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BOGS IN DISREPAIR

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The Exemption

- The provisions of this section shall not apply to:
 - Maintenance of drainage and flooding systems of cranberry bogs
 - To work performed for normal maintenance or improvement of land in agricultural or aquacultural use



Land In Agricultural Use

- Land within a resource area or Buffer Zone presently and primarily used in producing or raising [certain agricultural commodities, including cranberries] for commercial purposes.



Inactive Exemption

- Land in agricultural use may lie inactive for up to five consecutive years unless it is under a United States Department of Agriculture (USDA) contract for a longer term pursuant to the Conservation Reserves Program (the Food Securities Act of 1985, as amended by the Food, Agriculture, Conservation and Trade Act of 1990; and 7 CFR 1410), or it is used for the forestry purposes described in 310 CMR 10.04 (Agriculture)(b)14., 15., 16. and 17.). The issuing authority may require appropriate documentation, such as a USDA Farm Plan or aerial photography, to demonstrate agricultural use.



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Guidance

Cape American Cranberry Corporation

vs.

Bourne Conservation Commission

July 10, 2000



Cape American Facts

- 1972 bogs are in production
- 1981, 1982 and 1983 bogs vandalized
- 1984, 1985 and 1986 bogs harvested and crops sold
- 1987-1989 bogs in litigation
- 1987 bogs registered for water permit
- 1990 flumes repaired and minor maintenance performed
- 1991 lost crop due to vandals
- 1992 and 1993 bogs brushed, ditched, mowed, weeded
- 1993 crop lost due to vandals
- 1995 showed as active bogs GIS Map
- 1996 purchased by Cape American



DEP's Exemption Analysis

- Two Step Analysis:
 1. Does the area qualify for the exemption?
 2. Has the exemption been lost through inactivity?



DEP's Exemption Analysis (cont.)

- Nothing in the regulatory language requires one to parse out the precise nature and location of a maintenance activity that has taken place on a property over a period of inactivity. Indeed, by allowing for a period of up to five years of “inactivity,” the Regulations contemplate that there may well be circumstances in which the property is not being used at all for up to five years. Here, among those activities that took place over the disputed period were such things as tending to the flumes and tidal gates, repairing the pump, and maintaining the clapper valve, thereby preventing salt water from entering the bog area. Those activities are essential to the maintenance of the entire bog area as a land in agricultural use.



DEP's Conclusion

- Nothing in the regulatory language requires one to parse out the precise nature and location of a maintenance activity that has taken place on a property over a period of inactivity.
- Indeed, by allowing for a period of up to five years of “inactivity,” the Regulations contemplate that there may well be circumstances in which the property is not being used at all for up to five years.



DEP's Conclusion

- Here, among those activities that took place were such things as:
 - Tending to the flumes and tidal gates
 - Repairing the pump, and
 - Maintaining the clapper valve, thereby preventing salt water from entering the bog area.



DEP's Conclusion

- Those activities are essential to the maintenance of the entire bog area as a land in agricultural use.



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