

August 18, 1992

Earl Blanchard, Chairman
P.O. Box 122
Conservation Commission
Acushnet, MA 02743

Dear Earl:

I wanted to take the opportunity to reemphasize several points we discussed in our telephone conversation yesterday. During our call, I suggested that the Acushnet Conservation Commission require that applicants to the commission use the state form "Request for Determination of Applicability" (Form 1), rather than requiring only the town's form "Request to Determine Applicability of the Wetland Protection Act" ("Form 1-A"). When making its determination the town must also use the state form "Determination of Applicability of the Wetlands Protection Act" (Form 2).

While the Buzzards Bay Project recognizes the town of Acushnet's need for the information contained on its own form, failure to require the use of the state forms and procedures is not only a failure by the Acushnet Conservation Commission to adhere to the state's wetlands regulation, but could result in inadequate protection of the town's and public's wetlands interests. Furthermore, we believe that the town's actions may create financial risks and be an impediment to local businesses. Below I highlight these issues for you and the rest of the conservation commission to consider.

The Conservation Commission is not adhering to the Wetlands Regulations

The wetlands regulations expressly state that Requests for Determination of Applicability "shall be submitted on Form 1 of 310 CMR 10.04". It is the conservation commission's responsibility to reply to this request using Form 2. (... "Conservation Commissions shall issue a Determination of Applicability, Form 2 of 310 CMR 10.99" [10.05:(2)(b)])

Public rights have been undermined

The state regulations create an unbiased public process that enables appeals of determinations by abutters or ten citizens in the town. The wetland process now implemented by Acushnet undermines that appeal process. Also the town does not advertise or hold public hearings when the commission makes decisions on their determinations using Form 1A. There is always the potential that the conservation commission could make an inappropriate decision, thus without an appeals process or public hearings, some wetlands may not receive adequate protection.

Acushnet's wetland filing process could adversely affect businesses.

The town of Acushnet's failure to adhere to the process defined in the Wetlands Protection Act can put at risk those businesses who have received a negative determination under the local form, but who may not receive approval under the procedures required in the Wetlands Protection Act. For example, it is conceivable that a developer could get a negative determination by the town of Acushnet, proceed with a project, only to get halted by the state if an abutter or an aggrieved party files the state required Request for Determination of Applicability under the Wetlands Protection Act and gets a positive determination by appeal. Such a scenario can result in significant financial losses to a business or property owner. Because the title of the town's form may mislead the applicant into believing that they are complying with the Wetlands Protection Act, the town could be held liable for the applicant's financial losses.

The town of Acushnet is a signatory of the Buzzards Bay compact. One of the goals of the compact is to work toward regionally consistent environmental enforcement so as not to create an undue burden to property owners and businesses and to ensure adequate environmental protection. Acushnet is the only Buzzards Bay municipality that does not adhere to the Wetlands Protection Act procedures in the way I described.

I recognize that adhering to the state regulations may increase the town's administrative burden, but given the town's extensive wetland resources, it is in the town's interest to hire a conservation agent to assist the Conservation Commission. Of course these are tough economic times; if it is too much of a financial burden for the town to hire an agent, I suggest that Acushnet work with several other towns to form a regional conservation district, much in the same way that Acushnet participates in the Acushnet-Marion-Rochester health district originally funded by the Buzzards Bay Project.

While the Project does not have any funds to provide to the town to hire a conservation agent at this time, we will be happy to provide technical assistance to help the town comply with the state regulations. I would like to also add that if the town would like to institute its own wetlands protection bylaw tailored to the special needs of the town, the Buzzards Bay Project can provide you with technical assistance in drafting an appropriate bylaw. These bylaws can be used to obtain additional revenues for hiring the necessary professional staff.

If I can be of further assistance to you, please call me.

Sincerely,

Joseph E. Costa, Ph.D.
Project Manager

cc: Board of Selectmen
Conservation Commission
Town Counsel
Dennis Luttrell, BBAC

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