



# Cape Cod Cranberry Growers' Association

## GROWER ADVISORY

### Abandoned Bog Renovation

## Introduction

This Grower Advisory addresses the permitting process for renovating abandoned cranberry bogs. You may wish to refer to the Advisory titled “*Working With Bogs in Disrepair*” to better understand if the bog you intend to work in fits the regulatory definition of abandoned or is still considered active.

When considering renovating an abandoned bog, there are three different regulatory agencies that may have jurisdiction. These agencies represent local, state and federal concerns. It's important to check with each agency to insure regulatory compliance before you begin work. The role and concern of each agency is outlined below.

## Local

Some towns in Massachusetts have passed local bylaws that regulate how abandoned cranberry bogs can be renovated. These are separate regulations from state or federal jurisdiction. If the town has adopted abandoned cranberry bog regulations, the process will vary as to how the town chooses to administer the renovation or activity in these bogs. Although most towns in cranberry country currently do not have abandoned bog bylaws or regulations, be sure to check to see if your town has adopted these measures. To obtain this information, you may need to read the town's zoning or general bylaws or contact the conservation commission.

## State

The Massachusetts Department of Environmental Protection (MassDEP) has a permit process for the reclamation of abandoned cranberry bogs under the Wetlands Protection Act, as outlined in 310 CMR 23.00. The following is the MassDEP permitting process for renovating abandoned bogs.

## Eligible Abandoned Bogs

The regulations only apply to activities associated with the renovation of cranberry bogs which meet the following criteria:

- The bog must be on property that is in agricultural use as of August 7, 1996 and until the time of application. In essence the bog needs to be a part of an existing farm. The farm does not necessary have to be cranberries, it can be forestry, dairy, livestock, vegetable, etc.;
- Only bogs abandoned since 1959 are eligible;
- The bog can't be located in a Zone II (A Zone II is a wellhead protection area, defined by MassDEP, that represents the primary recharge area for a public drinking water supply well) or within the watershed of a surface public water supply;
- Can not be located in an Area of Critical Environmental Concern: An ACEC is an area designated by the Secretary of the Executive Office of Energy and Environmental Affairs;
- Can not be located on a Chapter 91 navigable stream: navigable stream is a stream that a vessel (i.e. canoe or kayak) can travel down without interruption anytime during the year;
- Sets the maximum amount of acreage eligible for reclamation to 5 acres per grower every three years.

## Performance Standards

The following standards for both renovating and managing the bogs need to be met:

- The bog shall not adversely impact the habitat of rare animal or plant species as determined by the Natural Heritage and Endangered Species Program;
- No alteration of a vernal pool is allowed;
- Renovation activities are to be conducted according to USDA/Natural Resources Conservation Service standards and utilizing approved Best Management Practices (BMP) from the UMass Cranberry Station;
- An approved NRCS Conservation Farm Plan is required prior to filing an application;
- The renovated bog must contain a bypass canal or tailwater recovery system to protect water quality down stream, if necessary. The bypass canal must be constructed within the existing dike system or adjacent upland areas;
- Protections need to be implemented for those abandoned bog renovation activities that are located along or near an anadromous fish (herring) runs. There are also additional restrictions for those abandoned bogs near anadromous fish runs;
- No renovation activities shall cause an increase in flood elevations on adjacent or downstream properties;
- The renovated bog needs to be leveled to within 6-inches;
- Renovation activities shall not result in any filling of wetlands or water bodies except that which necessarily occurs as a result of normal renovation activities or the replacement of dikes and water control structures. Alteration of bordering vegetated wetlands that were not in agricultural use prior to January 1, 1959 is prohibited.
- Each renovation project must include one or a combination of more than one of the below mitigation options to protect wildlife habitat (it is the grower's choice):
  - For every acre of renovated bog, an equal or greater area of land on the undisturbed land or wildlife land has a conservation restriction placed on it that is valid only as long as the bog is in production.
  - Implement a wildlife habitat enhancement plan for the site. The plan must be approved by MassDEP.
  - One for one replication of wetlands altered ( a wetland replacement for every acre of bog renovation)

## **Application Procedure**

### **Application:**

An application shall be filed with the regional office of MassDEP in which the abandoned bog is located. A copy of the completed application also needs to be sent to the local Conservation Commission and to the Natural Heritage and Endangered Species Program. Forms are available from MassDEP at their office and on their web site at <http://www.mass.gov/dep/water/approvals/wwforms.htm#wetlands> (Form BRP WW13: Renovation of Abandoned Cranberry Bogs), as well as on the CCCGA web site. A copy of an approved NRCS Conservation Farm Plan needs to be included as well.

### **Fee:**

An application fee of \$640 is required.

### **Public Notice:**

The applicant shall publish a notice in local newspaper with a 21 day comment period. The notice should contain the following information:

- Name and address of the applicant and property owner, if different
- Location
- Brief description of the project and number of acres to be renovated
- Name and address of a person from whom additional information may be obtained and acknowledgement that the application is available for review at the conservation commission
- The 21-day public comment period and that comments should be sent to the Lakeville DEP office and a statement about the appeals process

### **Abutter Notice:**

A copy of the public notice shall be hand delivered or sent by certified mail to all abutters within 1,000 feet of the project (not the property line).

### **Public Hearing:**

MassDEP may conduct a public hearing upon request or upon its own initiative.

## **Federal Jurisdiction**

The abandoned bog permit process outlined above is only for the Massachusetts Wetlands Protection Act. The Federal Agencies of the U.S. Army Corps of Engineers and the Environmental Protection Agency have jurisdiction on wetland activities (including abandoned bog renovations) under Section 404 of the Clean Water Act. Federal jurisdiction is different from local or state concerns and in some instances, a project may be considered to come under the abandoned bog regulations from the local and state perspective but be considered an active bog under the federal regulations. The reverse situation could also occur. Be sure to read the Grower Advisory titled "*Working With Bogs in Disrepair*" to better understand if the bog you intend to work in fits the regulatory definition of inactive (abandoned) under the federal regulations.

The federal permit process is not as straightforward as the state (MassDEP) program. If the bogs are inactive (abandoned) and the project is less than one acre, then a Programmatic General Permit from the Army Corps of Engineers is required, with potential oversight by the EPA. The application will involve at a minimum a brief project description, vicinity map, site plan and will need to be sent to the Massachusetts Historical Commission and the Wampanoag tribal Historic Preservation Officer. This permit is then reviewed by the Army Corps, with feedback from relevant agencies and a determination made.

If the project is equal or greater than one acre, then an Individual Permit is required. This permit is more involved and will necessitate a public hearing, with the Army Corps seeking comments from abutters, regulatory agencies, and the public. This renovation process will involve looking at alternatives for not working in the abandoned bog, meaning can you instead build a bog in adjacent upland soils. If that is not feasible, wetland mitigation may be required. The mitigation will be determined on a case-by-case basis but could include something similar to the effect that for every acre of abandoned bog renovated, an equal or greater number of acres will be built in adjacent upland soils as replicated wetlands.

The Massachusetts specific application for the Army Corps of Engineers is available on their web site at <http://www.nae.usace.army.mil/reg/index.htm>. Additionally, your local NRCS office may be able to assist you with the federal regulations.

### For More Information Contact:

<p>Gary Makuch, Wetlands Protection          Massachusetts Department of Environmental Protection          SERO          20 Riverside Drive          Lakeville, MA 02347          Phone: (508) 946-2807          Email: <a href="mailto:gary.makuch@state.ma.us">gary.makuch@state.ma.us</a>          Web: <a href="http://www.mass.gov/dep/water">www.mass.gov/dep/water</a></p>	<p>Karen Adams, Chief, Permits &amp; Enforcement          Army Corps of Engineers, New England District          696 Virginia Road          Concord, MA 01742          Phone: 978-318-8828          Email: <a href="mailto:Karen.K.Adams@nae02.usace.army.mil">Karen.K.Adams@nae02.usace.army.mil</a>          Web : <a href="http://www.nae.usace.army.mil">www.nae.usace.army.mil</a></p>
<p>Len Reno, District Conservationist          Natural Resources Conservation Services          West Wareham Office          15 Cranberry Highway          West Wareham, MA 02576          Phone : 508-295-5151          Email : <a href="mailto:Len.Reno@ma.usda.gov">Len.Reno@ma.usda.gov</a>          Web : <a href="http://www.nrcs.usda.gov">www.nrcs.usda.gov</a></p>	<p>Jeff LaFleur, Executive Director          Brian Wick, Director Regulatory Services          Cape Cod Cranberry Growers' Association          3203-B Cranberry Highway          East Wareham, MA 02538          Phone: 508-759-1041          Email: <a href="mailto:jlafleur@cranberries.org">jlafleur@cranberries.org</a>  <a href="mailto:bwick@cranberries.org">bwick@cranberries.org</a>          Web: <a href="http://www.cranberries.org">www.cranberries.org</a></p>

The information in this guide is provided by the Cape Cod Cranberry Growers' Association as a service to its members. The information represents our interpretation of the state and federal requirements and by no means is intended to act as a substitute for reading and following the specific regulatory requirements.

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