

HEARINGS, MEETINGS, LICENSES

8/29/16

**Roadway Acceptance Hearing –
Brookside Estates**

HEARINGS, MEETINGS, LICENSES

8/29/16



The Board of Selectmen will hold a public hearing in the Selectmen's Meeting Room at the Town Hall, 10 Nickerson Avenue, Middleborough, MA, on **Monday, August 29, 2016 at 7:30 PM to accept the layout of Brookside Drive and Fidelity Lane in Middleborough, MA**, on such terms as the Selectmen shall determine for the purposes of a Town way, such property being shown on two sheets entitled "Roadway Acceptance Plan of Land - Brookside Estates, prepared by Outback Engineering, dated August 9, 2016, plans are on file with the Town Clerk's Office. Anyone desiring to be heard on this matter should attend.

Diane Stewart, Chairman
Leilani Dalpe
Allin Frawley
John M. Knowlton
Stephen J. McKinnon
BOARD OF SELECTMEN
August 18, 2016

The Middleboro Gazette Newspaper

**Earth Removal Permit –
D&D Harju**

HEARINGS, MEETINGS, LICENSES

8/29/16

From: Sandy Fell
Sent: Wednesday, August 24, 2016 4:01 PM
To: Colleen Lieb
Subject: RE: Latest Harju Earth Removal Plans

Colleen,

Hi there. Thank you for sending the updated earth removal plans. I wondered if their application changed as well. A few of my concerns are as follows. Some of these concerns I have spoken to the Harju's at one of the offsite meetings that was conducted. These issues may have already been addressed but I am not sure as I was unable to attend the meeting last Monday. Here are a few of my concerns so the board is aware.

A few questions and comments on the project:

It is my understanding that the project calls for removal of 171,600 cubic yards of material in a 3 year period. I also recall seeing that the maximum amount of material that will be removed in a year is 56,000 cubic yards. If I am incorrect in these numbers please let me know. In speaking with the Harju's I asked how many cubic yards a truckload holds. The answer given if I recall correctly is between 30 and 40 cubic yards of material. In one of the meetings they stated that they plan on making 50-60 trips a day. Add up 50 truck loads a day at 30 cubic yards each equals 1500 cubic yards of material. This means that they would reach their yearly maximum within 50 work days during the year.

Given my example above on how many work days it would take to complete the yearly maximum I would like to ask that the hauling hours be adjusted so that they are not hauling during the time that the elementary school busses are on the road. My kids take the bus 9 and it stops in front of my house at 279 Purchase Street between 8:10AM and 8:15AM. Bus number 9 continues down Purchase Street to Captain Hall before reversing course and driving back down Purchase Street to Thomas Street. Bus number 5 comes up Rocky Meadow Street and turns Right onto Purchase Street and continues down Purchase Street to Thomas Street. I strongly feel that any transportation of material should not happen during this time frame. The Elementary and Kindergarten buses return to Purchase Street at approximately 3:40PM in the afternoon. I would propose to limit the trucks to operating between 8:30AM and 3:30PM. There will still be the middle school buses and high school buses on the roads during operating hours in the afternoon but those kids are older and have a better sense of safety than the younger ones.

I understand that the Harju's plan on using water to control dust. If the permit is approved I would like to ask that all trucks exit Right onto Purchase Street instead of Left. I am not sure where the material is being hauled to. The additional nuisance of dust would be limited then as the trucks would not be traveling in front of our home on Purchase Street and exposing us to additional dust in the transportation process. Is the proposed tree line of 50 feet the only barrier that is proposed to protect abutters from drifting sand in windy conditions?

Is there a plan for sand to be stockpiled for future farming use? If so where is the stockpile going to be located and can a dust control measure be implemented for it?

I will be home from vacation next week and will be able to attend the next meeting.



165 East Grove Street
Middleborough, MA 02346
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www.outback-eng.com

Civil Engineers ✦ Land Surveyors ✦ Wetland Scientists ✦ Soils Laboratory
VIA EMAIL

August 25, 2016

Middleborough Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02347

**Subject: Purchase Street Tailwater Pond and Earth Removal Permit Plan Review
Job #OE-3041**

Dear Board Members,

Outback Engineering has reviewed the August 22, 2016 and August 25, 2016 Response Letters, along with the "Proposed Tailwater Pond and Earth Removal Plan" for D&D Harju Cranberries, LLC prepared by G.A.F. Engineering, Inc. dated 4/5/16 last revised 8/19/16.

Relative to our comments 2 and 9, we note that GAF indicates that a Special Permit relative to the WRPD Z4 Zoning Bylaw is not required to allow work within the 25' buffer zone to the wetland resource areas per MGL Ch. 40A, Section 3, and that a Stormwater Pollution Prevention Plan per US EPA NPDES is not required where the reservoir are not waters of the United States and excavation work will be conducted such that no point source stormwater discharges will be directed to the bogs or other wetlands.

Based on G.A.F.'s responses, the plan has been revised to reflect our other comments from our August 18, 2016 letter, and we have no further comments.

If you have any questions or comments, please contact me at (508) 946-9231 ext. 203.

Sincerely,
Outback Engineering, Inc.

James A. Pavlik
James Pavlik, P.E., Principal

cc: Brian Grady, GAF (via email only)



ENGINEERING,
INC.

ENGINEERS
SURVEYORS

August 25, 2016

Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02346

Re: Response to Outback Engineering Review Letter
Earth Removal Permit Application
D & D Harju Cranberries, LLC
G.A.F. Engineering, Inc. Job No. 16-8682

Honorable Selectmen,

This letter is to provide additional information regarding Comment 9 in the Outback Engineering review letter dated August 18, 2016. Mr. Pavlik, from Outback Engineering, requested additional clarification regarding the need for this project to prepare a Stormwater Pollution Prevention Plan per US EPA NPDES program. It is our opinion that this project does not need a NPDES permit for several reasons. A NPDES permit is necessary when a project disturbs greater than 1 acre of land and discharges to a "water of the United States". This project will be excavated in such a way that, at no time will a slope be created that is in excess of 1 acre, that would create a point source discharge to "waters of the United States". Secondly, any discharges that are created would be discharged to the existing agricultural reservoir located to the north of the proposed project. This reservoir is not considered a "waters of the United States". The Code of Federal Regulations, 40 CFR 122.2 defines "waters of the United States". It also defines what is not "waters of the United States". Per this regulation the following are not considered "waters of the United States":

- Artificially irrigated areas that would revert to dry land should application of water to that area cease
- Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds
- Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water

I hope this information is helpful. I have included a copy of the appropriate pages from 40 CFR 122.2 for your review. Please let me know if you have any additional questions or require more information.

Very truly yours,

Brian R. Grady
Brian R. Grady, R.S.

William F. Madden

William F. Madden, P.E.

BRG/mas
Cc: D & D Harju Cranberries, LLC
Outback Engineering
Enc.



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(ii) All interstate waters, including interstate wetlands;

(iii) The territorial seas;

(iv) All impoundments of waters otherwise identified as waters of the United States under this section;

(v) All tributaries, as defined in paragraph (3)(iii) of this section, of waters identified in paragraphs (1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(vii) All waters in paragraphs (1)(vii)(A) through (E) of this definition where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (1)(i) through (iii) of this definition. The waters identified in each of paragraphs (1)(vii)(A) through (E) of this definition are similarly situated and shall be combined, for purposes of a significant nexus analysis, in the watershed that drains to the nearest water identified in paragraphs (1)(i) through (iii) of this definition. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(A) *Prairie potholes.* Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(B) *Carolina bays and Delmarva bays.* Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(C) *Pocosins.* Pocosins are evergreen shrub and tree dominated wetlands found predominantly along the Central Atlantic coastal plain.

(D) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters and hot, dry summers.

(E) *Texas coastal prairie wetlands.* Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(viii) All waters located within the 100-year floodplain of a water identified in paragraphs (1)(i) through (iii) of this definition and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in paragraphs (1)(i) through (v) of this definition where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (1)(i) through (v) of this definition. For waters determined to have a significant nexus, the entire water is a water of the United States if a portion is located within the 100-year floodplain of a water identified in (1)(i) through (iii) of this definition or within 4,000 feet of the high tide line or ordinary high water mark. Waters identified in this paragraph shall not be combined with waters identified in paragraph (1)(vi) of this definition when performing a significant nexus analysis. If waters identified in this paragraph are also an adjacent water under paragraph (1)(vi), they are an adjacent water and no case-specific significant nexus analysis is required.

(2) The following are not "waters of the United States" even where they otherwise meet the terms of

paragraphs (1)(iv) through (viii) of this definition.

(i) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.]

(ii) Prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(iii) The following ditches:

(A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

(B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

(C) Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (1)(i) through (iii) of this definition.

(iv) The following features:

(A) Artificially irrigated areas that would revert to dry land should application of water to that area cease;

(B) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds;

(C) Artificial reflecting pools or swimming pools created in dry land;

(D) Small ornamental waters created in dry land;

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

(F) Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways; and

(G) Puddles.

(v) Groundwater, including groundwater drained through subsurface drainage systems.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

(vii) Wastewater recycling structures constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

(3) In this definition, the following terms apply:



ENGINEERING,
INC.

ENGINEERS
SURVEYORS

August 22, 2016

Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02346

Re: Response to Outback Engineering Review Letter
Earth Removal Permit Application
D & D Harju Cranberries, LLC
G.A.F. Engineering, Inc. Job No. 16-8682

Honorable Selectmen,

Please find included herein a revised plan and responses to comments raised by Outback Engineering, in their letter dated August 18, 2016, with respect to the Earth Removal Permit Application Submitted on behalf of our client D & D Harju Cranberries, LLC.:

1. Per section 8.2.9 WRPD Z4 regulations of the town Zoning Bylaws and subsection 3.d. the "25' No Disturb Zone" is not correctly shown off all of the bogs and wetland resource areas. It appears that work is proposed within the "25' No Disturb Zone" (for instance, but not limited to, along west bogs where dike road is proposed, and adjacent to the small bog on the east side of the proposed pond). The zoning bylaw requires a registered land surveyor to certify wetland locations and the "25" No Disturb Zone" (plan is stamped by professional engineer only).

Response:

The 25' "No Disturb Zone" has been revised and shown on the plan. The revised plan has been stamped by a registered Land Surveyor.

2. The applicant should verify if a special permit per section 8.2.9,3.d. is required and permissible for work within the "25' No Disturb Zone" or all land disturbing activities should be moved 25' away from all bogs and wetlands.

Response:

Massachusetts General Laws Chapter 40A, Section 3 states that "No Zoning Ordinance or by-law shall...require a special permit for the use of land for the primary purpose of commercial agriculture". No special permit application is therefore required for this agricultural use. Section 8.2.9,1 of the Zoning Bylaw states "Permitted Uses: Except as specified in 8.2.9.2 Prohibited uses and 8.2.9.3 Special Permit Uses below, those principal and accessory uses authorized in the underlying district are permitted in WRPD Z4". Agriculture is an Exempt use in this district, as noted in the Use Regulations Table located in Section 3.1.B. The proposed use is therefore a permitted use in the WRPD Z4 district.

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3. The monitoring wells proposed by the applicant for monitoring groundwater impacts on abutting wells during dewatering activities should be shown on the plan.

Response:

No monitoring wells are proposed. The proposed tailwater pond will be excavated in a wet condition. If dewatering is found to be necessary, the water will be pumped to the adjacent reservoir located 150 feet directly to the west. This water will then recharge to the water table and have no effect on abutting wells. Any water pumped from the excavation will not be lost from the area. The nearest well is approximately 600' feet away.

4. Siltation fence should be installed along the western side of the proposed pond to prevent sediment from entering the existing bog and reservoir areas.

Response:

Siltation fence has been added, as shown on the revised plan.

5. There is proposed clearing within the 100' property line setback near the isolated wetland to the north of the proposed pond. Silt fence should be on or outside of this setback to ensure no clearing within the buffer.

Response:

Siltation fence has been relocated as shown on the revised plan.

6. There is a section of the proposed tree line located to the north-east of the proposed pond which seems to be cleared further than necessary; the silt fence is approximately 25' in front of it. Tree line should be revised to limit clearing or silt fence should be moved to limit of work.

Response:

The tree line has been revised as shown on the revised plan.

7. 100' buffer line from the existing reservoir to the west of the proposed pond appears to be 90-95'. Line should be revised to accurately show the 100' buffer.

Response:

The 100' buffer zone line has been adjusted on the revised plan.

8. Distances from proposed pond to abutting properties should be shown per plan checklist.

Response:

Distances from the proposed pond to abutting property lines have been added on the revised plan.

9. It appears that a Stormwater Pollution Prevention Plan per US EPA NPDES is required for this project where more than 1 acre of land disturbing activities are proposed.

Special permit granting authority should make this a condition of approval and require submittal of the required documentation prior to commencing work.
Items to consider:

Response:

A NPDES permit is not required for this project. The excavation will occur from west to east. At no time will slopes be created in excess of one (1) acre, that would create a point source discharge to the adjacent wetlands.

- a. Per applicant response to DPW dated 7/29/20165 erosion control notes should include a provision to monitor and clean the existing driveway off Purchase Street. If necessary, a 75' long 6" thick gravel tracking pad consisting of 2" crushed stone should be provided after the paved portion of the trucking route from Purchase Street.

Response:

Erosion control notes have been revised to include a provision to monitor and clean the existing access road as necessary. The first 200' ± of access road from Purchase Street is paved and in good condition and will be inspected and maintained throughout the project. We do not anticipate the need for an additional crushed stone tracking pad as the paved driveway performs the function of the tracking pad.

- b. Erosion control notes do not specify any control for the stockpile areas. A note should be added to the effect of the following: The soil stockpile areas shall be surrounded by silt fence and soil stockpiles & exposed soils to receive temporary hydroseed or tarp covering if they will be left unused for >14 days.

Response:

A note has been added regarding stockpile areas.

- c. A schedule should be provided for the erosion control measures.
Example: Purchase St. shall be inspected weekly for sediment and cleaned as needed.

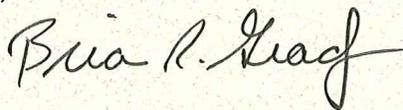
Response:

A schedule for inspection of the access road and Purchase Street has been added to the revised plan.

I trust these responses adequately address the comments raised by Outback Engineering, the review consultant. Should you require additional information please contact me directly.

Very truly yours,

Brian R. Grady



BRG/mas

Cc: D & D Harju Cranberries, LLC

Outback Engineering

Enc.



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Civil Engineers + Land Surveyors + Wetland Scientists + Soils Laboratory

August 18, 2016

Middleborough Board of Selectmen
Town Hall Building
10 Nickerson Avenue
Middleborough, MA 02347

Subject: Purchase Street Tailwater Pond and Earth Removal

Dear Board Members,

Outback Engineering has completed our initial engineering review of the plan entitled "Proposed Tailwater Pond and Earth Removal Plan" prepared by G.A.F. Engineering, Inc. dated 4/5/16 last revised 8/3/16 relative to a Special Permit request under the Earth Removal bylaw.

Other documents provided to us for reference:

- Earth Removal Permit Application, dated April 29, 2016
- Response to Department of Public Works Comments, dated July 29, 2016
- Conservation Farm Plan, dated February 2016

We have the following comments:

1. Per section 8.2.9 WRPD Z4 regulations of the town Zoning Bylaws and subsection 3.d. the "25' No Disturb Zone" is not correctly shown off all of the bogs and wetland resource areas. It appears that work is proposed within the "25' No Disturb Zone" (for instance, but not limited to, along west bogs where dike road is proposed, and adjacent to the small bog on the east side of the proposed pond). The zoning bylaw requires a registered land surveyor to certify wetland locations and the "25' No Disturb Zone" (plan is stamped by professional engineer only).
2. The applicant should verify if a special permit per section 8.2.9,3.d. is required and permissible for work within the "25' No Disturb Zone" or all land disturbing activities should be moved 25' away from all bogs and wetlands.
3. The monitoring wells proposed by the applicant for monitoring groundwater impacts on abutting wells during dewatering activities should be shown on the plan.
4. Siltation fence should be installed along the western side of the proposed pond to prevent sediment from entering the existing bog and reservoir areas.
5. There is proposed clearing within the 100' property line setback near the isolated wetland to the north of the proposed pond. Silt fence should be on or outside of this setback to ensure no clearing within the buffer.
6. There is a section of the proposed treeline located to the north-east of the proposed pond which seems to be cleared further than necessary; the silt fence is

approximately 25' in front of it. Treeline should be revised to limit clearing or silt fence should be moved to limit of work.

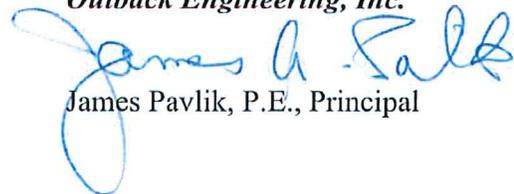
7. 100' buffer line from the existing reservoir to the west of the proposed pond appears to be 90-95'. Line should be revised to accurately show the 100' buffer.
8. Distances from proposed pond to abutting properties should be shown per plan checklist.
9. It appears that a Stormwater Pollution Prevention Plan per US EPA NPDES is required for this project where more than 1 acre of land disturbing activities are proposed. Special permit granting authority should make this a condition of approval and require submittal of the required documentation prior to commencing work.

Items to consider:

- a. Per applicant response to DPW dated 7/29/16 erosion control notes should include a provision to monitor and clean the existing driveway off Purchase Street. If necessary a 75' long 6" thick gravel tracking pad consisting of 2" crushed stone should be provided after the paved portion of the trucking route from Purchase Street.
- b. Erosion control notes do not specify any control for the stockpile areas. A note should be added to the effect of the following: The soil stockpile areas shall be surrounded by silt fence and soil stockpiles & exposed soils to receive temporary hydroseed or tarp covering if they will be left unused for >14 days.
- c. A schedule should be provided for the erosion control measures.
Example: Purchase St. shall be inspected weekly for sediment and cleaned as needed.

If you have any questions or comments, please contact me at (508) 946-9231 ext. 203.

Sincerely,
Outback Engineering, Inc.



James Pavlik, P.E., Principal

To: Board of Selectmen
Town of Middleborough
Town Hall
10 Nickerson Avenue
Middleborough, MA 02346

From: Scott Derby
220 Rocky Meadow Street
Middleboro, MA 02346

Subject: Harju Cranberry Bog on Purchase Street

I am writing today to express to you my support of the Harju's in their plan to create a reservoir in their cranberry bog located on Purchase Street near the corner of Rocky Meadow Street. My property sits directly across the street and in full view of the cranberry bog and of the proposed reservoir.

As a neighbor and recreational user of these cranberry bogs I have known the Harju's for almost ten years. I use the bogs frequently for family walks with my wife, three children and our dog. The Harju's have been fantastic neighbors to us this entire time. Because of this on-going and frequent use of the Harju's bogs I can attest to the great work they do to keep their bogs in top condition. This includes the buildings and property around the bogs.

Regarding the creation of a new reservoir I've found that again, the Harju's have been good neighbors. I have attended two informal site walks with them and have had all my questions answered. I have had follow up phone calls from Derek to make sure that all of my questions have been answered. I've also been witness to at least two earth removal projects in bogs off of Rocky Meadow Street since moving to this house in 2006. Though there certainly has been increased truck traffic I have not been adversely affected. The truck drivers have obeyed traffic rules and have been considerate. Further, I've not noted any damage to the local roads because of this work. After hearing the plan I can find no reason to think that the proposed reservoir work will affect me, my family or my property.

As a resident of Middleboro I would urge you, as Selectmen, to limit the scope of this discussion to that of the effect on local residents and their property. In my opinion this should be the only discussion at open forum. It becomes a slippery slope when you allow discussion of aesthetic issues (they are cutting down trees) on their private property. Again, how does this affect the neighbors?

Thank you for your consideration of this matter. Please feel free to reach out with any questions you have of me. Unfortunately, I will be travelling for business and unable to make this week's hearing.

Scott Derby
220 Rocky Meadow Street
sderb@gmail.com
617-828-1264