

MEMORANDUM

TO: Cosignatories on Buzzards Bay Project wetlands appeal
FROM: Joseph E. Costa, Ph.D, Executive Director, Buzzards Bay Project
DATE: July 5, 1994
RE: status of Holly Woods Road subdivision wetlands case
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I am writing to update you on the status of our appeal to DEP on the Holly Woods Rd. subdivision owned by E.F. Boardman Realty Trust on which you were a cosignatory. As you recall, in September of 1993, the Buzzards Bay Project and 20 Mattapoissett residents jointly submitted an appeal to DEP regarding the "negative determination of applicability" under the state Wetlands Protection Act relative to this project issued by the Mattapoissett Conservation Commission. The Buzzards Bay Project also urged DEP to initiate its own appeal on the case. In the box to the right, we give a history of events relating to this case.

Since our appeal, the most important milestones have been that DEP initiated its own appeal on the case on September 10, 1993, DEP made a site visit in October 1993 and concluded that a new wetlands line be submitted, and DEP made site visits in December 1993 and June 1994 to evaluate draft wetland delineations submitted by the applicant. As of the date of this memorandum, DEP has not yet issued a Superseding Determination on our or its own appeal.

- Milestones of E.F. Boardman Realty Trust subdivision on Holly Woods Rd.
- 2/88 NOI submitted to Mattapoissett Con Com with proposed wetland delineation.
- 3/88 Mattapoissett Con Com accepts wetland delineation and issues Order of Conditions
- 3/91 Original Order of Conditions expires
- 4/93 BBP receives complaints about alleged filling of wetlands and alleged septic system construction in wetlands
- 6/3/93 BBP writes Mattapoissett Con Com requesting files on Holly Woods Rd. subdivision.
- 6/18/93 BBP writes Mattapoissett Con Com noting expiration of Order, requests enforcement action by commission.
- 7/29/93 BBP submits Request for Determination of Applicability to Mattapoissett Con Com
- 8/24/93 Mattapoissett Con Com issues negative determination
- 9/3/93 BBP and 20 Mattapoissett Residents submit appeal for Superseding Determination to DEP
- 9/10/93 DEP initiates its own appeal on the Mattapoissett Con Com decision
- 10/93 DEP holds site visit, indicates new wetland delineation needs to be submitted
- 12/93 DEP holds second site visit to review draft wetland delineation
- 1/94 BBP receives first draft of new wetland delineation under state WPA regulations
- 6/94 DEP holds third site visit to review draft wetland delineation

It is worth noting that the property owner and their representatives have cooperated fully with DEP, and since DEP requested a new wetlands line, have invited the involvement of the Buzzards Bay Project in the wetlands redelineation at the site. In fact, the Buzzards Bay Project and the applicant are now in agreement on the revised wetland status on more than 97% of the total site area.

To the right, in Figure 1 we show the original wetlands delineation submitted by the applicant in 1988 and approved by the Mattapoissett Conservation Commission for the 10 lot, 92.4 acre¹ subdivision. As shown, the original plans showed that the site contained approximately 9.3 acres of wetland, covering about 10% of the subdivision.

When the Buzzards Bay Project received complaints in the Spring of 1993 alleging that mounded septic systems were being constructed in wetlands, the Buzzards Bay Project consulted DEP's Wetlands Conservancy Program maps for the area. The y

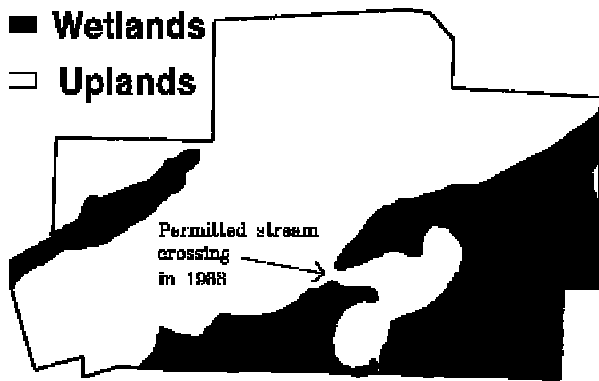


Figure 2. Wetlands in subdivision as identified on 1990 DEP Wetland Conservancy Maps. These maps are based on aerial photographs, and typically represent the minimum extent of wetland coverage, which in this case is about 33% of the site.

Wetlands Conservancy Maps are based on delineations made from 1990 aerial photographs. The Buzzards Bay Project recognized that these Conservancy Maps are not adequate for establishing wetland boundaries under the state wetland regulations, but we knew that DEP adopted a conservative methodology for delineating wetlands using aerial photographs, so we believed that Conservancy maps likely represented the **minimum extent** of wetlands at the site. As shown in Figure 2, the Wetland Conservancy Program maps showed a far greater wetland coverage than the 1987 subdivision plan. The Conservancy maps suggested that at least 30.2 acres, or 33% of the subdivision was composed of wetlands. This information was central to the Buzzards Bay Project's appeal, and may have been the key reason why DEP initiated its own appeal.

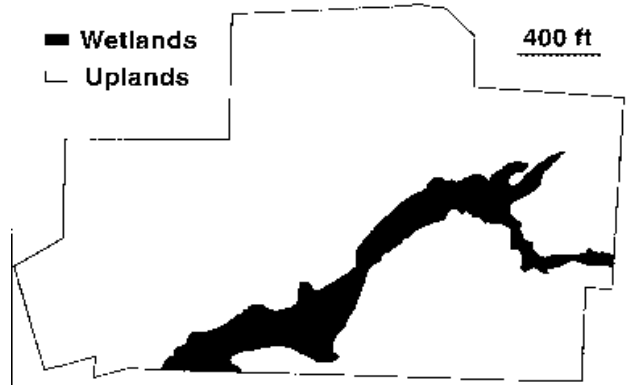


Figure 1. Outline of the 92 acre subdivision showing location of wetlands identified in 1987 dated plan. About 10% of the site was mapped as wetlands.

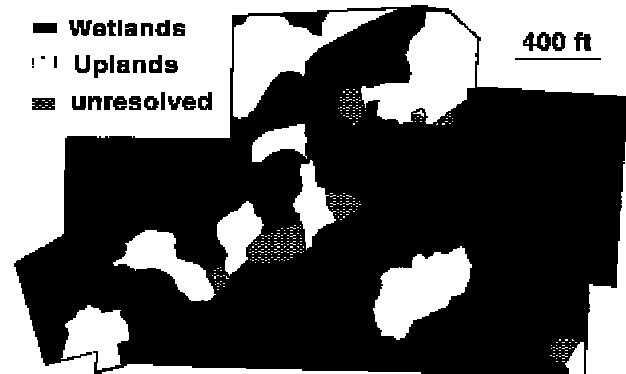


Figure 3. Outline of the 92 acre subdivision showing location of wetlands identified in 1994 by the property owner. At least 78% of the site is now identified as wetlands.

In June 1994, the applicants engineer submitted a new wetlands delineation to DEP, as represented approximately in Figure 3. As shown, it has now been determined that there are at least 73 acres of wetlands present in the subdivision, covering more than 78% of the site. Currently there are an additional 2.5 acres of land that all parties are not yet in full agreement. These areas are mostly disturbed sites under or around the mounded septic systems. DEP may determine that these areas are either wetland, upland, or filled or disturbed wetland.

It is apparent by comparing Figure 1 to Figure 3, that large areas of wetlands were overlooked in 1987. Without including the unresolved areas, the total wetland area overlooked in 1987 amounted to more than 63 acres or 2.8 million sq. ft. Thanks to your help and participation, these wetlands will now receive the appropriate level of protection due under the state regulations.

A number of lessons can be drawn from this case. One of the most important conclusions is that the accurate delineation of wetlands is one of the most important steps in protecting wetlands. Another lesson is that the DEP Wetland Conservancy Maps are a valuable **planning tool** that can help identify the likely minimum extent of wetlands at a site. Finally, the successful use by the Buzzards Bay Project of DEP's Wetland Conservancy Maps as the basis of an appeal, may have set an important precedent.

Finally, you may be aware that this case is under investigation by the US Army Corps to determine if the applicant has adhered to **federal** wetland regulations. The Army Corps made a site visit in July 1993 and determined that federally designated wetlands have been altered and required that a new delineation of federal wetland boundaries be submitted. The federally designated wetlands, like the state wetland area, is considerably more extensive than shown on the 1987 dated plans. We do not know when Army Corps will issue a ruling on this case.

We will notify you of any new decisions or announcements by DEP or the Army Corps. Once again, thank you for your participation.

cc. J. Smolak, E.F. Boardman Realty Trust
Mattapoisett Conservation Commission
E. Kouloheras, DEP-SERO

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¹ The subdivision plan identifies a "90" acre subdivision, but the acreage identified on the 9 plot plans submitted to the Board of Health total 92.43 acres. This latter figure was used in our calculations.