



Cape Cod Cranberry Growers' Association

GROWER ADVISORY

Working With Bogs in Disrepair

Introduction

There has been recent interest by both traditional cranberry growers and new growers in renovating or otherwise farming bogs in various states of disrepair in Southeastern Massachusetts. These are properties that at first glance may appear to have been abandoned but in many cases, may have simply been neglected or have had minimal agricultural practices performed on them for the past five years or more for a variety of reasons. This Grower Advisory is intended to provide guidance to those bogs that may be neglected, rather than abandoned. The abandoned bog process involves a permitted process, regulated by both the Massachusetts Department of Environmental Protection (MassDEP) and on the federal government side by the Army Corps of Engineers. For details on the abandoned bog process, please contact the Cape Cod Cranberry Growers' Association or your local Natural Resources Conservation Service office.

Is it Abandoned or Neglected?

Often it may be difficult to ascertain the difference between a bog that has been abandoned versus a bog that is neglected, rendering the bog in a state of disrepair. The regulations of the state Wetlands Protection Act, 310 CMR 10.04, state that



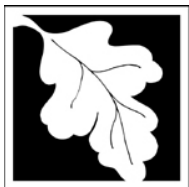
land in agricultural use may lie inactive for up to five consecutive years, unless it is under a United States Department of Agriculture contract for a longer term pursuant to the Conservation reserves Program. The Army Corps of Engineers follow federal guidance, where a length of time of inactivity is not stated. Generally, if a bog has been inactive for five years or less, it can be safely considered active, thereby allowing normal maintenance and improvement practices to continue.

A bog can still be considered active, even if a crop has not been harvested in five years, if some basic maintenance practices have been conducted. These practices include any of the exempt activities involved in the normal maintenance or improvement of land in agricultural use, as defined in the regulations of the Massachusetts Wetlands Protection Act. Once a bog has not been harvested for more than five years, you should obtain regulatory approval before proceeding with any activities. There are three levels of regulatory approval that should be obtained. Regulatory approval should be sought at the local, state and federal levels. This includes your local Conservation Commission, MassDEP and the Army Corps of Engineers. Each regulatory agency has differing criteria and may not require jurisdiction in all instances.

To prevent possible future enforcement issues, it's highly advised to have all agencies approve of your project before any work commences. When practical, it's best to schedule an on-site visit with all three regulatory agencies at the same time. That way, all parties are presented with the same information, under the same conditions, and it also provides an opportunity for the regulators to interact with you and each other in an open discussion.

Regulatory Approval Process

State: Department of Environmental Protection



Massachusetts
Department
of
ENVIRONMENTAL
PROTECTION

The MassDEP may want to have evidence of normal farming practices that have occurred on the bog over the past five or more years. Any of the normal maintenance or improvement practices as described in the regulations of the state Wetlands Protection Act should suffice. Some of the typical practices that may occur with a bog that is primarily neglected may include ditch mowing, winter flood management, weeding, flume or dike maintenance, managing water on the bogs, and the most recent fertilizer or pesticide application. Providing documentation of these practices may be problematic, especially if they were sporadically done. The best documentation is to provide work orders, journals, invoices for services rendered, related receipts, fuel delivery receipts, etc. Additionally, site photographs of your bog or related agricultural support land over time can help demonstrate historical maintenance activities. The most important factor is the date, especially the year that these activities occurred.

Additionally, the following items are also very helpful in demonstrating that the bog has not been truly abandoned: active Water Management Act registration or permit, Water Management Act Annual report forms consistently filed, harvest receipts, most recent conservation farm plan, Exhibit A maps (or similar handler maps) showing that the bog is still listed as active, plus current and historical aerial photographs demonstrating to the fullest extent possible that the bog still resembles a working bog.

Local: Conservation Commission

Your local conservation commission will most likely have resource concerns that will need to be addressed. Their regulatory role should mirror that of the MassDEP. Typically they will be less interested in the Water Management Act information as this is a direct regulatory tool of MassDEP but all other documentation that would be of interest to MassDEP would be of use at your local conservation commission level.

Federal: Army Corps of Engineers



**US Army Corps
of Engineers**

The Army Corps of Engineers – New England District will make the determination from the federal level of determining whether a bog is active or inactive under section 404 of the Federal Clean Water Act. The Environmental Protection Agency-New England Region may provide guidance to the Army Cops on their deliberation but it is ultimately the decision of the Army Corps. Alternatively, you may wish to start the process by requesting a site visit from your local district conservationist at the NRCS. They have local jurisdiction over federal Clean Water Act interpretations and may be able to guide your next steps prior to requesting Army Corps input.

The Army Corps is interested in determining whether a farming operation is established and ongoing (active) or abandoned (inactive). The determining factor is whether the area in question has lain idle (unmanaged or unmaintained) for so long that modifications to the hydrologic regime are necessary to resume operations. In other words, has the basic water and soil characteristics of the bog remained intact? They will decide if there is evidence that there has been an intention to farm the property in the future.

The strongest indicator of intention to farming is to evaluate whether the particular bog's water management system is intact and functional. The water management system may include dikes, dams, ditches, flumes, bypass canals, irrigation and/or tailwater recovery ponds. They will want to see that with minimal repairs, flumes and dikes are intact, the bog can hold flood water, and that the ditches are operational.

They will also give additional consideration to any bogs that have an approved USDA/NRCS Farm Conservation Plan, with practices scheduled within five years, a current and valid USDA/NRCS Environmental Quality & Incentive Program (EQIP) contract, an active MassDEP Water Management Act registration/permit and/or continuous filing of the Water Management Act annual report form. As with the other regulatory agencies, they will also want to have evidence of any normal maintenance activities, aerial photographs, and documentation of recent cranberry harvest history. This would include dates, production totals and the handler that received the crop (or even if the crop was harvested for personal use).

If the Army Corps of Engineers has made the determination that a bog is not abandoned, they may require two additional steps as part of their approval process. These requests may be informal but if not followed, may jeopardize future determinations for other growers. The additional compliance requests would be that the grower receives or updates a USDA/NRCS Conservation Farm Plan prior to starting any renovation activities and that the bogs are not ultimately converted to any non-agricultural use in the future.

Conclusion

If you are considering renovating or farming a bog that is in a state of disrepair, the following steps may be a guide for you in successfully navigating the regulatory process and gathering support documentation.

Step 1: Contact the CCCGA office or your local NRCS office for initial discussion of the project and to coordinate a possible site visit before you contact other regulatory agencies.

Step 2: Determine if the bog has been harvested within the past 5 years. If yes and you have documentation, the bog is still considered active under the Massachusetts Wetlands Protection Act, satisfying local (ConCom) and state (MassDEP) regulatory review. The Army Corps of Engineers may have jurisdiction as they do not comply with the 5 year window and they will be most interested in the water management structures. If the bog has trees growing in it or otherwise does not look much like an active bog, you may need their guidance. If so, see Step 1 above as possible guidance and options for consideration.

Step 3: If the bog has not been harvested in the past 5 years, you will need regulatory review from the local conservation commission, MassDEP, and advisably the Army Corps of Engineers. A simultaneous site visit with all three agencies is suggested but not required. The following checklist is intended as a guide for what information you may be able to provide to help the agencies with their determination.

Regulatory Review Checklist

<input type="checkbox"/> Ditch Mowing	<input type="checkbox"/> Work Orders or Journals	<input type="checkbox"/> Exhibit A or Similar Maps
<input type="checkbox"/> Winter Flood Management	<input type="checkbox"/> Maintenance/Harvest Invoices	<input type="checkbox"/> EQIP Contracts
<input type="checkbox"/> Managing Water	<input type="checkbox"/> Harvest Receipts	<input type="checkbox"/> Site Photographs
<input type="checkbox"/> Weeding	<input type="checkbox"/> Intact Water Control Structures	<input type="checkbox"/> Aerial Photographs
<input type="checkbox"/> Flume Maintenance	<input type="checkbox"/> Dike Maintenance	<input type="checkbox"/> Fertilizer/Pesticide Use
<input type="checkbox"/> Invoices or Receipts for Fuel/Electricity/Etc.	<input type="checkbox"/> Water Management Act Registration/Permit	<input type="checkbox"/> Water Management Act Annual Report Forms

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

For more information, please contact:

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<p>Army Corps of Engineers Regulatory/Permitting New England District 696 Virginia Road Concord, MA 01742-2751 Phone: 978-318-8338 Web: www.nae.usace.army.mil</p>	<p>Cape Cod Cranberry Growers' Association 265 D South Meadow Rd. Plymouth, MA 02360 Phone: 508-866-7878 Email: info@cranberries.org</p>