



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval L. Patrick
GOVERNOR

Timothy P. Murray
LIEUTENANT GOVERNOR

Ian A. Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

April 24, 2009

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

PROJECT NAME : Oiva Hannula & Sons
PROJECT MUNICIPALITY : Carver and Middleborough
PROJECT WATERSHED : Buzzards Bay
EEA NUMBER : 14385
PROJECT PROPONENT : Oiva Hannula & Sons
DATE NOTICED IN MONITOR : March 25, 2009

Pursuant to the Massachusetts Environmental Policy Act (M.G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

As described in the Environmental Notification Form (ENF) and a supplemental memorandum provided during the MEPA comment period, the project consists of water withdrawal permitting of 0.33 million gallons per day (MGD) of water associated with the cultivation of 36.5 acres of cranberry bogs. Additional work includes the creation of tail water recovery ponds, deepening existing irrigation ponds, and renovating or squaring off existing cranberry beds. The project includes alteration or construction of new bogs in areas known as Bailey Bog, Goddard Bog, and Washburn Bog. Bailey and Washburn bogs are located in the Town of Carver; Goddard Bog is located in the Town of Middleborough. Each bog has an approved Conservation Farm Plan prepared in conjunction with the National Resources Conservation Service (NRCS).

Despite the alteration of approximately 40 acres of land, MEPA's land alteration threshold does not apply to this project since work will be conducted in a manner consistent with an approved conservation farm plan. Additional impacts include the filling of approximately 36,844 square feet (sf) of Isolated Vegetated Wetlands (IVW) and surface water withdrawals of approximately 0.33 MGD.

Jurisdiction

The project is undergoing MEPA review pursuant to Section 11.03(4)(b)(1) and Section 11.03(3)(b)(1)(d) because the project requires a State agency action and will result in the new withdrawal of 100,000 or more gpd of water and the alteration of more 5,000 of more square feet of isolated vegetated wetlands. The project will require a Water Management Act (WMA) permit and a Section 401 Water Quality Certificate (WQC) from the Massachusetts Department of Environmental Protection (MassDEP). The project will require an Order of Conditions from both the Carver and Middleborough Conservation Commissions, or in the case of an appeal, a Superseding Order of Conditions from MassDEP. The project must obtain approval under the Section 404 Permit from the U.S. Army Corps of Engineers (ACOE). The project may also require a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the United States Environmental Protection Agency (U.S. EPA).

Because the proponent is not seeking financial assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required state permits and that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction exists over water, wetlands, and stormwater.

Water

The Proponent has applied for a WMA permit to cultivate 36.5 acres of existing and new cranberry bogs. MassDEP has indicated that the WMA regulates "new-style" bogs above 9.3 acres in common ownership within a single major watershed. Between the acquisition of previously unregistered bogs and the creation of new bogs, the Proponent exceeds the 9.3 acre threshold for bogs under common ownership. The proposed bogs will be "new-style", meaning that they will use laser leveling, sprinkler irrigation, and the implementation of tailwater recovery to reduce water usage in comparison to traditional construction methods.

The project seeks to permit water usage for 36.5 acres. This includes the total existing unpermitted and proposed 20.5 acres at Washburn Bog, the 3.5 proposed acres at Bailey Bog, and the 12.5 acres at Goddard Bog (4.5 acres of existing certified acreage and 8.0 proposed acres). The Proponent has active farm plans prepared in cooperation with the Plymouth County NRCS. MassDEP has indicated that continuing to operate under a farm plan will be a condition of any permit issued under the WMA.

Wetlands and Stormwater

The project will alter approximately 36,844 sf of IVW within the Bailey/Washburn Bogs. Two separate IVWs will be filled: IVW "A" in its entirety (25,473 sf) and a portion of IVW "B" (11,371 sf of its total 23,392 sf of area). IVW "A" is located within the new proposed 4.0 acre bog within the Washburn Bog system and IVW "B" is located partially within the new proposed 3.0 acre southernmost bog within the Washburn Bog system. Neither of these IVWs meet the criteria to be classified as Isolated Land Subject to Flooding in accordance with the Wetlands Protection Act. IVW's "A" and "B" are not jurisdictional under the Wetlands Protection Act, but are regulated by the ACOE. IVW's "A" and "B" were investigated for vernal pool habitat and were determined to not meet the Natural Heritage and Endangered Species Program (NHESP) criteria to be classified as a certified vernal pool. A separate IVW (IVW "C"), was investigated on site and is a certifiable vernal pool. This wetland area will not be altered as part of the project.

The ENF contained a wetland replication and monitoring plan to mitigate the direct alteration of on-site IVW. Replication will be provided at a ratio of 2.42:1, for a total of 89,342 sf in three distinct areas. The Proponent indicated at the ENF site visit that replication areas will mimic the existing IVW characteristics of the wetlands to be filled. The project will require the filing of a Notice of Intent (NOI) with the Carver and Middleborough Conservation Commissions and MassDEP prior to commencement of work. The NOI should detail the proposed activities and mitigating measures demonstrating compliance with the performance standards of the Wetlands Protection Act. The project will also be required to file a 401 WQC application with MassDEP, including the requisite alternatives analysis prepared in accordance with 314 CMR 9.00.

The Proponent will be required to prepare a Stormwater Pollution Prevention Plan (SWPPP) for use during the construction period in accordance with the NPDES Construction General Permit. This SWPPP should outline erosion and sedimentation control Best Management Practices (BMPs) to be implemented on-site during construction activities. Similar BMPs will likely be required in accordance with Orders of Conditions and 401 WQC review.

Historic and Archaeological Resources

The Massachusetts Historical Commission (MHC) will review the project under Section 106 of the National Historic Preservation Act of 1966, as amended (36 CFR 800) because the project will require a Section 404 Permit from the ACOE. Under MHC's state regulations, a Section 106 review substitutes for MHC's review (see 950 CMR 71.02(2)) in an effort to streamline the historic review process.

The MHC has reviewed the Inventory of Historic and Archaeological Assets of the Commonwealth and determined that the Bailey/Washburn bogs are within and adjacent to several inventoried ancient archaeological sites (MHC #19-PL-855, 19-PL-384). Based upon discussions with MHC, these sites appear to have been inventoried by avocational, rather than professional, archaeologists. Furthermore, one of the inventoried sites is not located within the

project site. The Proponent should work with the MHC to determine the appropriate level of archaeological investigation necessary to ensure compliance with Section 106 review. I anticipate that investigations will be limited to those areas that will be directly affected by the proposed bog construction on the subject property.

Based on the information in the ENF and after consultation with relevant public agencies, I find that no further MEPA review is required at this time. The project may proceed to State permitting.

April 24, 2009
Date


for Ian A. Bowles

Comments received:

03/31/2009 Massachusetts Historical Commission
04/07/2009 Division of Fisheries and Wildlife – Natural Heritage and Endangered Species
Program
04/14/2009 Massachusetts Department Environmental Protection - SERO

IAB/HSJ/hsj