

HEARINGS, MEETINGS, LICENSES
11-2-09

(Town Seal)

A hearing will be held in the Selectmen's Meeting Room at the Town Hall, 10 Nickerson Avenue, Middleborough, MA on Monday, October 5, 2009 at 7:45 PM, for the purpose of discussing an application filed by William F. Madden on behalf of G. Lopes Construction, Inc. and Red Dog Cranberry, LLC for an Earth Removal Permit for property located at Plympton Street, Middleborough, Assessors Map 034, Lot 4315. The reason for this request is for ongoing construction and expansion of an existing agricultural activity (cranberry cultivation). Anyone desiring to be heard on this matter should appear at the time and place designated.

Patrick E. Rogers, Chairman
Muriel C. Duphily
Marsha L. Brunelle
Stephen J. McKinnon
Alfred P. Rullo
BOARD OF SELECTMEN

Publish: September 24, 2009

Payment is forthcoming - Advertiser # 300074



ENGINEERING,
INC.

ENGINEERS
SURVEYORS

October 29, 2009

Town of Middleboro
Board of Selectmen
10 Nickerson Avenue
Middleboro, MA 02346

Re: Red Dog Cranberry/Lopes Construction
Earth Removal
Off Plympton Street, Middleboro, MA
G.A.F. Job No. 5945

Honorable Selectmen:

On Saturday, October 24, 2009 an on-site meeting was conducted for the purpose of reviewing the project site, which is the subject of an earth removal application submitted on behalf of Red Dog Cranberry and Lopes Construction. The meeting was attended by the Selectmen, Lopes Construction personnel, Farm Manager and Project Engineer.

The parties discussed the site, soil, construction dewatering, general cranberry cultivation practices and proximity of abutters to the work area as well as the need for a three-year permit to fully complete the project. Planted cranberry bog sections 2 and 3 were viewed and future construction of sections 4 and 5 was discussed. The applicant explained the time frame involved in the construction of sections 4 and 5 and offered to waive the extension provision of the by-law and close out the project at the end of the three-year permit term if granted. Additionally the applicant committed to place a conservation restriction on the remaining land not used as crop land or support land. The applicant also suggested that quarterly work plans be prepared so that measurable progress can be readily determined. This was previously done and produced beneficial measureable progress.

This correspondence is intended to summarize the key points discussed at the on-site meeting and we will be prepared to continue the positive dialog at the continued public hearing scheduled for Monday, November 2, 2009.

I trust the foregoing is sufficient for your immediate needs. If you have questions or require additional information please contact me directly.

Very Truly Yours,
G.A.F. Engineering, Inc.


William F. Madden, P.E.

Cc: Gil Lopes, Lopes Construction
Jill Zajac, Esq., Lopes Construction

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WAREHAM, MA

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 **DRAFT**

**TOWN OF MIDDLEBOROUGH
EARTH REMOVAL PERMIT
DRAFT ORDER OF CONDITIONS**

Permit No. 2009 -03

Tispaquin Street - Fred Green Realty Trust

Cranberry Bog Project

September 9, 2009

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BOARD OF SELECTMEN

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INSERT APPLICATION PAGES HERE

ORDER OF CONDITIONS

BOARD OF SELECTMEN

General Information

The time line and proposed work for the Fred Green Realty Trust Tispaquin Street Cranberry Bog Project shall be as outlined in the **Project Plan** required under this permit, and approved by the Town's Agent.

The Project Plan outlines the proposed construction sequence and time lines for the project. The project plan shall be updated annually and approved by the Town's Agent.

The following sections are applicable under this permit:

- a. General Conditions
- b. Standard Conditions and Site Requirements
- c. Special Conditions
- d. Inspection Fees and Bonding

A. General Conditions

1. All phased construction work consisting of regrading shall be completed and required plantings shall be 'growing' prior to any application for a future earth removal permit or opening of new phases. No cutting, clearing or grubbing of areas not included under the Project Plan as 'phased' work shall be performed at the site.

If any aforesaid described work is done in unpermitted areas - without the written permission of the Town's Agent future earth removal requests may be forfeited.

The Town of Middleborough's Earth Removal Bylaw - as amended - should be reviewed by the project proponent to ensure that compliance requirements are met.

2. This permit is valid for **three (3) years** and may be renewed for up to one (1) year thereafter at the discretion of the Board of Selectmen at a duly advertised public meeting.

The permit holder recognizes that the Board of Selectmen desire the project to be completed in a shorter time frame or eighteen months (18) if possible.

3. Hours of operation are limited from Monday through Friday 7:30 A.M. to 4:30 P.M. Earth removal equipment motors, including trucks hauling material to and from the site, are not to be started or run until before 7:30 A.M and after 4:30 pm.

It is anticipated that up to thirty (30) loads a day may be removed until the 70,781 cubic yards of earth are removed from the site.

4. No operation at the site is allowed on Saturday, Sunday or Town Hall observed holidays, which are as follows:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Presidents Day	Veteran's Day
Patriots Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

5. All excavated areas not part of the bogs will be topsoiled and planted per the specification on the approved plan or at the direction of the Town's Agent. All top and subsoil shall be stripped from the operation area and stockpiled for use in restoring the area after the removal operation has ceased. A minimum of four inches of topsoil must be put back in place.

6. The permit holder is not permitted to spot excavate to remove better material here and there on the site. The project will be excavated in phases, as provided on the approved plan. Phases shall be planted, prior to excavation of the next phase. The Town's agent may allow partial excavation into the next phase provided that planting is performed during the growing season.

7. Excessive erosion is to be controlled as determined by the Board of Selectmen's Agent - working with the Town's Conservation Commission's Agent. During non construction periods, stockpiled materials may be required to be covered to prevent erosion from the site

8. No refining or screening of material is allowed on the permitted property except the screening of sand and loam to be used for on-site cranberry bogs, gravel for on-site roadways and loam for final on-site grading and seeding.

Any utilized screening plant shall be no larger than 150 to 200 yards per hour.

The permit holder shall provide a written description, time frame and proposed volume of material to be screened for approval by the Town's Agent.

9. Existing tree lines, natural land topography and vegetative buffer zones shall be maintained, a minimum of one hundred feet (100 ft.) from all property lines. In the absence of tree lines on the property, then the natural vegetated buffer shall be maintained for the same distances and trees planted in order to screen the site.

b. Standard Conditions and Site Requirements

1. Standard highway signs warning of heavy trucks entering the street shall be erected as directed by the Town's Agent and be in place prior to commencement of removal operations.

2. The Board of Selectmen, Conservation Commission, Town Manager or their Agents shall be free to inspect the premises at any time during normal working hours with or without prior notice to the permit holder.

3. The permit holder shall adhere to all State laws pertaining to covering loads and weight loads.

4. Any spillage on public ways or private property shall be cleaned up immediately by the permit holder or its agent.

5. The Board of Selectmen may, following a public hearing, revoke the permit, modify or revise the conditions of the permit and/or impose a fine if they find that the permittee, or any agent of the permittee violates any condition of this permit.

6. The Town Manager or designee is authorized to act as the Board of Selectmen's Agent in the administration and enforcement of this permit.

7. All loaded vehicles must be covered to prevent dust and contents from spilling or blowing from the property.

8. The haul road and loading area must be watered regularly to keep dust from blowing from the property. Gravel may be required to be added to the haul road by the Town's Agent to assist in dust control.

There shall be paving placed on the driveway for a minimum of fifty (50) feet from the roadway surface down the access roadway.

9. This permit is not transferable, except by vote of the Board of Selectmen. Notice of a pending sale or transfer must be provided to the Board of Selectmen. The Board of Selectmen will hold a public hearing to consider the transfer of this permit to the prospective buyer of the property.

10. During operations, where the excavation working face will have a depth of more than 15 feet with a slope in excess of 1:1, a fence at least three (3) feet high shall be erected to limit access to that excavation.

11. No area shall be excavated so as to cause accumulation of freestanding water, except in conjunction with a storage pond for cranberry bogs as shown on the plans. Permanent drainage shall be provided as needed in accordance with good conservation practices. Drainage shall not lead directly into or from streams or ponds, except as specifically approved by the Town's Agents and as allowed by state statute or regulation..

12. No excavation shall be closer than 200 feet to an existing public way unless specifically permitted by the Board of Selectmen at a publicly scheduled hearing. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction purposes.

13. Bog pumps will be powered electrically, or in the alternative, mufflers will be installed on pumps to reduce noise.

14. Gates will be installed on the haul road to prevent unauthorized access to the property.

15. Two by Three foot signs will be erected every 500' along the property line. The signs will display the permit number, the name and phone number of the permit holder's agent and the name and phone number of the Town's Agent, together with the words "NO TRESPASSING-EARTH REMOVAL IN PROGRESS".

16. All trucks hauling from the site must display a sign on the rear of the truck in an area that will be unobstructed and clearly in view displaying the words "TOWN OF MIDDLEBOROUGH **PERMIT No. 09-3.**

17. A copy of this Earth Removal Order of Conditions shall be filed with the Registry of Deeds by the Permit holder as a notice to all that these conditions restrict work on the lot under the permit.

18. A Certificate of Compliance will be issued by the Board of Selectmen when the project is completed. The Certificate of Compliance will operate to release the lot from the conditions of the permit and terminate the permit. The Certificate of Compliance must also be filed with the Registry of Deeds by the permit holder.

19. The approved plan shall be modified to include the general location (no survey required) of any monitoring wells on the site.

20.. No standing trees are to be cut, trimmed or removed from the site, except for those areas shown on the approved plan. Violation shall result in a fine being imposed, in accordance with Earth Removal Bylaw §6, and/or revocation of this Permit.

If any tree needs to be trimmed, cut or removed, prior approval shall be provided by the Town's Agent.

21. No rock crushing is authorized. Any proposed rock crushing may be authorized by the Board of Selectmen following a public hearing on a request for an Earth Removal Permit modification.

22. Excessive noise levels, as determined by the Town's Agent, shall result in onsite equipment modification within one (1) week of notification.

23. De-watering operation plans shall be provided through a modification to the submitted Project Plan for review and acceptance by the Town's Agent.. De-watering may be limited during the Summer months. Siltation barriers will be provided as required by the Town's Agent.

c. Special Conditions

1. Blasting on the site is not approved. Special permission may be provided by the Board of Selectmen after a public hearing - prior to application of a blasting permit to the Town Fire Department.
2. A dewatering system, if required will be outlined in a modified Project Plan, for review and approval by the Town's Agent..
3. Monitoring wells may be required to determine groundwater levels that could impact adjacent residential overburden and bedrock wells.

If neighboring overburden wells are determined to be potentially affected by the dewatering operation, work will cease, monitoring wells shall be installed, and an evaluation made from a qualified hydrologist on the dewatering operation, prior to commencement of work. The Town's Agent shall determine if work will continue at the site - after consultation with the Board of Selectmen during a public meeting.

4. Monitoring well(s) for water levels, if required, are to be measured every seven (7) days, and the results kept in a daily log.
5. An Order of Conditions from the Middleborough Conservation Commission described as DEP File Number 220 - 1098 valid until June 25, 2012 is made a part of these conditions.
6. A Project Plan that outlines the manner in which this project will be operated will be submitted to the Town's Agent for approval, within twenty one (21) days of Board of Selectmen's approval of this project and made a part of these conditions..
7. Trucks will not idle on Tispaquin Street at any time.
10. The permit holder will prepare a Farm Plan that meets standards set forth from the United States governments - Natural Resource Conservation District (NCRS) and the Massachusetts Department of Food and Agriculture and provide to the Town's Agent upon project completion.
11. The permit holder will be responsible for maintaining the roadway to no less than present conditions after consultation with the Town's Agent or designee every four (4) months or if conditions warrant, immediate action.

The permit holder will be responsible for providing a video (cd) of existing conditions to the Highway Superintendent or designee of existing conditions for up to one hundred (100) feet from the egress in both directions.

As noted in this permit, the driveway shall be paved a minimum of fifty (50) feet from Tispaquin Street onto the property.

12. Streets and driveway shall be swept regularly.
13. Signage as outlined under b. Standard Conditions (1) and (4), (15) and (16) shall be installed prior to start of work at the site.

d. Inspection Fees and Bonding

Inspection Fees

1. An initial review to confirm compliance with permit conditions and restrictions must be performed by the Board of Selectmen's Agent before the commencement of any earth removal activities.

The fee for this review is **\$ 400.00, due** and payable at the time the permit holder notifies the Board of Selectmen's Agent that all requirements of the permit which must be done prior to commencement of work have been accomplished, and the permit holder is ready for the Agent to perform the initial review.

2. Quarterly reviews must be performed by the Board of Selectmen's Agent every three months following commencement of earth removal work. These reviews will include a field review and plan review to determine on-going compliance with the permit.

- a. The fee for each such review is **\$ 400.00, due** and payable to the Town three months after the commencement of earth removal on the lot and every three months thereafter for the duration of the permitted project.
- b. This report, along with **the Project Plan** will be made available to the public at the Town Manager's Office, upon request.
- c. The Board's Agent will include with the quarterly review a written assessment and update of actual activities and goals that were provided under **the Project Plan**.
- d. The Boards' Agent will determine **if the Project Plan** is meeting the proposed activities and goals. **If the Project Plan** activities and goals are not met for three (3) consecutive quarters, the project permit shall be suspended and a hearing with the Board of Selectmen shall be held to determine if the permit shall be reissued.

Bond Requirements

1. A bond, or acceptable alternative surety, in the amount of **\$50,000.00 will** be required to indemnify the Town for damage to private or Town property and for use by the Town for site closure in the event of abandonment of the project.