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August 25, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : W.L. Byrne, Inc.
PROJECT MUNICIPALITY : Middleborough
PROJECT WATERSHED : Taunton / Buzzards Bay
EOEA NUMBER : 13841
PROJECT PROPONENT : W.L. Byrne, Inc.
DATE NOTICED IN MONITOR : July 25, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.03 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **requires** the preparation of a mandatory Environmental Impact Report (EIR).

As described in the Environmental Notification Form (ENF), the project involves the creation of 85.11 acres of new cranberry bogs and approximately 25 acres of reservoir and canals on an approximate 217-acre project site. Upon completion of the bog system, the project will require the withdrawal of approximately 760,000 gallons per day (gpd) of surface water from the proposed reservoirs. The construction of the bogs is proposed to be completed by the year 2015.

The ENF depicts 17 cranberry beds, approximately three to five acres in area, with two geographically distinguishable reservoir areas connected by a canal system. The proposed project will alter approximately 115 acres of upland; construction of the cranberry bogs and associated reservoirs will involve the removal of earth and extensive site regrading. Several small buildings, totaling 500 square feet in area, are proposed to be constructed on the project site to house irrigation and maintenance equipment.

The project area is adjacent to, and a continuation of, an existing sand and gravel removal/cranberry bog facility owned and operated by W.L. Byrne, Inc. These bogs have an approved Department of Environmental Protection (DEP) Water Management Act Permit and presently withdraw 590,000 gpd of surface water from on-site reservoirs.

The proponent proposes to utilize water control structures comprised of reservoirs, ditches and conveyance canals designed as a closed system, with all water used in the cultivation of cranberries returning to reservoirs located adjacent to the proposed bogs. Stormwater runoff will also be retained on site for recharge back to groundwater. The proponent will utilize agricultural Best Management Practices (BMPs) for irrigation and flood management to limit use of on-site water resources. The project will also incorporate integrated pest management (IPM) and BMPs in using fertilizers and chemicals.

This project is subject to a mandatory EIR pursuant to Sections 11.03(1)(a)(1) and 11.03(4)(b)(1) of the MEPA regulations because it will directly alter more than 50 acres of land and because it proposes a new water withdrawal of 100,000gpd. The project will require a Water Withdrawal Permit under the Water Management Act from the DEP. The project may also require a Conservation and Management Permit from the Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP) and a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency (U.S. EPA). The project may require an Order of Conditions during some portion of the ten-year construction period for work within a wetland resource area buffer zone from the Middleborough Conservation Commission, although the ENF indicates that the proposed project does not entail impacts to wetland resource areas. The project will require an amendment and/or extension of an existing Earth Removal Permit from the Town of Middleborough.

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts and that are within the subject matter of required or potentially required state permits. In this case, MEPA jurisdiction exists over land alteration, water supply, wetlands, rare species and stormwater.

The proponent must prepare a Draft and a Final EIR in fulfillment of the requirements of Section 11.03 of the MEPA regulations.

SCOPE

Project Description and Permitting

The EIR should include a description of the proposed project, a history of adjacent earth movement and cranberry operations, and a discussion of current and proposed water withdrawal permitting. The EIR should include existing and proposed grading plans at a reasonable scale detailing elevations, proximity to dwellings, open space and private wells. The EIR should include a schematic cross-section of a completed bog, including relationship to groundwater,

irrigation control systems, and elevations. The EIR should detail the location of access or maintenance roadways (paved or unpaved) and quantify environmental impacts they may have, if not already calculated within the ENF. The EIR should identify and describe project phasing, including provisions to ensure slope stabilization if there are delays in the proposed construction schedule.

The EIR should briefly describe each state permit required for the project, and should demonstrate that the project meets any applicable performance standards.

Alternatives

The EIR should analyze the following alternatives:

- No-Build Alternative;
- Preferred Alternative as proposed by the proponent; and
- A Reduced Build Alternative, in which anticipated land alteration is less than the ENF threshold (50 acres) and land alteration impacts to rare species Priority Habitat, if applicable.

The EIR should identify the impacts conceptually for each of the alternatives, on land alteration (both removal of material and introduction of impervious area), water supply and wetlands impacts in a tabular format. This table, along with a supporting narrative, should provide a comparative analysis that clearly shows the differences between the environmental impacts associated with each of the alternatives.

The EIR should discuss how this project is compatible with Executive Order 385 – Planning for Growth, by discussing its consistency with local land use plans and the applicable regional planning documents.

Land Alteration

The project consists of substantial land alteration through the removal of sand and gravel material and overall site grading. The project will export sand and gravel from the project site to lower elevations to allow for the construction of cranberry bogs and reservoirs. The EIR should investigate all feasible methods of avoiding, reducing, or minimizing impacts to land. The EIR should present information regarding overall earth import/export volumes, location and types of soil, results of soil testing, existing and proposed grades, and bog construction techniques for each alternative. The EIR should describe methods for land clearing, earth processing and removal. If a haul road is to be constructed, the EIR must provide details regarding its location, anticipated grading, impervious surfaces and other impacts. The EIR should discuss finished slopes along the edges of the bog areas in relation to adjacent uses and proposed slope stabilization measures. Methods to reduce erosion and sedimentation during and post-

construction should be discussed to the extent required under local and federal requirements, if any.

Stormwater

The project may require the preparation of a Stormwater Pollution Prevention Plan (SWPPP) under the NPDES Construction General Permit. The project proponent must coordinate with the U.S. EPA, Boston Office regarding the applicability of the NPDES program to the project. The EIR should present the findings of the U.S. EPA with regards to the applicability of the program, or if exemption criteria apply. If a SWPPP is required under NPDES, a plan should be included in the EIR outlining measures to be implemented on site to reduce erosion and sedimentation during earth moving activities.

Wetlands

The Commonwealth has endorsed a “No Net Loss Policy” that requires that all feasible means to avoid and reduce the extent of wetland alteration be considered and implemented. The ENF indicates that no direct wetland alteration is anticipated during any phase of the project construction. Given the project phasing, if an Order of Conditions is required for work within wetland resource area buffer zones in the future, the proponent should seek approval from the Middleborough Conservation Commission. The ENF notes that a portion of the 217-acre site along its south and west boundaries contain Bordering Vegetated Wetlands (BVW). The EIR should include plans that illustrate the relationship of these BVWs to the proposed earth moving activities and cranberry bogs.

The EIR should identify the significance of all the wetland resources present on the site, including value to public and private water supply, flood control, storm damage prevention, prevention of pollution, and fisheries and wildlife habitat. The EIR should analyze indirect (i.e. changes in drainage patterns) impacts on wetlands and habitat resulting from the project. The EIR should provide details regarding impacts to wetlands and wetland buffer zones related to site grading, impervious areas, and other site development features. The EIR should demonstrate that the proponent has minimized impacts to wetland areas to the maximum feasible extent. The EIR should explain any local wetland requirements, and how compliance with these requirements affects project design. The EIR should address the relationship of proposed Integrated Pest Management (IPM) techniques to the health of adjacent wetland systems.

Water Supply

The project will require a permit under the Water Management Act (WMA) for estimated water withdrawals of 760,000 gpd upon complete build-out of the cranberry bog system. The proponent should coordinate with DEP to determine the location and testing methodology of

groundwater monitoring wells in and adjacent to the project site. The results of testing (including baseline data) should be provided in the EIR. The EIR should include a plan depicting the locations of monitoring wells and adjacent private wells in relation to existing and proposed site elevations. The EIR should include a description of the proposed closed reservoir system, including location, depth, and control points/structures. The EIR should discuss measures to limit impact of fertilizers or pesticides to groundwater and describe methods for water conservation. I encourage the proponent to prepare a Farm Plan under the guidance of the Natural Resources Conservation Service (NRCS) upon commencement of agricultural practices on site.

Rare Species

The Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP) has indicated that a portion of the project site may be located within *Priority Habitat* in the 12th edition of the *MA Natural Heritage Atlas* which will be effective October 1, 2006. Projects that will take place in Priority Habitat require review through a direct filing with NHESP for compliance with the Massachusetts Endangered Species Act (MESA). Review of the NHESP database indicates that the project site occurs within the habitat of the Eastern Box Turtle (*Terrapene carolina*). The Eastern Box Turtle is listed as a species of "Special Concern" and is protected pursuant to the provisions of the MESA (M.G.L. c.131A) and its implementing regulations (321 CMR 10.00). NHESP has requested that the proponent initiate Eastern Box Turtle surveys at the project site to determine if the project will result in a probable "take" of a state-listed rare species. If the project cannot be revised to avoid a take, it may be permitted only if it meets the performance standards for a Conservation and Management Permit (321 CMR 10.23), which is considered a state action under MEPA.

The EIR should provide information describing the location of the proposed earth movement and cranberry bog operations in relation to the Priority Habitat Areas outlined in the 12th edition of the *MA Natural Heritage Atlas*. If it is confirmed that the project site is located within Priority Habitat, the proponent should coordinate with NHESP to create a survey plan in accordance with MEPA requirements and if it is determined that a "take" will occur, the proponent must obtain a Conservation and Management Permit from NHESP prior to commencement of work as a means to avoid, minimize or mitigation impact to this rare species habitat. The EIR should present an update of coordination efforts with NHESP and results of surveys if available.

Construction Period

The construction period for this project will be extended over a duration of ten years, as it is anticipated that bogs will be built as new areas are cleared of sand and gravel. The EIR should discuss potential construction period impacts (including but not limited to noise, vibration, dust,

and traffic flow disruptions) and analyze and outline feasible measures, which can avoid or eliminate these impacts.

Mitigation

The mitigation section should include a proposed Section 61 Finding for each state agency that will issue a permit for the project. The proposed Section 61 Finding should contain a clear commitment to implement mitigation measures, estimate the individual costs of the proposed mitigation, and identify the parties responsible for implementation. A schedule for the implementation of mitigation should also be included.

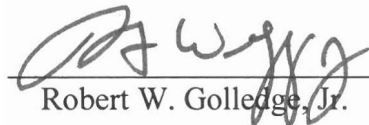
Comments

The EIR should contain a copy of this Certificate and of each comment received. The EIR should follow the general guidance for outline and content contained in section 11.07 of the MEPA regulations, as modified by this Certificate. The EIR should respond fully to each substantive comment received, to the extent that it is within MEPA jurisdiction. The EIR should present additional technical analysis and/or narrative as necessary to respond to the concerns raised.

The proponent should circulate a copy of the EIR to any party submitting written comments on the ENF and in accordance with Section 11.16 of the MEPA Regulations. A copy of the EIR should be made available for public review at the Middleborough Public Library.

August 25, 2006

Date


Robert W. Golledge, Jr.

Comments Received:

08/14/2006	Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program
08/15/2006	Department of Environmental Protection – SERO
08/17/2006	Edward and Marilyn Hart

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