



## Massachusetts Association of Conservation Commissions

*protecting wetlands, open space and biological diversity through education and advocacy*

April 8, 2016

Representative David M. Nangle  
Chair, House Committee on Steering, Policy, and Scheduling  
State House, Room 146  
Boston, MA 02133

Re: House Bill 150, An Act relative to the disclosure of wetlands on property

Dear Chair Nangle:

We are writing to bring to your attention our concern about House Bill 150, which we understand has been referred to the House Committee on Steering, Policy, and Scheduling. The bill would require real estate agents, brokers, and salespersons to inform prospective buyers in writing that the property to be sold may be in its entirety or in part a wetland.

Our concern with the bill is that whether a property contains a wetland or not will not always be obvious. Wetlands are land areas that contain surface water all or part of the time, as well as some adjacent land areas. Legally the term includes not only areas we typically think of as wetlands, such as cattail marshes or red maple swamps, but also intermittent streams, floodplains, and other areas that may be dry for a significant portion of the year. Some areas, such as rivers, streams, ponds, wooded swamps, bogs and cattail marshes, are easily recognizable. Distinguishing other wetlands, especially during winter and dry times of the year, can be more difficult and may require the services of a botanist or wetland scientist.

A notice from a real estate agent, broker, or salesperson that a property may be in part a wetland (or lack of notice meaning there is no wetland on the site), may provide incorrect and misleading information to prospective buyers. They may not understand that the real estate professional is not providing a definitive opinion on whether there are wetlands on the property. Whether the property contains a wetland resource area, and the extent to that area, must be made by the local conservation commission that administers the wetland laws and regulations.

We are also concerned that the bill requires prospective buyers to be notified of "Any home owner restrictions on the property to be sold associated with wetlands." That is not possible to do in a generic notice. Restrictions will differ depending on the proximity to wetlands, the type of work proposed to be done, the type of wetland, and the potential impact of that work on the wetland. Further, there may be restrictions on work done in areas that provide buffers to wetlands but the legislation is silent on that.

Under the Wetlands Protection Act, property owners may file a Request for Determination of Applicability or Abbreviated Notice of Resource Area Delineation with the local conservation commission if there is a question of the location of a wetland or whether the work they propose to do requires conservation commission approval. Real estate agents, brokers, and salespersons, to operate with due diligence, may need to file with conservation commissions and receive a determination so that

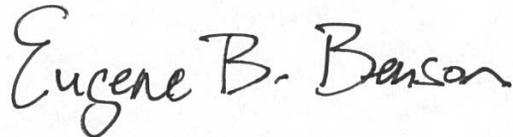
they may provide the notice required by H.150. That will increase the workload of commissions and costs and time for real estate transactions.

We understand and appreciate the intention of H.150, which is to inform prospective buyers that the property they are considering purchasing may contain wetlands that would need to be protected and that restrict work they might do on the property. Rather than requiring notice to prospective buyers that there may be a wetland on the property, we suggest that real estate agents, brokers, and salespersons provide prospective purchasers with information about the Wetlands Protection Act. For example, we provide the accompanying brochure to conservation commissions, which often have them available for property owners. Requiring distribution of the brochure to prospective buyers would provide a more appropriate and informative notice.

We are available to provide additional information and to meet or speak with you or your staff if that would be helpful.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Eugene B. Benson". The signature is written in a cursive, flowing style.

Eugene B. Benson  
Executive Director  
eugene.benson@maccweb.org

enc.