communities on the relationship of city or town charters to the state's General Laws. Based on old-time rules of law, we said that a charter could override the state Conservation Commission Act (G.L. Ch. 40, sec. 8C) only through a special act of the Legislature.

It looks as though our advice was incorrect — or, rather, outdated. City and town charters are adopted through strenuous procedures set out in G.L. Ch. 43B, called the "Home Rule Procedures Act." As the title suggests, this statute is designed to give communities broad discretion in managing themselves, with only a few narrow limitations. The charter is adopted by a two-thirds vote of the town. It is amended either by amending the charter itself — a complex procedure — or by a two-thirds vote of town meeting. Section 10 of G.L. Ch. 43B notes that a charter amendment is required to change the mode of appointment or terms of the legislative body, selectboard, town or city manager; otherwise a simple two-thirds town meeting vote will suffice.

Section 20 of the Home Rule Procedures Act states broadly that charters can in effect override state statutes relating to "the structure of city and town government, the creation of local offices, the terms of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices." You couldn't get any broader than that! Anyone for the monarchy? However, sec. 20 goes on to list a number of specific provisions which a charter may provide. Subsection (d) provides for "the term of office to be served by any local elected official."

The question logically arises: Are the provisions in sec. 20 illustrative of charter powers, or do they delimit the powers of the community? Common sense says the former. It would hardly make sense for a town to be able to limit the term of elected officials and not of appointed officials such as Conservation Commissioners. However, no court seems to have ruled on this specific point. The decision of the Appeals Court in *Town Council of Agawam v. Town Manager of Agawam* (20 Mass. App. Ct. 100, 1985) does not relate to this issue, although it does speak in broad language about the discretion granted under sec. 20.

Attorney George Hall of our Board of Directors has spoken to me about his fears concerning the concentration of power in the hands of a few under various town charters. Certainly, there is a danger in adopting a charter that all the implications will not be clear at the time of the vote. For communities alarmed by possible control of the appointment, terms, or management of Conservation Commissions, the best route would seem to be a vote of amendment. Best check with town counsel, though, to make sure it is done right.

MACC is grateful for the attention and advice given us by Chatham's town manager and Canton's town counsel, among others.

Alexandra D. Dawson, J.D.
MACC Director of Legal Affairs

New Items and Important Publications

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#917 \$7.00

National List of Plant Species that Occur in Wetlands: Massachusetts. US Fish & Wildlife Service. 1988. Lists indicator status (obligate, facultative, etc.). Organized by scientific name and common names. Important for delineations under the Wetlands Act. Current edition.

#105 \$12.00

1995 Supplement to List of Plant Species that Occur in Wetlands: Northeast (Region 1). US Fish & Wildlife Service. 1995. Lists changes or additions in indicator status for 145 species. Organized by scientific name. Important for delineations under the Wetlands Act. New Item - call for price #105A

Weeds in Winter. Lauren Brown. W.W. Norton. 1986. Identifies over 135 common weeds and wildflowers of the northeastern US, each illustrated with a full-page line drawing. 252 pp.

#128 \$11.00

Winter Botany. W. Trelease. Dover Publications. 1967. Winter identification of over 1,000 vines, shrubs and trees. 396 pp.

#109 \$10.00

Fruit Key and Twig Key. W. Harlow. Dover Publications. 1946. Guide to fruits and seeds. Over 350 photographs and descriptions make winter field identification easy. 56 pp.

#107 \$4.00

Wetlands Protection Act Regulations. Department of Environmental Protection. 310 CMR 10.00. Current text. Part I: Applies to all wetlands. Part II: Coastal Wetlands. Part III: Inland wetlands. Note: #002 and #003 include forms.

Parts I, II & III	160 pp.	#002	\$11.00
Parts I and II	134 pp.	#003	\$9.00
Forms	42 pp.	#005	\$5.00

Wetlands Protection Program Policies. 1995. Department of Environmental Protection policies interpreting the Wetlands Protection Act and Regulations.

#012 \$8.00

A Guide to Understanding and Administering the Massachusetts Wetlands Protection Act. Elizabeth A. Colburn, Ph.D., Editor. Massachusetts Audubon Society. 1995 Edition. Complete package includes text insert, binder and tabs.

#155 \$25.00

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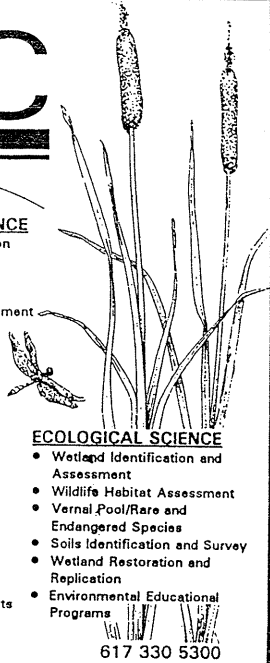
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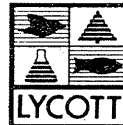
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Notice of Public Hearing

The Department of Environmental Protection will hold public hearings on a proposal to reauthorize provisions of the Wetlands Protection Act Regulations relating to agricultural projects, which provisions would otherwise expire on May 20, 1996.

These provisions are contained in the 310 CMR 10.04 definition of "agriculture" [establishing which agricultural projects are and are not subject to wetlands permitting]; 310 CMR 10.06 (6) [relating to emergency certification of agricultural projects]; and 310 CMR 10.53(5) [permitting the waiver of certain performance standards for specified agricultural projects]. Hearings will be held as follows:

- Feb. 6, 1996, 7 p.m. Auburn Town Hall, Selectmen's Meeting Room, 104 Central St., Auburn
- Feb. 7, 1996, 7 p.m. DEP, Northeast Regional Office, 10 Commerce Way, Woburn
- Feb. 8, 1996, 7 p.m. DEP, Southeast Regional Office, 20 Riverside Dr., Route 105, Lakeville
- Feb. 12, 1996, 1 p.m. McCormack State Office Bldg., One Ashburton Place, 21st floor, Conf. Rm. 1, Boston
- Feb. 15, 1996, 7 p.m. Pittsfield City Hall, Council Chambers, 70 Allen St., Pittsfield

Written comments may be submitted until February 26, 1996. Questions about the hearings, requests for copies of the proposed regulations, and public comments should be direct to: Gary Gonyea, DEP/DWW, One Winter St., 8th floor, Boston, MA 02108 (telephone 617-556-1152).

Massachusetts Association of Conservation Commissions
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