

*Jackie*

**HEARINGS, MEETINGS, LICENSES**  
**8-10-09**

**DECAS, MURRAY & DECAS** ATTORNEYS AT LAW  
132 NORTH MAIN STREET • MIDDLEBORO • MASSACHUSETTS 02346 • (508) 947-4433

GEORGE C. DECAS (RETIRED)  
DANIEL F. MURRAY, ESQUIRE  
WILLIAM C. DECAS, ESQUIRE

REPLY TO POST OFFICE BOX 201  
MIDDLEBORO, MA 02346-0201  
FAX (508) 947-7147

WAREHAM OFFICE:  
219 MAIN STREET  
(508) 295-2115

August 3, 2009

Charles J. Cristello, Town Manager  
(via FAX#: 508-946-2320)

RE: Special permit – extension (Sippican Commerce Park)

Dear Charlie:

You advised that a representative of Sippican Commerce Park requested the Board of Selectmen to extend the time for substantial use of its WRPD special permit. The representative asserted that Section 9 of Chapter 40A provides for extension of the time for substantial use of a special permit for good cause.

You asked if the Board has authority to grant or allow an extension of the time for substantial use of the permit for up to two years.

The relevant statute is Chapter 40A, Section 9 (14<sup>th</sup> paragraph) which provides –

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Section 9 does not provide for an application to a special permit granting authority for an extension of the duration of a special permit beyond the time for substantial use based on good cause or otherwise. Section 9 also does not provide any explicit authority for a special permit granting authority to extend the duration of a special permit. The Zoning By-Law does not provide any procedure or authority with respect to extensions of a special permit.

-2-

My opinion is that the Board does not have authority to extend the time for substantial use of the special permit.

In contrast to the absence in Section 9 of a procedure to extend a special permit, Chapter 40A, Section 10 provides that a permit granting authority may upon application extend the time for exercise of the rights under a variance for a period not to exceed six months. Section 10 provides that rights granted by a variance lapse if not exercised in one year.

Section 9 of Chapter 40A as set forth above provides that a special permit which is not substantially used during the applicable specified time (under the Middleborough Zoning By-law, one year – Section VII-C-5) does not lapse if the delay in substantial use is based on good cause. The statute does not contain any procedure to determine the existence of good cause and does not define the phrase “good cause”. Protection of a special permit from lapse based on good cause does not require any action of the special permit granting authority to “extend” the permit. There is either good cause for failure to use a permit in the time required, in which case the permit would not lapse, or there is not good cause for the failure to use the permit, in which case the permit would lapse at the expiration of the specified time.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dan", written over a large, loopy initial "D".

Daniel F. Murray  
Town Counsel

DFM/s  
09-103-1



3 Belcher Street | Plainville, MA 02762  
T 508.643.2920 | F 508.643.0080

June 30, 2009

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

Re: WRPD Special Permit Extension Request - Sippican Commerce Park

Dear Board Members,

As you may recall, the Board granted a Special Permit (“the Permit”) in August of 2007 to the Edgewood Development Company, LLC (“Edgewood”) pursuant to the Water Resource Protection Districts By-Law of the Zoning By-Laws of the Town of Middleborough for improvements at Sippican Commerce Park. This commercial subdivision is located within the WRPD Z4 overlay district along the Bay Colony Railroad line in South Middleborough. A copy of the Permit is attached for your review. Unfortunately, we have not been able to start work on this project and respectfully request a two (2) year extension of the Permit.

Edgewood asks that the Board determine there is “*good cause*” to extend the time frame for the Special Permit to August 21, 2011 as authorized by MGL, Chapter 40A, Section 9. There are three reasons for this request: (1) The application process with the planning board began in April 2007 and lasted 14 months – not ending till July of 2008. (2) At that point there was little commercial interest so no activity was initiated by Edgewood till May of 2008. (3) From May 2008 through January 2009 Edgewood attempted to negotiate a mutually acceptable Agreement with the Planning Board to begin the project but was not able to do so. As you are aware, we are now (unfortunately) in court with that Board.

We are fully committed to constructing this commercial subdivision as it is an excellent project for Edgewood and the town. All other permits are in place as we have received our MEPA approval, Conservation Commission Order Of Conditions and our MassHighway Curb Cut Permit. We remain available to meet to negotiate an Agreement with the planning board which will address our mutual needs while making the project economically feasible to construct.

I thank you for your understanding and cooperation in extending the time frame for this important project. If you have any questions or require additional information, please contact me at your convenience. I look forward to meeting with you to discuss this extension and working with the Town to bring much needed non-residential growth to Middleborough.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Timothy D. Higgins', is written over a circular stamp. The signature is fluid and cursive.

Timothy D. Higgins,  
Vice-President of Development

WRPD Special Permit Extension Request  
Sippican Commerce Park  
June 30, 2009

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Enclosures: WRPD Special Permit (August 21, 2007)  
Order of Conditions (June 17, 2007)



## Town of Middleborough Massachusetts

### BOARD OF SELECTMEN

Marsha L. Brunelle  
Adam M. Bond  
Patrick E. Rogers  
Wayne C. Perkins  
Steven P. Spataro

The Board set the 6<sup>th</sup> day of August, 2007, and 7:05 P.M. as the time, and the Selectmen's Meeting Room, at the Town Hall, 10 Nickerson Avenue, Middleborough, Massachusetts, as the place of the public hearing upon said petition.

The following notice was published in the Middleboro Gazette in the issues of July 26<sup>th</sup> and August 2<sup>nd</sup>, and a copy of said notice was sent by mail to each of the interested parties and the owners of all property affected thereby, as they appear upon the most recent tax list.

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 6, 2007 at 7:05 PM, for the purpose of discussing an application filed by Edgewood Development Company, LLC, 3 Belcher Street, Plainville, MA, for a Special Permit under the Water Resource Protection District By-law, to allow activities within 25 feet of a wetland, including minimal pavement widening on Wareham Street, and the filling of 1,418 square feet of an abutting cranberry bog, associated with the development of the Sippican Commerce Park commercial subdivision. The property is located off Wareham Street and is shown as Assessors Map 109 Lots 4675, 4084, and 2963, and Assessors Map 110 Lots 4183 and 4928, zoned General Use "A", W.R.P.D. "Z4". Anyone wishing to be heard on this matter should appear at the time and place designated.

Marsha L. Brunelle  
Adam M. Bond  
Wayne C. Perkins  
Patrick E. Rogers  
Steven P. Spataro  
BOARD OF SELECTMEN  
July 26, Aug. 2, 2007

A hearing of said petition was held at the time and place specified. There were four (4) members of the Board present, they being: Selectman Rogers, Selectman Spataro, Selectman Perkins, and Selectman Bond.

Because Chairwoman Brunelle was absent, Vice Chairman Bond chaired the meeting.

Vice-Chairman Bond read the following: "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 6, 2007 at 7:05 PM, for the purpose of discussing an application filed by Edgewood Development Company, LLC, 3 Belcher Street, Plainville, MA, for a Special Permit under the Water Resource Protection District By-law, to allow activities within 25 feet of a wetland, including minimal pavement widening on Wareham Street, and the filling of 1,418 square feet of an abutting cranberry bog, associated with the development of the Sippican Commerce Park commercial subdivision. The property is located off Wareham Street and is shown as Assessors Map 109 Lots 4675, 4084, and 2963, and Assessors Map 110 Lots 4183 and 4928, zoned General Use "A", W.R.P.D. "Z4". Anyone wishing to be heard on this matter should appear at the time and place designated."

Vice-Chairman Bond explained that, because only four (4) selectmen were present, a unanimous vote of the Board would be needed to approve the Permit. Another option would be to open the hearing and continue until the fifth member is present.

Tim Higgins, Vice President of Edgewood Development Company, said he would like to proceed with the hearing.

Vice-Chairman Bond opened the hearing.

Mr. Higgins returned the green cards.

Mr. Higgins told the Board that the request is in regards to the development of the Sippican Commerce Park commercial subdivision on Route 28 in South Middleboro on the Rochester line.

Mr. Higgins said the property is zoned industrial. It abuts the Bay Colony Railroad line.

Mr. Higgins said there is an existing paved and gravel road which is accessed from the pavement of the relocated Route 28. There are currently two crossings of a stream. The proposal is to construct a new road in compliance with the subdivision regulations, DEP Stormwater Management Policy requirements and the Massachusetts Highway Department requirements between the streams. A new left turn lane will be added to Route 28 for northbound vehicles turning into the subdivision. Several feet of new pavement will be added. The old pavement will be removed and the area loamed and seeded further improving the quality of stormwater entering the stream. Some of this activity will occur within 25 of the stream, necessitating the Permit.

Mr. Higgins said that a stormwater treatment facility will be located under the roadways.

Mr. Higgins further explained that the project will require 1,418 of a bog to be filled. Replication of 2, 580 square feet is proposed on the same bog. This will also help the bog's owner, Danny Warren, as it will "square off" the bog and partially eliminate an existing "dog leg". He said there are no other viable alternatives to this activity.

Mr. Higgins also told the Board that two (2) existing dwellings on the bogs will be removed.

Mr. Higgins proceeded to go through correspondence showing that the proposal meets and/or fulfills each criterion providing under the Special Permit criteria.

Mr. Higgins said he looked forward to getting to work on the project. He said that the Environmental Impact Report will soon be filed with MEPA. This is all that remains.

Selectman Rogers said he was pleased with the information that was provided. He noted there are no wells in the area of the project.

Selectman Perkins said he was familiar with the site. He asked about the elimination of 2 septic systems.

Mr. Higgins said they would both be eliminated.

Vice-Chairman Bond noted correspondence from the Health Officer and Building Commissioner who had no comments regarding the request. The Tax Collector's Office indicates there are no outstanding taxes due.

Mike Burroughs, 636 Wareham Street, said he was concerned with the traffic coming out of the road and turning left. He asked if this was the "composting" project. He explained that trucks coming from SEMASS leave with "waste" on the tires which gets left on the street, making it slippery.

Mr. Higgins said he does not represent the composting company. He did say that project, if it goes forward, would require a notice of project change to be filed with MEPA. This would give the public the opportunity to comment. Trafficking routes is one of the areas.

John Burroughs, 621 Wareham Street, said he had taken the time to "count vehicles" from 7:00 AM to 7:00 PM. There is an average of a truck every 12 minutes. He said he could not support more trucks.

Vice-Chairman Bond asked how far from the road Mr. Burroughs lives.

Mr. Burroughs said about 80' from the road. He noted about 75% of the trucks that go by are trash trucks.

Selectman Spataro asked who would be responsible to maintain the discharge water system.

Mr. Higgins said a Trust of the building owners would be created. There will be no maintenance responsibilities for the Town or Mass Highway.

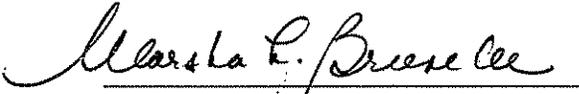
Hearing no further comments, Vice-Chairman Bond closed the hearing.

Upon motion by Selectman Perkins and seconded by Selectman Rogers, the Board  
VOTED: To approve the request of Edgewood Development Company, LLC, 3 Belcher Street, Plainville, MA, for a Special Permit under the Water Resource Protection District By-law, to allow activities within 25 feet of a wetland, including minimal pavement widening on Wareham Street, and the filling of 1,418 square feet of an abutting cranberry bog, associated with the development of the Sippican Commerce Park commercial subdivision, for property located off Wareham Street, shown as Assessors Map 109 Lots 4675, 4084, and 2963, and Assessors Map 110 Lots 4183 and 4928, zoned General Use "A", W.R.P.D. "Z4".

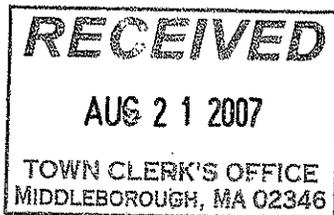
The Board further found that the project is

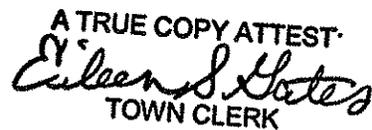
- a. Is in harmony with the purpose and intent of the WRPD By-law and will promote the purposes of the Water Resource Protection Districts.
- b. Is appropriate to the natural topography, soil, and other characteristics of the site to be developed.
- c. Will not, during construction or thereafter, have an adverse environmental impact on the aquifer or recharge areas, and
- d. Will not adversely affect any existing or potential water supply.

Unanimous Vote.

  
\_\_\_\_\_  
Marsha L. Brunelle, Chairwoman  
BOARD OF SELECTMEN

August 20, 2007  
Date



A TRUE COPY ATTEST  
  
TOWN CLERK

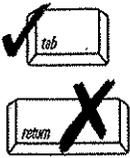


Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:  
220-1002

**A. General Information**

**Important:**  
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



Middleborough

1. Conservation Commission

2. This issuance is for (check one): a.  Order of Conditions b.  Amended Order of Conditions

3. To: Applicant:

Edgewood Development Co. LLC  
 a. First Name b. Last Name c. Company  
3 Belcher Street  
 d. Mailing Address  
Plainville MA 02762  
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

see attached list  
 a. First Name b. Last Name c. Company  
 d. Mailing Address  
 e. City/Town f. State g. Zip Code

5. Project Location:

Off Wareham Street Middleborough  
 a. Street Address b. City/Town  
110 & 109 4288,4299,4183,4958 & 4675,4084,2963  
 c. Assessors Map/Plat Number d. Parcel/Lot Number  
Latitude and Longitude, if known (note: electronic filers will click for GIS locator): 41d48'18"N 70d47'53"W  
 e. Latitude f. Longitude

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Plymouth  
 a. County b. Certificate (if registered land)  
23095,26454 & 31721 144, 143 & 190 Respectively  
 c. Book d. Page

7. Dates: 5/26/2006 5/17/2007 5/17/2007  
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

"Sippican Commerce Park"  
 a. Plan Title  
G.A.F. Engineering, Inc. William F. Madden, Civil Registered Professional Engineer  
 b. Prepared By 4/28/07; Glenn D. Amaral, Professional Land Surveyor 4/28/07  
See attachment list Signed and Stamped by  
1"=200'  
 d. Final Revision Date e. Scale

f. Additional Plan or Document Title g. Date



# WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

## B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- a.  Public Water Supply
- b.  Land Containing Shellfish
- c.  Prevention of Pollution
- d.  Private Water Supply
- e.  Fisheries
- f.  Protection of Wildlife Habitat
- g.  Groundwater Supply
- h.  Storm Damage Prevention
- i.  Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a.  the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

- b.  the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c.  the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

**Inland Resource Area Impacts:** Check all that apply below. (For Approvals Only)

- 3.  Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	2,980	1,418	6,240	2,850
	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. cu.yd dredged	f. cu.yd dredged		



**B. Findings (cont.)**

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input checked="" type="checkbox"/> Riverfront area	21,603 a. total sq. feet	21,603 b. total sq. feet		
Sq ft within 100 ft	7,148 c. square feet	7,148 d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	14,455 g. square feet	14,455 h. square feet	i. square feet	j. square feet

**Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)**

10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. cu.yd dredged	b. cu.yd dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



## WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

220-1002

### C. General Conditions Under Massachusetts Wetlands Protection Act

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
7. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to this Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MA DEP"]

"File Number 220-1002"



## WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

### C. General Conditions Under Massachusetts Wetlands Protection Act

10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
18. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Special Conditions:

If you need more space for additional conditions, select box to attach a text document

1. The applicant is to provide a splash pad on the outflow of discharge FES1 and FES2.
2. Comply with requirements in Amory Engineers, P.C. final peer review.
3. See attached.



# WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

## D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable?  Yes  No
2. The \_\_\_\_\_ hereby finds (check one that applies):  
Conservation Commission
3.  that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

a. Municipal Ordinance or Bylaw

b. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

4.  that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

a. Municipal Ordinance or Bylaw

b. Citation

The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

- c. The special conditions relating to municipal ordinance or bylaw are as follows:

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If you need more space for additional conditions, select box to attach a text document



# WPA Form 5 – Order of Conditions

220-1002

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

## E. Issuance

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

5/17/2007

1. Date of Issuance

Please indicate the number of members who will sign this form:

Five

This Order must be signed by a majority of the Conservation Commission.

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

[Signature]  
[Signature]  
[Signature]  
[Signature]

[Signature]  
   
 

## Notary Acknowledgement

Commonwealth of Massachusetts County of

Plymouth

On this 17th Day of

May

2007

Month

Year

Before me, the undersigned Notary Public, personally appeared

Deborah Kirsch

Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

Personally known

Description of evidence of identification

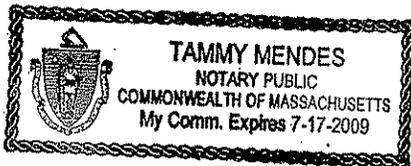
to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

As member of

Middleborough

City/Town

Conservation Commission



Tammy Mendes

Signature of Notary Public

Tammy Mendes

Printed Name of Notary Public

7/17/2009

My Commission Expires (Date)

Place notary seal and/or any stamp above

This Order is issued to the applicant as follows:

by hand delivery on

by certified mail, return receipt requested, on

Date

Date



## WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

220-1002

### F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate DEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant. Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order or Determination, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, § 40) and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

**Section G, Recording Information is available on the following page.**



# WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

220-1002

## G. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 7 of this form shall be submitted to the Conservation Commission listed below.

Middleborough

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Middleborough

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Off Wareham Street

Project Location

220-1002

DEP File Number

Has been recorded at the Registry of Deeds of:

Plymouth

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

**SIPPICAN COMMERCE PARK  
INDUSTRIAL SUBDIVISION**

**PLAN INDEX**

<u>Sheet No.</u>	<u>Description</u>	<u>Date</u>
1	Title Sheet	04/27/07
2	Abbreviations, Legend & Notes	04/27/07
3	Key Sheet – Lotting Sheet 1 of 7	04/27/07
4	Lotting Sheet 2 of 7	04/27/07
5	Lotting Sheet 3 of 7	04/27/07
6	Lotting Sheet 4 of 7	04/27/07
7	Lotting Sheet 5 of 7	04/27/07
8	Lotting Sheet 6 of 7	04/27/07
9	Lotting Sheet 7 of 7	04/27/07
10	Topographic Overview – Key Sheet	04/27/07
11	Detention Basin	05/27/07
12	Railroad Spur Swale	04/27/07
13	Retention Basin / Fire Pond	04/27/07
14	Profile Sheet Sta: 0+00-10+50	04/27/07
15	Profile Sheet Sta: 10+50-21+100	04/27/07
16	Profile Sheet Sta: 21+00-26+82 & Grading	04/27/07
17	Construction Detail Sheet No. 1	04/27/07
18	Construction Detail Sheet No. 2	04/27/07
19	Construction Detail Sheet No. 3	04/27/07
20	Construction Detail Sheet No. 4	04/27/07
21	Construction Detail Sheet No. 5	04/27/07
22	Construction Detail Sheet No. 6	04/27/07
23	Drainage Cross-Sections	04/27/07
24	Test Pits	04/27/07
25	Landscape Plan Around Parcel C	04/27/07
26	Street Lighting Layout & Photometrics	04/27/07
FP-1	Fire Pond & Fire Pump House Detail	02/26/07
FP-2	Fire Pond House Plan Notes & Details	02/26/07
FP-3	Fire Pump House Section	02/26/07

TOWN OF MIDDLEBOROUGH  
CONSERVATION COMMISSION

**STANDARD CONDITIONS**

APPLIES  
**YES NO**

- X** Recording of Order is the responsibility of applicant or owner. To be returned prior to commencement of work.
- X** All mitigation and resource protection devices and measures, e.g. hay bales, siltation fence, etc. are to be installed prior to initiation of any work under the Order of Conditions. The Conservation Agent shall be notified when in place for inspection and verification. No work, which is subject to the Order of Conditions, is to be undertaken until approval is received from the Conservation Commission and/or Agent.
- X** Commission to be notified 5 days in advance of the date of start of work prior to its commencement.
- X** In addition to the mitigation shown on the plan, staked hay bales or siltation fence is to place where necessary to prevent erosion and siltation into the wetland resource area(s).
- X** Wherever necessary to maintain compliance with M.G.L. CH. 131, s.40, appropriate mitigation, to prevent erosion and siltation to surface waters and Bordering Vegetated Wetlands, is to be installed and maintained until all exposed areas are stabilized.
- X** Any tears, rips, breaks or collapse of siltation barrier shall be repaired immediately (no more than 24 hours).
- X** Any replication area is to be prepared prior to the destruction of the resource area being replicated.
- X** All detention and/or retention areas are to be completed and vegetated before installation of any impervious material or structure discharging surface water runoff.
- X** Retention/detention basins, included in this plan, are to be maintained on a regular basis. Schedule stated in the Notice of Intent.
- X** All facilities and equipment used within or as part of this project will be continually maintained and operated so as to comply with this Order and the Wetlands Protection Act.
- X** Members and agents of the Conservation Commission shall have the right to enter and inspect the property to determine and evaluate compliance with this order.
- X** Wetland flagging to remain in place until the project has been completed.

APPLIES

YES NO

- X Notice of Intent, Order of Conditions and plan shall be retained on the site during construction and made available to all contractors.
- X Prior to any construction, an on-site inspection is to be held between the proposed contractor, the engineer, owner's representatives and the Conservation Commission to go over the sequence of construction and all other restrictions and requirements as noted on the Order of Conditions. A written construction schedule to be received at that time.
- X No sodium based de-icing agents to be used.
- X The drainage system is to be sealed until all work has been completed and vegetation has been established.
- X Certificate of Compliance to be requested immediately after completion.
- X All conditions are on going and do not expire at the end of three years upon the issuance of a Certificate of Compliance.
- X Request for Certificate of Compliance shall be accompanied by an as-built plan. As-built plan to be overlay map.
- X No partial Certificate of Compliance will be issued unless the balance of the project, at whatever stage it is in at the time of said request.
- X As-built plan to show location of structures, grading, wetland line, resource areas and an deviation from original plan of record.
- X This project to be in compliance with the Order of Conditions, the Wetlands Protection Act and Regulations promulgated thereunder (M.G.L. CH. 131, s.40; 310 CMR).
- X Engineer or other equally qualified person shall be available on-site and responsible for insuring compliance with the Order of Conditions.
- X Written reports to be submitted to the Conservation Agent detailing progress of activities as detailed by the Order of Conditions. To be received the 1<sup>st</sup> and 15<sup>th</sup> month when construction activities are taking place.
- X If wetland alteration is allowed under limited project status, no wetland alteration is to occur until all local, state and federal permits have been received for the project as submitted to the Conservation Commission.
- X This Order of Conditions is issued for the above referenced plans only. Any alteration to said plans may cause this Order of Conditions to be null and void unless an amendment is submitted and approved by this Board.
- X Prior to commencement of work, applicant is to submit letter certified by a professional engineer stating that any plans submitted for other local, state and federal permits are identical to the plans submitted for this Order of Conditions.



**TOWN OF MIDDLEBOROUGH  
HEALTH DEPARTMENT**

Jeanne Spalding, RS, CHO  
Health Officer  
Hours: 9am-5pm

PH: 508-946-2408  
FX: 508-946-2321

**MEMO**

**TO: Board of Selectmen/Health**

**FROM: Jeanne Spalding, Health Officer**

**DATE: August 5, 2009**

**RE: Vernon St. well variance to septic system**

As the Board may recall, this proposal and supporting groundwater monitoring data was presented by Brian Grady of GAF in April of this year. At the request of the Health Dept. the applicant agreed to a review by another engineer relative to the variance issue of a 200 ft. septic separation to wells with a perc rate of less than 5 min/in. The design does meet the state requirement of 100 ft. separation.

Rich Tabaczynski, P.E. responded with the comments provided in the attachment. With the assistance of Paul Fellini from the Planning Dept. additional review of existing files and data within the Conservation Dept. relative to a watershed study for this area was also taken into consideration. During an informal meeting with Mr. Fellini and Mr. Grady in the Health Dept. office, discussion of the variance issue relative to the FEMA Map and monitoring well data supplied by MR. Grady appears to be supported by information in the watershed study.

The watershed information was not part of the packet sent to the review engineer having recently been located and while he is currently on vacation. Given the time already expended, I think it fair to ask the Board to give favorable consideration to this variance pending any final comments from the review engineer with in the next two weeks after he has had an opportunity to review the watershed report.

I would also recommend the following conditions relative to the well:

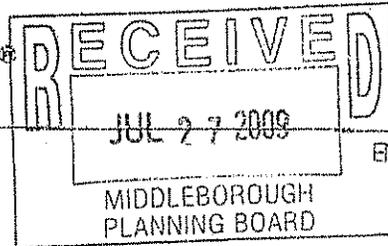
- *The well is to be a deep bedrock well exceeding 100ft. deep.*
- *The onsite well is to be tested in the April/May period for three years after occupancy.*
- *The onsite well is to be tested one week after a 100yr. flood event for the next three years. (may be in lieu of the April/May test)*
- *With the agreement of the direct abutters, Mr. and Mrs. Thompson, a baseline test of their well be conducted at the applicant's expense and one follow up test in the April/May period one year after occupancy.*
- *All well tests to be collected and tested by a certified lab and results submitted directly to the Health Dept. from the lab.*

This does not constitute an approval of the septic design site plan which has yet to be done. In addition, any and all changes to the plan may result in a referral back to the Conservation Commission.



DESIGN ENGINEERS, LLC.

July 27, 2009



ENGINEERS & ENVIRONMENTAL SCIENTISTS



Mr. Paul A. Fellini  
Construction Administrator  
Middleborough Planning Department  
20 Centre Street, 2<sup>nd</sup> Floor  
Middleborough, MA 02346

*RE: Engineering Review  
Vernon Street -- Sewage Disposal Systems Design  
Ade Job #2518.09*

Dear Mr. Fellini:

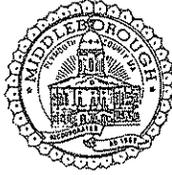
Atlantic Design Engineers, LLC has completed our initial engineering review of the sewage disposal system design for Lot 4669 Vernon Street. The information reviewed is as follows:

- Memo from Jean Spalding to the Selectmen, dated April 23, 2009
- Letter from GAF to the Board of Health, dated March 24, 2009
- Letter from Abutter to the Board of Health, dated April 23, 2009
- Memorandum from Conservation Commission to Jean Spalding, dated December 23, 2008
- Well Completion Report (4 sheets)
- GAF Groundwater Control Plans – 13 drawings
- GAF Sewage Disposal System Design, dated March 5, 2008
- Planning Department Groundwater Analysis Package: USGS, FEMA & Assessor's Maps, Probable High Water Level Analysis & Surface Water; Taunton River 95% Analysis

We have the following comments:

1. We concur with the Frimpter Analysis provided, which results in a higher, more conservative, Estimated High Groundwater Elevation than that shown in the plans and used in the design.
2. Provide worksheets and calculations to confirm the incremental floodplain volume filled and incremental compensatory volume provided.
3. Where the FEMA Zone A does not have a defined Base Flood Elevation (BFE) for the locus and the elevation is critical to the design, the engineer should develop a BFE based upon FEMA guidelines for Approximate Zone A Areas and compare it to the flood plain elevation derived from the study referred in Note #3. It seems as if it should be higher than Elevation 19, based upon the Flood Plain maps.

P.O. Box 1051  
Sandwich, MA 02563  
(508) 888-9282 • FAX 888-8859  
email: [ade@atlanticcompanies.com](mailto:ade@atlanticcompanies.com)  
[www.atlanticcompanies.com](http://www.atlanticcompanies.com)



## Town of Middleborough

### CONSERVATION COMMISSION

#### MEMORANDUM

TO: Board of Selectmen  
FROM: Patricia J. Cassidy, Conservation Agent   
DATE: July 31, 2009  
RE: Vernon Street (Map 37, Lot 4669) Michael Sands

Attached you will find a memo that I had given to Jeanne Spalding, Health Officer dated December 23, 2008.

I would ask that Mr. Sands or any other responsible party for this property come to a Conservation Commission meeting in the near future to go over any changes to the plan and see if it will require the filing of a new Notice of Intent.

Our next meetings are August 20, September 3, and September 17. I would recommend that we be contacted by August 7 if Mr. Sands would like to speak with the Commission at the August 20<sup>th</sup> meeting.

This site is a concern to the Commission as it will impact bordering land subject to flooding also known as floodplain, which is a protected resource under the Wetlands Protection Act.

If you have any questions, don't hesitate to call the Conservation Department at 508-946-2406.

pjc



## Town of Middleborough

### CONSERVATION COMMISSION

#### MEMORANDUM

TO: Jeanne Spalding, Health Officer  
FROM: Patricia J. Cassady, Conservation Agent   
DATE: December 23, 2008  
RE: Vernon Street (Map 37, Lot 4669) Comments

The Conservation Department has a couple of files on the above-mentioned site. The first file is under DEP file #220-880. This file was for a Notice of Intent to building a single family dwelling with associated septic system within the 100-foot buffer zone to a wetland resource area and within the bordering land subject to flooding (BLSF) also known as the 100-year floodplain. The result was the issuance of an Order of Conditions by the Middleborough Conservation Commission on June 22, 2004 approving the project. This Order of Conditions was then appealed to the DEP by an abutter, Mr. David Thompson in which the DEP then issued a Superseding Order of Conditions issued on October 27, 2004. The applicant Mr. Sands was then issued an Extension Permit for the Orders of Conditions that extends his approval to October 27, 2010.

The main topic of discussion concerning the permit under 220-880 was the floodplain. The fill within the BLSF will displace the flood storage capacity by 7,800 cubic feet and they are proposing 8,000 cubic feet of compensatory flood storage as mitigation. This mitigation was approved by the DEP. Under the Wetland Protection Act regulation 310 CMR 10.57 (4) (a) 1: mitigation can also take place within the BLSF as long as no flood storage capacity is lost.

More recently there was a second Notice of Intent filing under 220-1040 for the installation of five monitoring wells in the buffer zone to monitor the depth to the water table. This proposal was approved with the issuance of an Order of Conditions on August 16, 2007.

If there are any changes to these approved plans then Mr. Sands will need to come back before the Commission to see if the changes warrant the filing of a new Notice of Intent.

If you have any other questions, don't hesitate to contact me.

pjc

**FILE**

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

**PLYMPTON ST - VIERA CRANBERRY BOG PROJECT**

**AUGUST 10, 2009**

**\* \* \* \***

**BOARD OF SELECTMEN**

**\* \* \* \***

**Plympton Street - Viera Cranberry Bog Project  
Permit No. 09-2**

**Conditions for Earth Removal Permit  
August 10, 2009**

<b>Name</b>	Plympton Street-Viera Cranberry Bog Project	
<b>Street</b>	Plympton Street, Middleborough, MA	
<b>Past Earth Removal Permit No.</b>	<b>06-5</b>	
<b>New Earth Removal Permit No.</b>	<b>Permit No. 09-2</b>	
<b>Zoning Map Description</b>	Map 26, Lots 4361, 4385, 5119	
<b>Other Permits</b>	Middleborough Conservation Commission Review Completed	
<b>Proposed Volume</b>	Phase 1	62,890 cubic yards
	Total	62,890 cubic yards

## Earth Removal Permit Conditions

### BOARD OF SELECTMEN

#### General Information

The time line and proposed work for the Fuller 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, outlined under Special Conditions - No. 7- can be found in Appendix A of the Earth Removal Application Package.

The Project Plan outlines the proposed construction sequence and time lines for the project. The project plan shall be updated annually for approval by the Board of Selectmen or their designated 'Agent' (Town's Agent).

The Earth Removal Permit holder has submitted a Project Plan (Appendix A) that will be provided to the Town's Agent for final review and approval - the **Project Plan** that will outline the planned activities and goals for each quarter of the phased construction work for each year of the permit. 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** - or - for a lesser time approved by the Board of Selectmen at the time of application and hearing - and may be renewed for up to one (1) year thereafter at the discretion of the Board of Selectmen.

3. Hours of operation are limited from 7:30 A.M. to 4:30 P.M. Operation is allowed Monday through Friday. Motors of earth removal equipment, 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.

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.
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. 09-2.**

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 discouraged. 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. A copy of **Doyle Cranberry Company of Duxbury, Massachusetts** agreement, dated July 2, 2009, to allow exit or entry access to the site is made a part of these conditions (Appendix B).
6. Conditions from the Middleborough Conservation Commission and Army Corp of Engineers is made a part of these conditions.
7. A Project Plan for the Proposed Cranberry Bog for Edward Viera, 199 Plympton Street prepared by Webby Engineering Associates, 180 County Road, Plympton, MA., is made a part of these conditions (Appendix A).
8. Responses to field issues raised during the public hearing for the project as outlined in correspondence dated February 24, 2009 from Field Engineering Co., Inc. shall be made a part of these conditions.
9. Trucks will not idle on Plympton 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 Highway Superintendent 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 on the plans, the driveway shall be paved a minimum of fifty (50) feet from Plympton Street onto the property.

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 **\$ 600.00, 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 **\$ 600.00, 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.

Patrick E. Rogers, Chairman  
BOARD OF SELECTMEN

\_\_\_\_\_  
Date

Commonwealth of Massachusetts  
County of Plymouth

On this 10th day of August, 2009, before me the undersigned Notary Public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification which was/were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose(s).

\_\_\_\_\_  
Signature of Notary

(Seal)  
My commission expires \_\_\_\_\_

**TOWN OF MIDDLEBOROUGH**  
**EARTH REMOVAL APPLICATION**  
**and renewal form**

**1. General Information**

Name of Applicant: Edward Viera

Address of Applicant: P.O. 101 Middleboro, MA

Town or City: 195 Plympton St Middleboro MA 02346

Owner of Property: Edward Viera

Location of Property: 195 Plympton Street

Assessor's Parcel and Map Numbers Map 26 Parcel 4361

Map 26 Parcel 4385

Map 26 Parcel 5119

**2. Permit Status**

New Application or Renewal: ✓

Request for an Extension of Time for existing permit: \_\_\_\_\_

Existing Permit Number: \_\_\_\_\_

Parcel(s) Acreage: 17.22

Estimated Number of Cubic Yards to be Removed: 62,890

Requested Time Frame of Permit 3 yr.

Brief Project Description and Reasons for Request:

To Construct new Cranberry Bog & New Reservoir

**3. Project Plan**

Has a Project Plan being submitted with this Application?

**An Application for an Earth Removal Permit will not be accepted by the Board of Selectmen for a public hearing, unless submitted with this application.**

**4. Planning Information**

a. **Proposed Traffic Route** from site to unloading of materials.

Route 58 or Route 44  
\_\_\_\_\_  
\_\_\_\_\_

b. Has a plan and Notice of Applicability (NOA) or Intent (NOI) been submitted to the Town of Middleborough's Conservation Commission? yes

c. Has Order of Conditions by Conservation Commission been issued: If so what is project number and date of conditions : \_\_\_\_\_

d. Provide a copy of the Order of Conditions so they may be attached to the permit.

e. Is there a Department of Environmental Protection – Water Management Act Registration or Permit for this property? no

Permit No. \_\_\_\_\_ Registration No. \_\_\_\_\_

f. Has a Farm Plan been completed? no Please provide a copy.

g. Expected Date of Project Completion: \_\_\_\_\_

**5. Engineering General Information**

Engineering Firm Name: Webby Engineering Inc.

Engineer's Contact/Name: Joseph Webby Jr.

Street: 180 County Road

Town/City Plympton MA 02367

Phone Number: 781 585-1164

**7. Financial Obligations**

Do you owe any property taxes, water, sewer or any other financial obligation to the Town of Middleborough that is not current?

\_\_\_\_\_ yes       no

**8. Authorization of Applicant**

a. Have you authorized the engineer to speak on your behalf regarding project questions that may come up prior to the public hearing?

yes      \_\_\_\_\_ no

b. I have reviewed this Application Package and attached information and deem it to be correct.

Edward Vieira  
Signature of Applicant

EDUARDO VIEIRA  
Printed Name of Applicant

Date 4/15/09

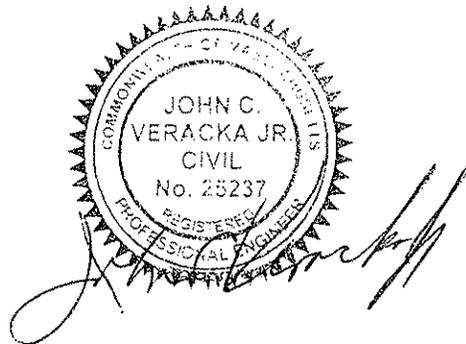
Phone Number: 508-946-4282

# **Appendix A**

# PROJECT PLAN

**PROPOSED CRANBERRY BOG  
FOR EDWARD VIERA,**

**199 PLYMPTON STREET  
MIDDLEBOROUGH,  
MASSACHUSETTS**



PREPARED BY WEBBY ENGINEERING  
ASSOCIATES, INC.  
180 COUNTY ROAD  
PLYMPTON, MASS. 02367

#### **1) PURPOSE OF PROJECT**

Edward Viera would like to construct approximately 2.79 acres of cranberry bog and enlarge his existing reservoir.

#### **2) DESCRIPTION OF SITE AND PRIOR WORK**

The site is at 199 Plympton Street, and lies on the south side of Plympton Street, adjacent to the Middleboro Land Fill. A gravel removal permit was issued in 2006, and approximately 40 % of the materials have been removed.

#### **3) REASONS FOR EARTH REMOVAL PERMIT**

Construct approximately 2.79 acres of cranberry bog and enlargement of existing reservoir.

#### **4) PURPOSE OF PROJECT**

Edward Viera was issued a permit in 2006, and because of the current economy, the soil removal is approximately 40% completed. We are not aware of any compliance issues that may have occurred.

#### **5) PHASES**

The project is proposed with one Phase, and should be completed within three years.

#### **6) TIME DURATION**

Three year permit is requested.

## 7) DESCRIPTIONS

a.) The project is proposed with one Phase, and should be completed within three years. Total volume yet to be removed from the site is 62,890 +/- cubic yards.

Average volume per year = 20,963 +/- cubic yards.

Average volume per weekday = 81 +/- cubic yards.

Majority of excavation and removal will be between May and November.

Daily truck loads would vary according to contractual needs, with daily truck counts of between 5 and 30.

b.) The proposed site is surrounded on three sides by existing cranberry bogs, and the Middleboro Land Fill on the easterly side. Currently there are a few trees between the site and the land fill that will remain. No treed buffer zones are proposed on the cranberry bog sides. The proposed site is approximately 500 feet from Plympton Street.

c.) There are no specific site conditions that require special attention.

d.) There will be no dewatering system at the site. Mr. Viera needs the water levels to be stable to supply his reservoir.

e.) All reservoir and cranberry bog construction will conform to the latest Best Management Practice (BPM). See University Of Massachusetts Cranberry Station publication 2006.

f.) Total volume yet to be removed from the site is 62,890 +/- cubic yards.

g.) Some 500 cubic yards of sand will remain on site for cranberry bog construction and maintenance.

h.) Maximum side slopes will be 3 feet horizontal to 1 foot vertical.

i.) Area of existing cranberry bog equals 3.0 acres +/-, area of proposed cranberry bog equals 2.79 acres for a total of 5.79 acres. Volume of water required equals 4.34 acre/feet of water (189,159 cubic feet/1,414,910 gallons). Volume of proposed reservoir equals 1,255,966 gallons with a recovery rate of 1 foot /5 hours as recorded in August 2006.

j.)Excavation of the reservoir will conform to Best Management Practices

k.)Dust will be controlled with a water truck as needed.

l.) Erosion control will be utilized on the side slopes on the land fill side, and will be maintained until vegetated.

m.) Mall exposed slopes will be loamed with at least 6 inches of topsoil, and seeded with grasses.

n.)No rock crushing will be performed on site.

o.) No screening will be performed on site.

p.) No additional equipment is requested for the site.

# Appendix B

Doyle Cranberry Co.  
PO Box 2111, Duxbury Ma. 02331  
781-934-8974

July 2, 2009

Board of Selectmen  
Town of Middleborough  
Middleborough, MA 02346

RE: E. Veira Earth Removal Project

Mr. Viera has been given the ability to use our previously constructed haul road with paved entry/exit for access/egress to his project. This is the same haul road Mr. Viera has used for the past three years. If you need any other information please contact myself or Mr. Viera.

  
Bradley P. Doyle  
Doyle Cranberry Co.