

**Community Land & Water Coalition**  
**A Project of Save the Pine Barrens, Inc.**  
**P.O. Box 1699**  
**Plymouth MA 02362**  
[www.communitylandandwater.org](http://www.communitylandandwater.org)

January 19, 2024

Via email to:  
Branden Costa  
MassDEP Southeast Regional Office  
Wetlands and Waterways  
20 Riverside Drive  
Lakeville MA 02347

**Re: Request for Denial - Superseding Order of Conditions**  
**A.D. Makepeace Co. - Red Brook - 2 River Run Way/Garden Road**  
**Town of Plymouth Assessor's Map 115, Parcel/Lot A/049**  
**DEP File No. # SE57-3332, Plymouth PCC 23-43**

Dear Mr. Costa:

Please add these comments to the record of the Request for Denial-Superseding Order of Conditions by Save the Pine Barrens, Inc. (STPB) dated November 13, 2023 regarding the Town of Plymouth Conservation Commission's (Commission) November 1, 2023 Order of Conditions SE 57-3332 (Order). The Applicant is ADM Agawam Development LLC (Makepeace or ADM). The Request asks the Department to issue a Superseding Order of Conditions denying the Work. ("Work" is defined under the Regulations, 310 CMR 10.00). The location is adjacent to Deer Pond and shown on Town of Plymouth Assessor's Map 115, Parcel/Lot A/049 (Site).

These comments are submitted in a timely manner, by the requested due date of January 19, 2024 for additional comments in regard to the above referenced matter.

The Commission's Order of Conditions purports to authorize tree removal, road widening, grading, and paving (Work) within an Area Subject to Protection under the Wetlands Protection Act, M.G.L. c. 131, Section 40. As described below and in STPB's November 13, 2023 letter, among the flaws in the Order of Conditions is that the Commission allowed Makepeace to improperly segment the Work by failing to show the full scope of the Work and

residential development project associated with the road. The Work includes paving and extending Garden Road from its current terminus just south of the cranberry bog, continuing to the east of Deer Pond, to its final terminus along Wareham Road, the clearing of 25 acres of forest, the leveling of topography, and the creation of several hundred square feet of additional impermeable surface within a mapped area of Core Habitat and Critical Natural Landscape identified under BioMap 3.

These comments respond to new information obtained at the MassDEP Site visit on January 4, 2024 and the Makepeace's Foley & Lardner LLP January 3, 2024 letter to Branden Costa, MassDEP handed to STPB representatives at the January 4, 2024 site visit.

### **Further Request for Investigation of Makepeace's Unpermitted Alteration of Wetlands**

STPB's November 13, 2023 Request asked MassDEP and the Conservation Commission to investigate and provide a public response to information STPB provided that appears to show that Makepeace violated the Wetlands Protection Act and Regulations by altering wetlands without a permit at the Site. This alteration appears to be related to Makepeace's earth removal and land alterations at its White Island cranberry bogs. Publicly available information appears to show that Makepeace altered about 13,000 square feet of Bordering Vegetated Wetlands (BVW) at the Site without an Order of Conditions. The Beals+Thomas plans submitted with the Notice of Intent show the paving of Garden Road will occur on top of the BVW that appears to have been altered without a permit.

STPB and the Ten Residents Group renew the request for enforcement and provide the following additional information about the potential unlawful filling of BVW where the paving of Garden Road is proposed.

During the January 4, 2024 Site visit, the Plymouth Conservation Agent asserted that he was "aware" of this BVW alteration and that Makepeace's wetlands alteration of the BVW on the Site is exempt from the Wetlands Protection Act and Regulations because it is "Normal Improvement of Land in Agricultural Use." The Town and Makepeace appear to assert that the alteration of the BVW was "agriculture" because Makepeace was "squaring off" the bogs to the north. This does not qualify as "Normal Improvement of Land in Agricultural Use" under the Regulations.

For example, 310 CMR 10.04 (d) states that the squaring off of bogs is exempt as long as it does not "alter a Bordering Vegetated Wetland. See, "d. the squaring-off of fields and bogs, provided that the **activity does not alter a Bordering Vegetated Wetland**, there is no increase in the amount of land in production beyond the minimum increase necessarily resulting from

making the boundary of any field or bog more regular, and no fill is placed within Bordering Land Subject to Flooding.”

This area of bog in question is identified as a Bordering Vegetated Wetland (BVW) in Makepeace’s Notice of Intent. STPB’s expert’s analysis of ortho-imagery appears to show that Makepeace altered approximately 13,000 square feet of Bordering Vegetated Wetland, which was filled in without an Order of Conditions sometime between 2021 and 2024. Exhibit A overlays Makepeace’s Notice of Intent plans on to a 2021 color aerial photo. This depicts the NOI plans at 50% transparency to show the underlying satellite image. The underlying 2021 satellite image depicts a rounded cranberry bog, extending into the area of proposed Work associated with the NOI. In comparison, the 2024 satellite image on Exhibit B-3 shows that Makepeace has “squared off” this cranberry bog. Exhibit B depicts a similar image, with the full 2021 satellite image in full view, which clearly demonstrates the rounded bog extending into the area of proposed Work. Exhibit B-2 is a Google Earth Image from 2021, provided to clearly depict the wetland before it was squared off.

Neither Makepeace nor the Town have provided evidence of a Conservation Farm Plan that is a prerequisite to such an exemption or any other documentation that Makepeace’s wetlands alteration qualified for the Normal Improvement of Land in Agricultural Use exemption.

The photo narrative in the Exhibit to this letter shows the dramatic and rapid land alterations in the area adjacent to and surrounding Deer Pond since 2014. This includes the Red Brook development and two significant “cranberry agriculture” projects, both of which impacted wetlands. First, is the Makepeace “squaring off” of the White Island Bogs, which involved clearing upland forests and removing sand and gravel. Second is the E.J. Pontiff Cranberry sand and gravel mining operation for the alleged purpose of creating a “tailwater pond” for cranberry bogs. This operation mined 50 feet into the Sole Source Aquifer and altered a wetland and MESA habitat.

In summary, Makepeace’s alteration and filling of the BVW at the location of the proposed Work to pave Garden Road appears to be a clear and egregious violation of the Wetlands Protection Act. MassDEP should fully investigate, and if violations are found impose the maximum penalties and order restoration and/or mitigation.

## **Makepeace’s Notice of Intent Application Fails to Accurate Show NHESP “Priority Habitat”**

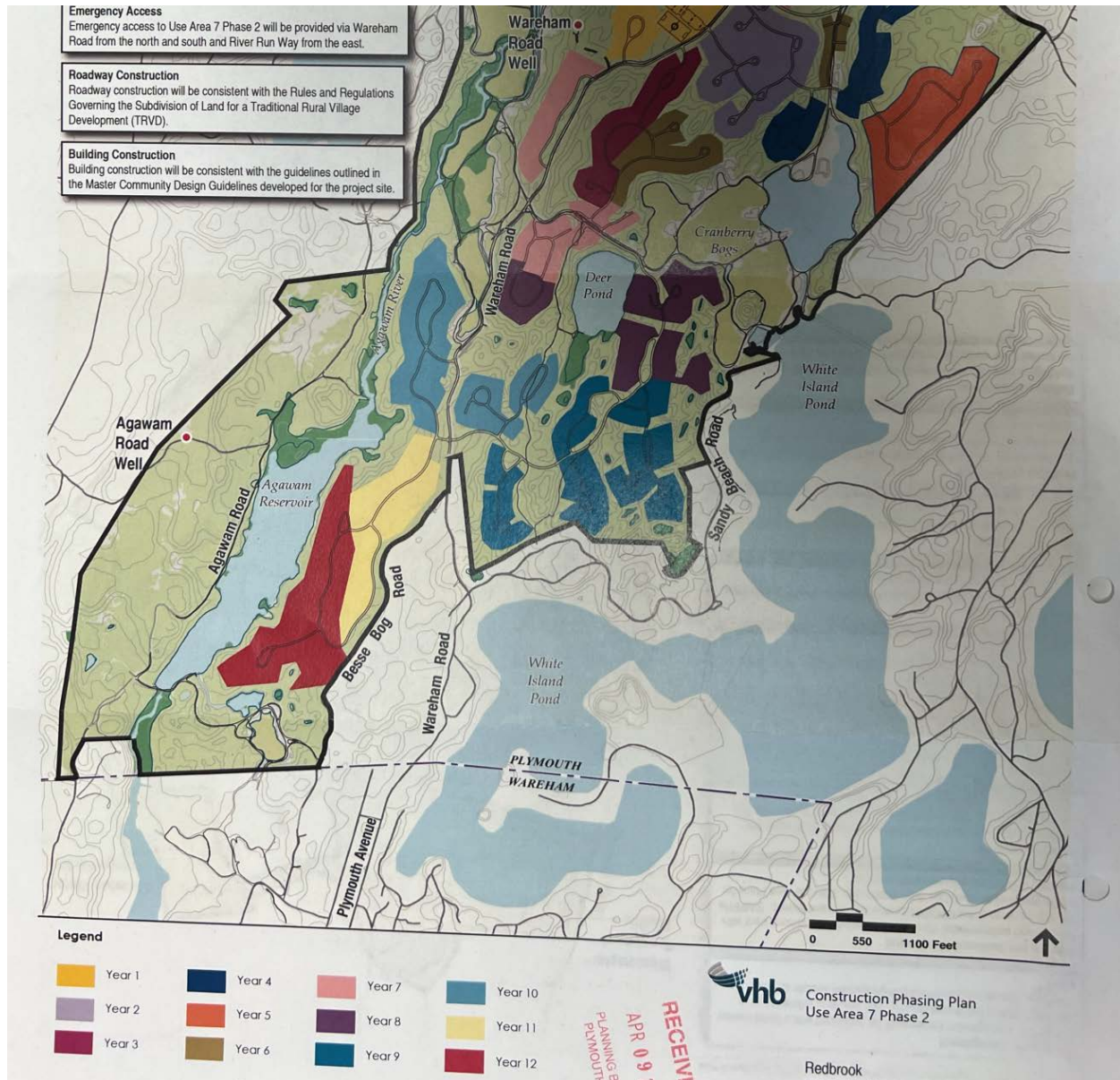
Makepeace’s Stormwater Management Information submitted with the Notice of Intent states that the Work will result in approximately 1.9 acres of land disturbance. The NOI fails to show or state the total acreage of land disturbance within Priority Habitat on the Site plans or in the narrative. At the January 4, 2024 Site visit meeting, STPB’s experts requested that MassDEP require Makepeace to provide this information. Makepeace’s representatives stated they did not know the total acreage of tree clearing or land disturbance within Priority Habitat. They stated that the information would be provided at a later date. As of the date of these comments Makepeace has not provided the information. The absence of this information means that the Conservation Commission’s Order of Conditions was based on incomplete information and was defective.

## **Makepeace is Segmenting the Project to Obscure The Full Environmental Impacts**

Makepeace’s Notice of Intent (NOI) application to the Commission does not describe the full extent of the Work and thereby prohibits an accurate and complete determination of whether the interests of the Act and Regulations are protected under 310 CMR 10.05(6)(n). Makepeace states in the Notice of Intent that the Project is “to pave an existing unimproved road off of Wareham Road to extend it to create “Garden Road.” However, the full scope of the Project involves clearing an additional 25 acres of forest, leveling topography, and creating several hundred square feet of impervious surface for a new residential subdivision. Furthermore, the full scope of the “Work” depicted in the NOI actually involves paving and extending Garden Road from its current terminus just south of the cranberry bog, to the east of Deer Pond, then south to its final terminus along Wareham Road, which is not even described in the Notice of Intent nor depicted in the Site plans. The “Work” described in the NOI is not a project proposal, but a tiny fraction of the proposed land disturbance and activities that may impact Resource Areas as defined by the Act and Regulations. Makepeace and its consultant Beals+ Thomas failed to fully describe the Work and segmented the road from the remaining portions of the residential development. This allowed Makepeace to present to the Conservation Commission only a small portion of the actual land alterations and construction that will occur. The Commission failed to require a full and complete NOI application that accurately describes the work which resulted in a defective Order of Conditions. MassDEP should find the Order inadequate.

Makepeace’s “construction phasing” map below submitted to the Town of Plymouth for the special permit for Red Brook shows the residential development to the east of Deer Pond, served by Garden Road, appearing as “year 3” although this is not entirely clear. Makepeace

should be required to fully disclose the specific location and development to be served by the road.



According to 321 CMR 10.16, under the Massachusetts Endangered Species Act (MESA) which applies here, projects may not be segmented. Makepeace must disclose the entirety of its development plans for the Deer Pond area, even if certain areas of those plans do not fall within areas subject to the Wetlands Protection Act. The Work that is proposed under this NOI is part of the larger Red Brook development plan. The Red Brook residential development has undergone numerous project redesigns since its original MESA approval, and this particular phase of the project may not have been reviewed. Therefore, the entirety of the Project should be disclosed in this NOI filing, because it exceeds MESA thresholds, so that it can undergo the proper review.

## **NHESP Priority Habitat Impacted**

Makepeace's NOI fails to provide full and complete information to show that the Work is consistent with the Massachusetts Endangered Species Act (MESA) and the numerous "Take Permits" issued by Natural Heritage and Endangered Species Program (NHESP) for Red Brook. The project is located within Priority Habitat subject to regulation under MESA and therefore, according to the Wetlands Protection Act, requires NHESP review. The Notice of Intent indicates that a separate MESA review had been complete, but Makepeace failed to provide this as part of the NOI application. NOI form indicates that the MESA review was "available upon request." The Commission failed to request this information from Makepeace. Therefore its Order of Conditions is based on incomplete information.

The Work is part of the ADM - Agawam Development project covered by at least one NHESP "Conservation and Management (CMP) Permit." NHESP issued one or more "Take" permits to Makepeace to kill or take protected species in order to build Red Brook. At least one permit, NHESP # 011.135 was issued in Nov. 2011 and Amended on January 26, 2017. MassDEP must require Makepeace to provide complete, updated, signed and recorded CMP permits that apply to Red Brook and this Work. Makepeace must demonstrate to the public's satisfaction that it is in compliance with all terms and conditions of all CMPs before the MassDEP issues its determination on STPB's Request.

Therefore, this is a request that the MassDEP require Makepeace to provide the MESA information to the public prior to MassDEP making a determination on STPB's November 13, 2023 Request. Without this information, STPB and the public are deprived of the opportunity to fully evaluate whether the Commission complied with the Act and Regulations in issuing the Order.

## **Interim Wellhead Protection Area**

Publicly available records indicate that an Interim Wellhead Protection Area was established for the Wareham Road Well in 2017, which crosses the Site boundaries (Exhibit C). This is to request that the Department investigate whether this boundary still applies for this well.

## **Protection of Fisheries and Wildlife Habitat**

The Order of Conditions failed to list Fisheries as significant to the Interests of the act. Deer Pond is a locally known fishing destination. Its water quality is protected by the acres of forests surrounding it, which filter runoff from the surrounding area before reaching the pond. The NOI itself states that "the proposed roadway...will provide access to a future neighborhood," yet fails to address how the clearing of trees and removal of sand for the

construction of said neighborhood will impact the water quality, temperature, and ultimately fisheries of Deer Pond. Furthermore, the extensive acreage of forest which is to be the proposed location of the “future neighborhood” is home to extensive wildlife habitat, the destruction of which is most undoubtedly an interest of the Act.

### **Response to Makepeace’s January 3, 2024, Letter**

The following comments are submitted in response to Makepeace’s January 3, 2024 submitted as part of this appeal process.

1. Abutter notification

Neither the Commission nor Makepeace followed proper procedures for Abutter Notification under the WPA (310 CMR 10.05(4)(a)), as return receipt cards for certified mail to the abutters were not presented to the public during the public hearing for the Notice of Intent on October 17, 2023, as required by the Act.

2. The Order fails to protect the interests of the Act or meet the requirements of the Act’s implementing Regulations. 310 CMR 10.000

The Town of Plymouth’s Order of Conditions fails to protect several interests of the Act, natural resources that will be negatively impacted by the Work. These are described above and further below. STPB’s November 13, 2023 Request (Letter) identifies several ways in which the Order fails to protect the interests of the Act, including protection of public and private water supply (Letter, page 5), protection of groundwater supply (Letter, page 3), prevention of pollution (Letter, page 6), protection of fisheries (Letter, page 6 and above), and protection of wildlife habitat (Letter, page 2 and above). The Letter also states that the Order fails to accurately identify interests protected by the Act (Letter, page 5), such as Flood Control and Storm Damage Prevention. Further details are provided below.

a. Public and Private Water Supply, Groundwater Supply

The Order of Conditions fails to identify the Work as significant to Public and Private Water supply, even though there are known private wells downgradient of the Site that could potentially be affected by the Work. No private well search or private well locations were included in the Notice of Intent, and therefore the Town of Plymouth had no way to determine that the Work was not significant to private water supply. During the meeting ahead of the Site visit on January 4, 2024, a representative from Beals + Thomas stated that the private wells were too far away to be impacted by the Work, but no proof or calculations were supplied to the Town of Plymouth nor to the public in order to support that assertion. Therefore the Order fails to

protect the interests of the Act by failing to investigate potential impacts to known private well supply wells in the vicinity of the Project.

The Town of Plymouth also failed to indicate on the Order of Conditions that the Work was significant to public water supply and to groundwater supply. As stated in the November 13, 2023 Letter, the NOI fails to address impacts from the Project to the Plymouth Carver Sole Source Aquifer. For instance, because the Deer Pond is a surface water body located within the Plymouth Carver Sole Source Aquifer, it should be considered a part of the Plymouth Carver Aquifer system. Residents expressed concern about vehicular pollution from stormwater runoff into the Pond during the public comment period, which should be interpreted as concern over threats to the public water supply. The Order fails to identify this as a concern.

Furthermore, the Plymouth Carver Aquifer, because of its highly permeable and transmissive character, is vulnerable to contamination. In this regard, the Project should be considered in its entirety. Removal of 25 acres of forested upland removes a protective layer of natural filtration on top of the aquifer, leaving it exposed to potential sources of water quality degradation. The forest helps improve the water quality by preventing erosion, absorbing nutrients, regulating rainfall and evaporation, preventing flooding, and filtering runoff. White Island Pond is an impaired pond, with excess phosphorous levels in the pond from agricultural runoff from AD Makepeace's and E.J. Pontiff's sand and gravel mining and cranberry operations immediately adjacent and upgradient of the Pond. What will removal of 25 acres of forest, which provide filtration of agricultural runoff from AD Makepeace's sand and gravel mining and cranberry operations to the north and west, do to the water quality in White Island Pond, part of the public drinking water supply? The Order fails to address public and private water supply, as well as groundwater supply, from the Project, and therefore fails to uphold the interests of the Act.

**Makepeace's Refusal to allow STPB to attend the site visit to observe the Resource Areas and area of Work.**

On January 4, 2023, Makepeace refused STPB's two wetlands experts access to the Site for purposes of the Site visit. The experts were not allowed to accompany MassDEP's representatives and Makepeace's representatives as they walked on the Site to observe the Areas Subject to Protection. MassDEP took no action to require Makepeace to allow STPB's representatives the opportunity to access the Site to observe the Areas Subject to Protection. This denied STPB a full and fair opportunity to protect its rights by participating in the Site visit on January 4, 2023.

Makepeace's refusal to allow STPB to participate in the Site visit and the MassDEP failure to require Makepeace to provide access violated MassDEP's Wetlands Regulations, the



fundamental purposes of the Wetlands Protection Act and due process rights. The purpose of the Wetlands Protection Act, G.L. c. 131, Section 40 and the Regulations includes to provide a public and transparent process for review of activities that may alter Areas Subject to Protection under the Act. The Wetlands Regulations state they “set forth a **public review and decision-making process** by which activities affecting Areas Subject to Protection under M.G.L. c. 131, Section 40 are to be regulated in order to contribute to” the eight designated interests of the Act. 310 CMR 10.01(2). (Emphasis supplied).

The Regulations further state, “After receipt of a request for a Superseding Determination or Order, the Department may conduct an information meeting and may conduct an inspection of the site. In the event an inspection is conducted, **all parties shall be invited in order to present any information necessary and useful to a proper and complete review of the proposed activity** and effects upon the interests identified in M.G.L. c. 131, Section 40.” 310 CMR 10.05(7)(i). (Emphasis supplied) Makepeace’s denial of access to view the Areas Subject to Protection and the area of Work under the Order of Conditions violates the purpose of the Act and deprives STPB of information necessary and useful to a proper and complete review of the proposed activity.

STPB brings to MassDEP’s attention that Makepeace also refused site access to STPB’s two wetlands experts at the MassDEP site visit on October 4, 2023, at 46 Federal Road in Carver MA. The purpose of that site visit was to observe the location of Work proposed under a Carver Conservation Commission Order of Conditions. The Work consists of the expansion of an approximately 40 acre sand and gravel mining operation located at Makepeace’s Read Custom Soils location. The Carver Order of Conditions purports to allow Makepeace to alter wetlands in order to level a hill to prevent “shading” of 100-year old cranberry bogs. According to Makepeace and its consultant it is necessary to level the hill to remove 1.5 million cubic yards of sand and gravel worth an estimated \$10 million for “cranberry agriculture.”

Is Makepeace trying to prevent public scrutiny of its activities by refusing access to locations where it is proposing work that will alter wetland areas and in which the public has a legally protected interest under the Wetlands Protection Act?

### **Persons Aggrieved**

These comments are submitted by STPB on behalf of itself and its members. STPB members include persons who live, work and recreate in Plymouth and includes abutters to the Site. STPB is a Massachusetts non-profit corporation whose mission is to protect, preserve and steward the land and water of Southeastern Massachusetts, including the Plymouth Carver Sole Source Aquifer (Aquifer), wetlands, forests, wildlife, history and endangered species. These comments are also submitted by the undersigned Ten Residents Group. The Group consists of

more than ten residents of the Town of Plymouth where the Work is located. STPB and the Ten Residents Group are Persons Aggrieved under 310 CMR 10.05(7). They are aggrieved by the failure of the Plymouth Conservation Commission to properly apply the Wetlands Protection Act and Regulations at 310 CMR 10.00, failure to enforce the Act and Regulations and failure to protect the interests of the Act and Regulations identified in G.L. c. 131, Section 40 and 310 CMR 1.01(2) including but not limited to protection of public and private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, and protection of fisheries and wildlife habitat.

### **CONCLUSION**

For the foregoing reasons, in addition to the Request submitted on November 13, 2023 and information provided at the January 4, 2024 Site meeting, the undersigned Aggrieved Persons request that MassDEP overturn the Order and issue a Superseding Order of Conditions denying the Project.

#### **Submitted on behalf of:**

##### **Save the Pine Barrens, Inc.**

[environmentwatchesoutheasternma@gmail.com](mailto:environmentwatchesoutheasternma@gmail.com)

Post Office Box 1699

Plymouth MA 02362

*Margaret E. Sheehan, Esq.*

*Signed electronically as Authorized Representative*

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Margaret Sheehan, Esq., Authorized Representative

##### **Ten Residents Group**

*Margaret E. Sheehan, Esq.*

*Signed electronically as Authorized Representative*

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Margaret Sheehan, Esq., Authorized Representative

For the below listed Ten Residents Group

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Paul Tucker Withington  
122 Old Sandwich Road, Plymouth, MA, 02360

Neil Withington  
122 Old Sandwich Road, Plymouth, MA, 02360

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Lenna Matthews  
59 Ellisville Drive, Plymouth, MA, 02360

Sharon Racette  
395 Federal Furnace Road, Plymouth, MA, 02360

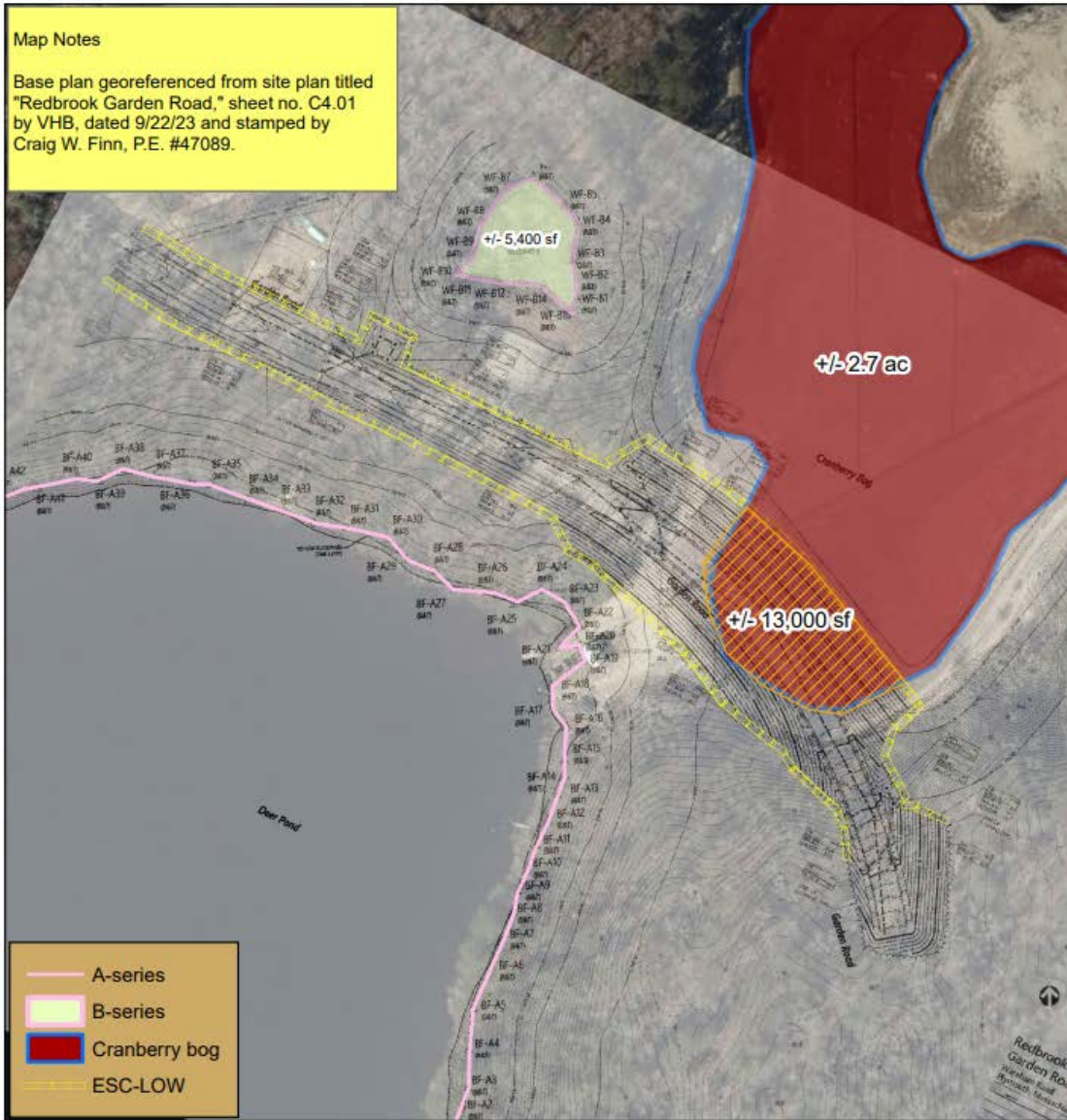
Morgan Wealti  
17 Inkberry Lane, Plymouth, MA, 02360

John Bescherer  
34 White Oak Drive, Plymouth, MA, 02360

cc:

James, Lea Gulotta  
Crossen, Michael K.  
Pontrelli, Mike  
Makuch, Gary  
Richard Vacca

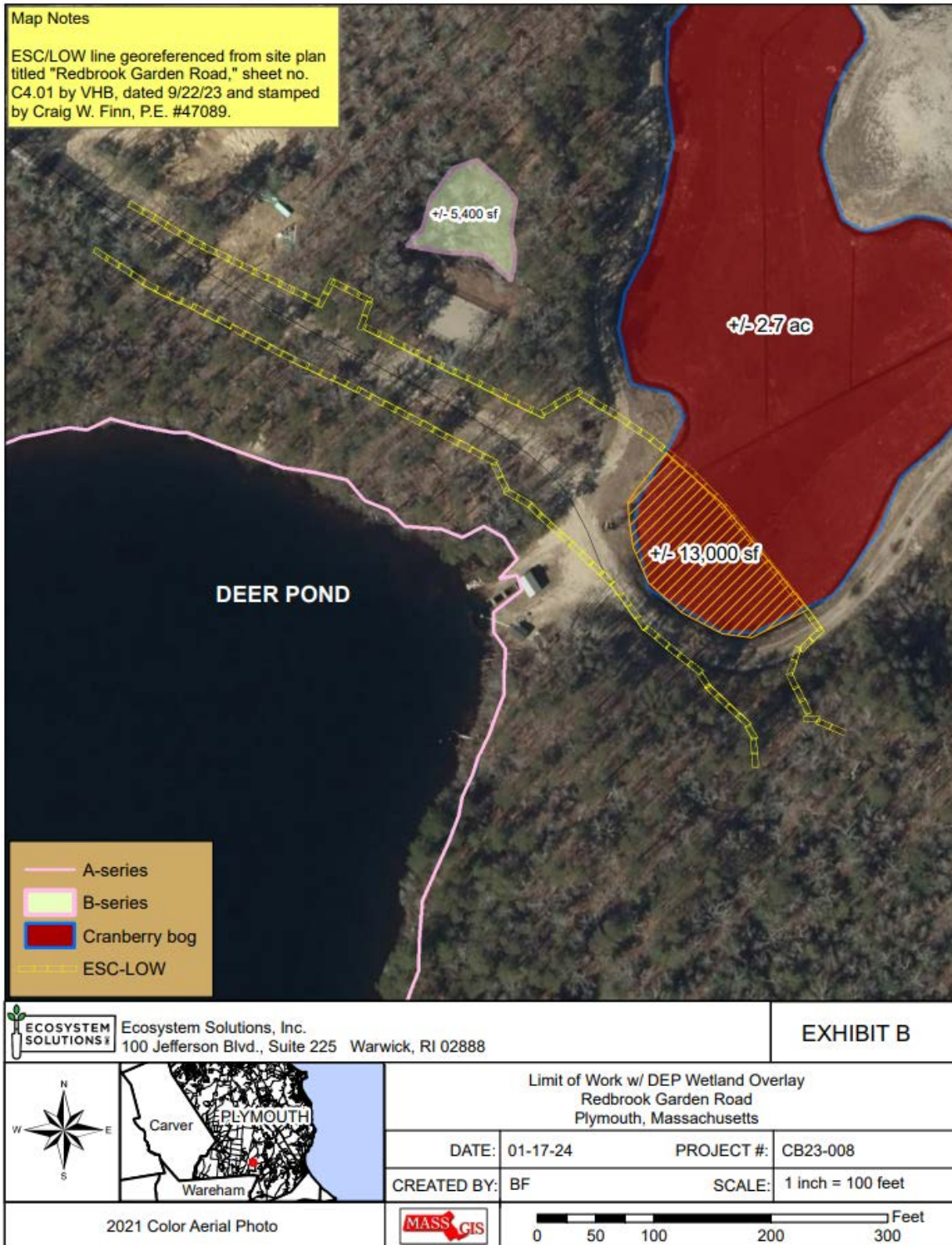
**EXHIBIT A**  
**SITE PLAN OVERLAY WITH DEP WETLAND OVERLAY**  
**REDBROOK GARDEN ROAD, PLYMOUTH, MASSACHUSETTS**



	Ecosystem Solutions, Inc. 100 Jefferson Blvd., Suite 225 Warwick, RI 02888		<b>EXHIBIT A</b>	
			Site Plan Overlay w/ DEP Wetland Overlay Redbrook Garden Road Plymouth, Massachusetts	
DATE: 01-17-24		PROJECT #: CB23-008		
CREATED BY: BF		SCALE: 1 inch = 100 feet		
2021 Color Aerial Photo				



**EXHIBIT B**  
**LIMIT OF WORK WITH DEP WETLAND OVERLAY**  
**RED BROOK GARDEN ROAD, PLYMOUTH, MASSACHUSETTS**





**EXHIBIT B-2**  
**2021 GOOGLE EARTH IMAGE DEPICTED ROUNDED CRANBERRY BOG**  
**EXTENDING INTO FUTURE LOCATION OF PROPOSED WORK**





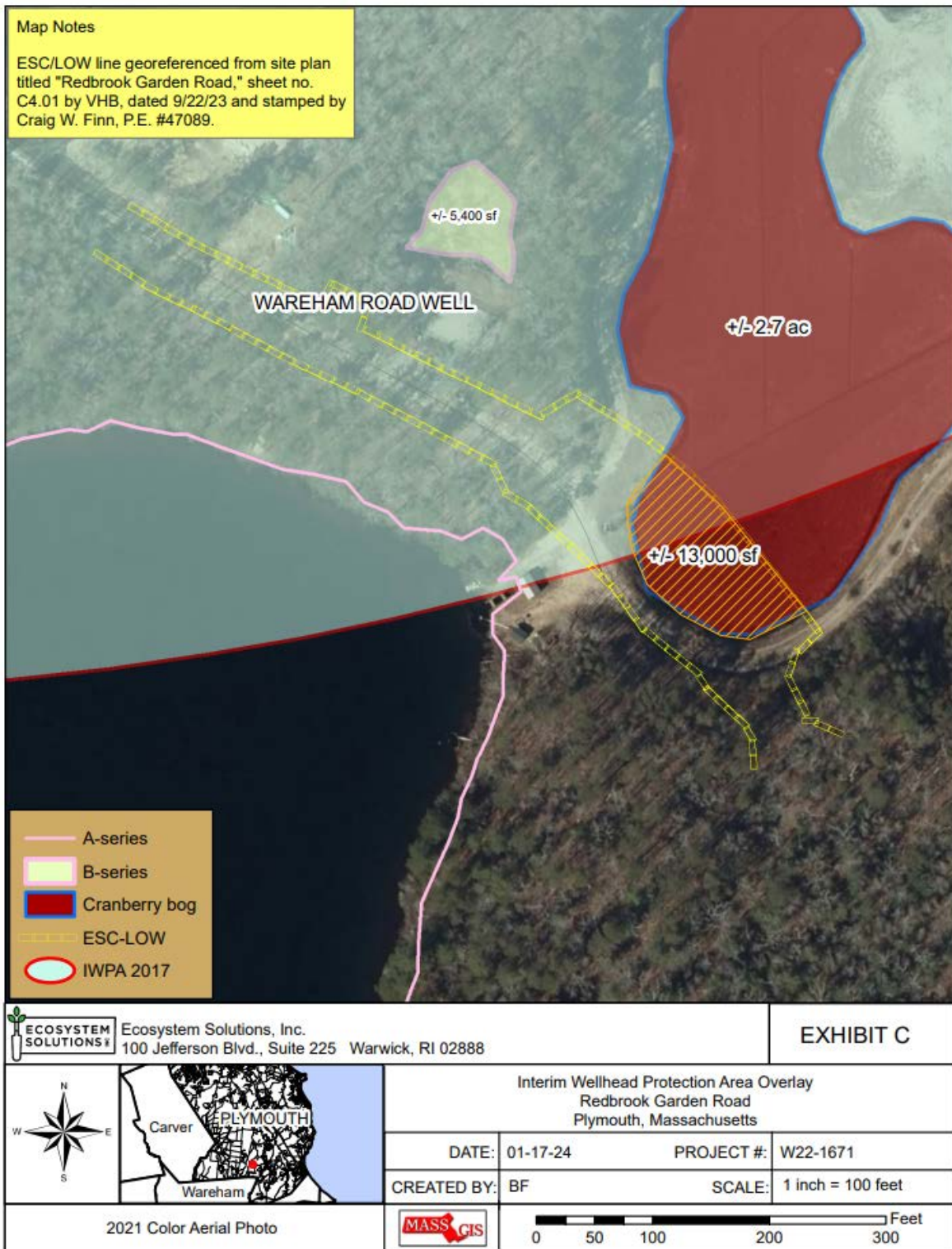
**EXHIBIT B-3**  
**2024 GOOGLE EARTH IMAGE SHOWING ALTERED BOG/BVW**





# EXHIBIT C

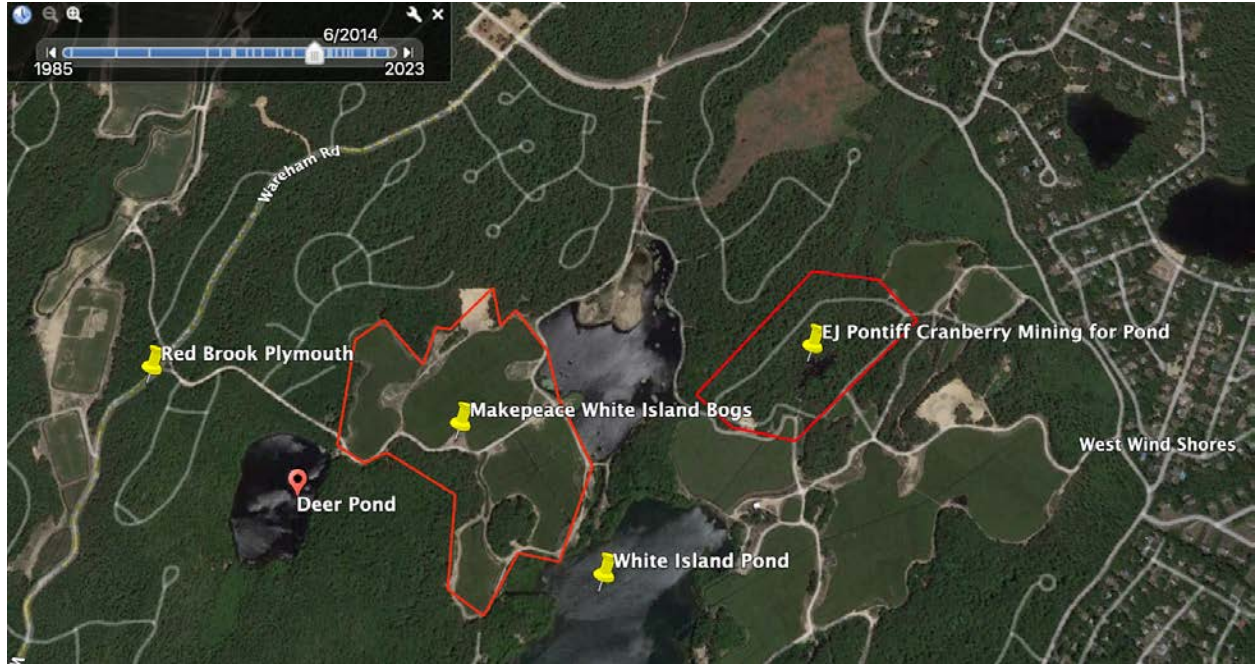
## INTERIM WELLHEAD PROTECTION AREA OVERLAY RED BROOK GARDEN ROAD, PLYMOUTH, MA



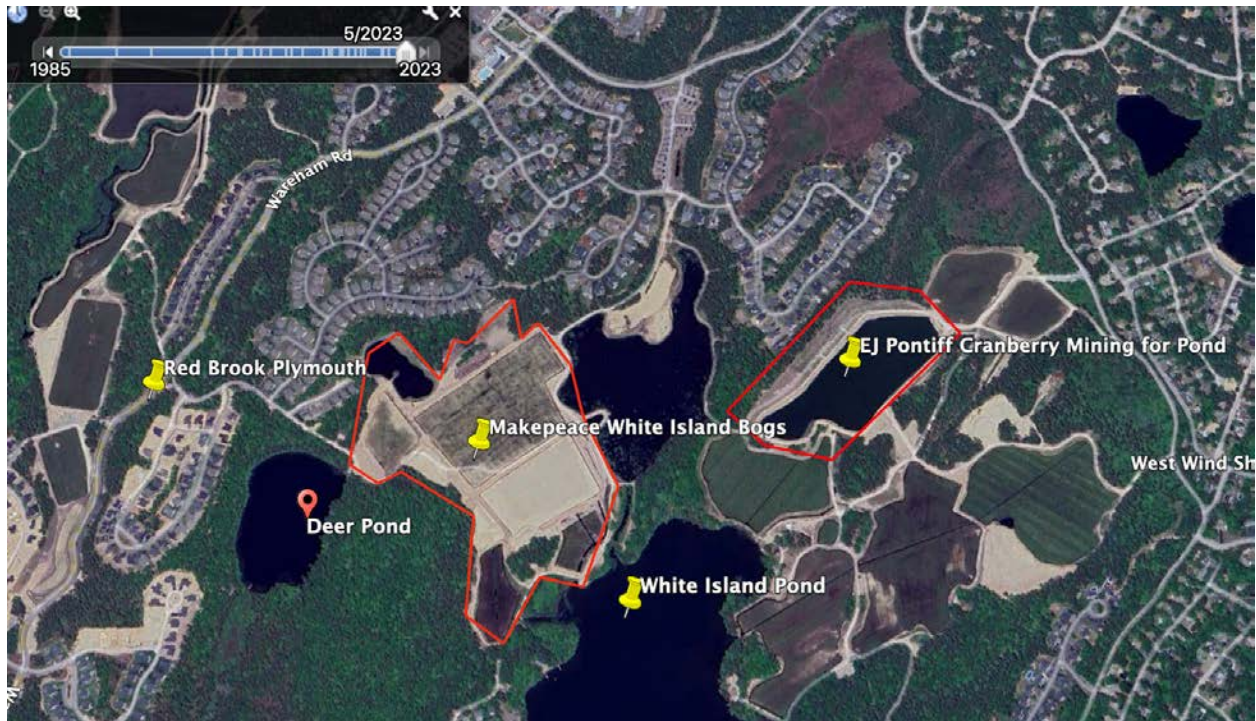


# EXHIBIT SHOWING LAND ALTERATIONS 2014 to 2023

Before: June 2014



After: May 2023



**May 2023: Land Alterations Related to Cranberry Agriculture**

**Left: AD Makepeace “Squaring Off” White Island Bogs including sand mining**  
**Right: E.J. Pontiff sand and gravel mining to create “tailwater pond” for cranberry agriculture and removal of over 1 million cubic yards of sand and gravel and mining in the Aquifer**





**May 2023: AD Makepeace White Island Bogs “Squaring Off” and area of potential violation by altering Bordering Vegetated Wetlands**

