



Buzzards Bay Project
National Estuary Program

Douglas S. Westgate, Chairman
Wareham Conservation Commission
54 Marion Rd
Wareham, MA 02571

April 20, 2005

Re: Comments on the proposed expansion of the Onset Bay Marina
via: fax (508) 295-2358, and hand delivery

Mr. Westgate:

The Buzzards Bay Project National Estuary Program has received inquiries and comments from residents, town officials, and an engineering firm regarding the potential environmental impacts from the proposed expansion on the Onset Bay Marina. These inquiries have ranged from the regulatory and permitting process to environmental impacts of the marina expansion and increased boating activities on eelgrass abundance in Buzzards Bay. We have conducted a preliminary review the plans submitted, a letter dated April 6, 2005 by the Division of Marine Fisheries, a March 14 statement from two commercial shellfishermen, the town wetlands bylaw, Wareham's Harbor Management Plan, and a March 16, 2005 letter from the Wareham Marine Resources Commission.

Some of the issues raised to us about this project do not relate to the jurisdictional authority of the Wareham Conservation Commission, however, in this letter we provide a brief summary of those jurisdictional and permitting issues to clarify the regulatory process for others who have an interest in the permitting of this project and are copied on this letter.

Project Overview

Onset Bay Corporation proposes to expand the Onset Bay Marina located on Greene Street in Onset Village, in the Town of Wareham. The existing facility is licensed under Chapter 91 (License Number 2413). The existing facility currently extends 602 ft into Onset Bay. The proposed expansion will add an additional 361 feet with 16,400 square feet of docking space. This project appears to be one the largest proposed dock expansions in Buzzards Bay we are aware of.



Permits Required

State Wetlands Protection Act (MGL Ch. 131, s. 40)

This permit is issued by the Conservation Commission pursuant to the supporting regulations 310 CMR 10.0. The issuance of the permit can be appealed by an abutter, 10 residents, or an aggrieved party. In general, the state WPA regulations address the direct impacts of a dock, and not cumulative impacts of many docks, or boating activity associated many docks in a bay. With respect to eelgrass, the state regulation are generally interpreted to avoid to the extent possible, the placement of docks in existing eelgrass beds.

Local Wetlands Bylaw

Many towns, like Wareham, have local wetland bylaws that are more stringent than the state regulations. As noted in more detail below, the Wareham regulations provide the Conservation Commission the opportunity deny a dock expansion such as this, if certain criteria are met. In such a case, the Conservation Commission would deny the project under the local regulations, and approve it under the state regulations. The Massachusetts Department of Environmental Protection cannot issue a new Chapter 91 waterways license for a dock or dock expansion until any local wetland bylaw denials are overturned in Superior Court.

Chapter 91 Waterways License

Separate from the state Wetlands Protection Act permit, DEP issues a Chapter 91 Waterways License. The Commonwealth of Massachusetts owns the land below the low water mark, and this permit is meant to license docks and other structures placed in Massachusetts tidelands in a way to protect the public's interests in "fishing, fowling, and navigation." DEP considers navigational issues and public access issues through the permitting process. DEP may also deny a project if it contradicts a locally approved, and state accepted or approved, Harbor Plan. In their March 16, 2005 letter to the Board of Selectmen, the Marine Resources Commission asserts the Onset Bay Marina expansion contradicts Wareham's Harbor Management Plan. For these concerns to be addressed, the Marine Resources Commission must submit their written comments to DEP during the permit application comment period to become a party to the decision.

US Army Corps of Engineers (federal wetlands and navigation regulations permit)

The applicant will need to file for an Army Corps permit to comply with federal navigation and wetlands laws and regulations. If the Marine Resources Commission, shellfisherman, or residents have concerns about navigation, public uses, eelgrass beds, or water quality, including cumulative impacts and indirect effects of boat activity, they must submit their written comments to Army Crops during the permit application comment period to become a party to the decision.

Site Plan Review

If the expansion conforms with local zoning ordinance no variance would be required from the Zoning Board of Appeals. However, a Site Plan Review permit may be required by the Planning Board to ensure that local parking, stormwater treatment and other requirements

for business development is adhered to. We have not reviewed the Planning Board's Site Plan review regulations to determine whether any sections apply to this project.

Specific jurisdictional controls under Wareham's Wetland Bylaw and supporting regulations

The Wareham Wetlands Protection Bylaw, like many other local wetland protection initiatives, expands the purpose of the bylaw to protect more than the eight interests of the state Wetlands Protection Act (MGL Ch. 131, s. 40)

Following the Massachusetts Association of Conservation Commission model, the underlying reasons for enactment are generally referred to as "protection of the resource area values of the bylaw." In addition to the duplication of the WPA "interests," the Wareham Bylaw protects the "resource area values" of erosion and sedimentation control, water quality, water pollution control, shellfish, rare species habitat, aesthetics, agriculture, aquaculture, and recreation. Projects may be regulated that are likely to have a significant or cumulative effect on these values that have been "deemed important to the community."

The Conservation Commission is authorized by Section VI of the Bylaw to deny a permit for "failure to meet the performance standards" or for "failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by the bylaw and where no conditions are adequate to protect those values."

In the Definition Section (Section VII) recreation is defined and a performance standard is given. This paragraph states:

"The term recreation shall include, without limitation, the purposes for which the resource areas are used by the public such as navigation, fishing, hunting, shellfishing, swimming, waterskiing, diving, walking, etc. A project must not be designed so as to impair the ability of the resource area to provide for these and other normal and customary public recreation uses."

The Commission must decide two things vis a vis the resource area value of recreation.

1. Will the proposed expansion of Onset Bay Marina have a significant effect on recreation?
2. Is the project as designed likely to impair the public recreation uses?

If both questions are answered in the affirmative, then the Bylaw requires that the project be denied.

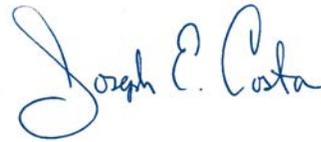
Eelgrass Bed Coverage

Eelgrass beds can be shaded out by docks, particularly where it is near its maximum depth distribution. Moreover cumulative impacts of boating activity, especially activity causing sediment resuspension, such as sediment resuspension from propeller wash, can make water more turbid, and can lead to loss of eelgrass. Chain dragging associated with moorings, both the actual dragging disturbance in eelgrass beds, and sediment resuspension by chain dragging, can also lead to direct and indirect eelgrass bed losses.

Between the mid 1980s and mid 1990s, eelgrass has shown a general decline in Onset Bay, and details of this decline are shown on the maps on the following pages (Figures 1 and 2). This decline is likely to have been caused both by excessive nitrogen inputs from land sources and sediment activity associated with boat activity and mooring fields. It is impossible to assign relative significance of these activities to the eelgrass loss without more information.

I hope this information assists the board with its decision.

Sincerely,

A handwritten signature in blue ink that reads "Joseph E. Costa". The signature is written in a cursive style with a large initial 'J'.

Joseph E. Costa, PhD
Executive Director

cc Wareham Marine Resources Commission
David Pichette, Conservation Agent
Chuck Gricus, Town Planner



Figure 1. Eelgrass mapped by Costa in the mid 1980s¹ (green crosshatch) and mapped by Massachusetts DEP in the mid-1990s (red hatched).

¹ from Costa, J. E. 1988. Eelgrass in Buzzards Bay: Distribution, production, and historical changes in abundance. U. S. Environmental Protection Agency Technical Report. EPA 503/4-88-002, 204 p.

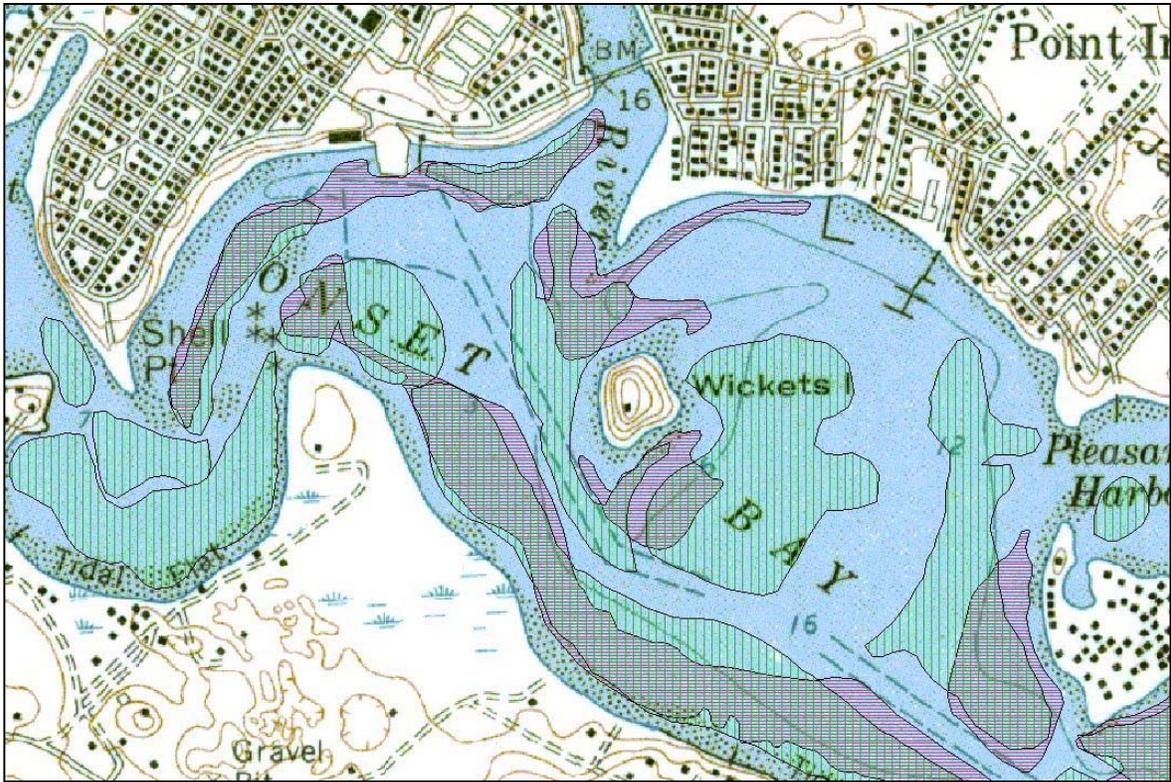


Figure 2. Same as figure 1 but larger scale view.



Figure 3. Vicinity of Onset Bay Marina in early summer, 2001 or 2002.