

January 3, 2024

VIA EMAIL AND FEDEX

Mr. Branden Costa
Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Re: Request for Superseding Order of Conditions, Garden Road,
Plymouth, MA (SE57-3332)

Dear Mr. Costa,

I write on behalf of the A.D. Makepeace Company, ADM Cranberry Company LLC, ADM Agawam Development LLC, and ADM Development Services LLC (collectively, "Makepeace") in response to Save the Pine Barrens, Inc.'s ("STPB") November 13, 2023 letter (the "Letter") regarding Order of Conditions SE 57-3332 issued by the Town of Plymouth Conservation Commission (the "Commission") on November 1, 2023 (the "Order"). That Letter requested a Superseding Order of Conditions for a project on Makepeace land located off Wareham Road in Plymouth, Massachusetts (the "Project"). The Project involves paving an existing unimproved road off Wareham Road, and extending the existing road to create an extension to "Garden Road." As explained below, there is no reason to revisit the Commission's approval of the Project.

A. Background

The Project concerns land owned by Makepeace in Plymouth, located at 2 River Run Way (Map 115, Lot 049). Makepeace plans to pave an existing unimproved road off Wareham Road, and extending the existing road to create an extension to "Garden Road" within the Redbrook development. Garden Road will serve a future neighborhood in the Redbrook development, which will be outside of Massachusetts Wetland Protection Act (M.G.L. c. 131, § 40, the "WPA") jurisdictional areas.

The Master Plan for the Redbrook development, which included the Project, has been reviewed multiple times, including through the Massachusetts Environmental Policy Act ("MEPA") and the Massachusetts Endangered Species Act ("MESA"), as well as local Planning Board review and approval.

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Makepeace filed an NOI with respect to the Project on September 26, 2023.¹ The Letter erroneously states that abutters were not properly notified. *See* Letter at page 7. A hard copy list of abutters was provided to the Commission on September 29, 2023 to allow the Commission to issue notices. Makepeace issued its abutter notices on October 2, 2023.

After appropriate review, the Order was issued on November 1, 2023. The Order approved the Project, subject to compliance with the NOI, the general conditions set forth in the WPA, and additional conditions set forth by the town of Plymouth.

On November 13, 2023, STPB submitted the present request for a Superseding Order of Conditions. As explained below, STPB's claims are without merit. The Letter sets forth several allegations but provides no support for any of them. Instead, it makes baseless allegations without pointing to facts that create any genuine issue calling the validity of the Order into question.²

B. STPB Lacks Standing to Request a Superseding Order of Conditions

Pursuant to 310 CMR 10.05(7), in order to request a Superseding Order of Conditions, STPB must either be a "person aggrieved" by the Order or be representing the interest of "any ten residents of the city or town where the land is located." STPB does not fit into either category, and therefore lacks standing to appeal the Commission's decision.

A "person aggrieved" is defined as "any person who, because of an act or failure to act by the issuing authority, may suffer an injury in fact which is *different either in kind or magnitude* from that suffered by the general public." 310 CMR 10.04 (emphasis added). STPB has identified no injury in fact it would suffer due to the Project, let alone one that is different in kind or magnitude from any injury to the general public. The Letter merely states that STPB's mission is "to protect, preserve and steward the land and water of Southeastern Massachusetts," but does not identify how the Project would infringe upon that mission. It further states that its members "live, work and recreate in Plymouth," but does not offer an explanation as to why STPB's members would be affected differently than any other resident of Plymouth. STPB is not a "person aggrieved" within the meaning of the regulation.

¹ The Letter argues that Makepeace paid the incorrect fee for the Project. *See* Letter at page 7. DEP and the Commission accepted the filing with the fee sent by Makepeace. More importantly, the fee does not affect any substantive determinations made in issuing the Order. Should DEP conclude that Makepeace paid the incorrect fee, Makepeace is happy to make an additional payment.

² The Letter also includes two pages of irrelevant and erroneous information pertaining to the Redbrook development as a whole. *See* Letter at pages 2-4, "Project Site." The Redbrook Master Plan is not the subject of the NOI, which only applies to the specific Project at issue, and therefore the information is not relevant and not addressed herein.

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STPB also has failed to identify ten specific Plymouth residents whose interests it is representing in requesting a superseding Order of Conditions. The Letter does not identify *any* Plymouth residents who claim to be submitting the appeal, let alone the required ten residents. It also does not identify a designated representative for such a citizen group.

STPB did not participate in the public hearing regarding the Project. No representative of STPB provided comment on the NOI filing prior to the submission of the Letter.

For these reasons, STPB does not fall into any category enumerated by 310 CMR 10.05(7), and therefore does not have standing to request a superseding Order of Conditions. Because of the clear lack of standing, STPB's request should be denied.

C. The Letter Does Not Comply with the Requirements of 310 CMR 10.05(7)(c)

Even if STPB did have standing to appeal the Commission's decision, which it does not, the Letter does not comply with 310 CMR 10.05(7)(c), which requires that a request for a superseding Order of Conditions "state clearly and concisely the objections to the Order . . . which is being appealed, and in the case of a request for a Superseding Order, how the Order of Conditions . . . is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in M.G.L. c. 131, § 40."

STPB halfheartedly attempts to satisfy this requirement by asserting generally that the Order does not protect the interests of the WPA or meet the requirements of the WPA's implementing regulations. *See* Letter at page 2. Although the Letter erroneously purports to identify ways in which the NOI was deficient, no basis is offered for these supposed deficiencies, much less any connection to the specific requirements of the WPA or its implementing regulations, as required by 310 CMR 10.00. Instead, the Letter includes pages of irrelevant and erroneous information regarding the Redbrook Master Plan, which is not relevant to approval of the Project. As such, it fails to identify "clearly and concisely" the ways in which the Order fails to protect the interests of the WPA or its implementing regulations, and the Order should stand.

D. STPB's November 13, 2023 Request for Superseding Order of Conditions is Deficient, Inaccurate, and Misleading

Although the Letter purports to identify various deficiencies with the NOI, the Letter makes clear that STPB did not thoroughly review the NOI or the plans submitted in conjunction with the NOI. The supposed deficiencies enumerated in the Letter are either not applicable to this Project or were in fact satisfied by Makepeace's NOI filing. The Commission had all information necessary to make an informed decision when issuing the Order.

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1. The NOI Is Complete and Accurate, and the “Deficiencies” Identified Are Largely Inapplicable

The Letter argues that the NOI failed to include certain information, such as the length of the roadway to be paved, the area of buffer zone to be altered, and the grading necessary for the Project. This is untrue. Included with the NOI were to-scale plans for the Project, which allow the Commission or any other person to measure distances and areas. Information regarding grading impact was also depicted in the Grading and Drainage Plan filed with the NOI.

Further, identifying the square feet of alteration within the buffer zone is not required by the NOI form required by DEP. However, work within the buffer zone is similarly depicted on the to-scale plans submitted with the NOI.

The Letter states that the NOI did not accurately identify the interests protected by the WPA. *See* Letter at page 5. This is also untrue, as Item 1.4 in Section 2 of the NOI enumerates the relevant interests of the WPA and local bylaw, and discusses the Project in relation to those interests. This requirement has thus been satisfied by the NOI filing.

STPB’s Letter also argues that the NOI did not “give accurate information” regarding the impact on Priority Habitat associated with Deer Pond, and instead stated that information was available on request. *See* Letter at page 5. The NOI accurately stated that no portion of the Project is within Estimated Habitat. Even though not required, the Natural Heritage & Endangered Species Program was given a copy of the NOI for the Project, and indicated they would not issue a determination letter for this Project, as it does not fall within an Estimated Habitat. Therefore, the NOI provides all the necessary information with regards to rare species-related interests of the WPA.

2. The Project Complies with All Requirements for Work in the Buffer Zone

a. Stormwater Analysis

As is STPB’s tendency, the Letter identifies certain supposed deficiencies with the NOI’s stormwater analysis but cites to no support for its contentions that the Project plans are deficient. The Letter is unclear regarding why the plans for the Project are deficient or noncompliant, and therefore it is difficult for Makepeace to fully respond. However, Makepeace herein provides additional information regarding stormwater management for the Project.

The endpoint for any stormwater runoff is either (1) the isolated wetland, (2) the existing cranberry bog, or (3) Deer Pond.³ Although the Letter states that the plans show 100-year runoff

³ The Letter inaccurately states that these three endpoints are used for overflow from the leaching chambers. In fact, as depicted on the plans and described in the Stormwater Memorandum, Deer Pond is not used for the overflow from any

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going onto the “surrounding land,” Makepeace notes that these endpoints are all on Makepeace land, and therefore no offsite flooding is proposed by the plans. DEP’s stormwater regulations require that peak rates of discharge post-development do not exceed peak rates of discharge pre-development. The Stormwater Management Standards (“SMS”) state that this requirement is only applicable to 2-year and 10-year 24-hour storms. Information regarding both pre- and post-development rates of discharge is included in the Stormwater Memorandum filed with the NOI and demonstrates that the post-development rate of discharge is reduced for the 2-year and 10-year storm events, in compliance with the SMS.⁴

b. Public Water Supply

The Letter also raises that the NOI failed to address certain issues regarding public water supply. Once again, these supposed deficiencies underscore STPB’s failure to understand the WPA or its implementing regulations, and its failure to adequately review the NOI filing.

With respect to the effects on the groundwater supply and public or private water supply, all information regarding water quality required by the SMS was included in the Stormwater Memorandum filed with the NOI. Further, Item 1 in Section 2 of the NOI discusses how the interests of the WPA have been maintained by the Project plans.⁵

Additionally, the closest public drinking water supply is approximately 2,200 feet away from the Project site, and there are no private drinking water supplies near the Project. Information regarding future water demands is not relevant to this filing. *See* Figure 1.

The Letter also argues that the NOI fails to account for the fact that the Project is located in proximity to Zone II wellhead protection areas. *See* Letter at page 5. This is irrelevant. The Project site is actually located approximately 1,850 feet to the east and south of any Zone II protection area, and no work is proposed within a Zone II protection area. *See* Figure 1. There are no additional

proposed leaching chamber. Any overflow from the leaching chambers will run ultimately to either the isolated wetland or existing cranberry bog.

⁴ Although not required by the SMS, the Stormwater Memorandum shows that the post-development rate of discharge is also reduced for a 100-year storm event for all endpoints except for the isolated wetland. In that instance, while the rate of discharge is not reduced post-development, the overall discharge volume is reduced. This satisfies the SMS’s directive that best management practices are provided to “attenuate” discharge connected to a 100-year storm event.

⁵ The Letter also separately raises concerns about water quality protections. *See* Letter at pages 6-7. These supposed issues are not relevant to this NOI, as the Project consists of paving and extending a current sand-track road. Further, although not germane to the instant review, the overall Redbrook development has addressed nitrogen impacts through the relevant regulatory reviews and through substantive nitrogen mitigation efforts.

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requirements if work is *near* a Zone II protection area, only if work is *within* the protection area. The NOI is compliant and no additional information is necessary.

Also without support, the Letter argues that the NOI fails to show that the Project area is within an Interim Wellhead Protection Area (“IWPA”). As demonstrated in Figure 1, the Project is not within any mapped IWPA based on information obtained from MassGIS. Even were the Project within an IWPA, the design of the Project would not be impacted, as the Project plans were designed as if it were situated in a critical area with respect to rapidly infiltrating soils. Therefore, even if the Project work were within an IWPA, the design would still be in compliance.

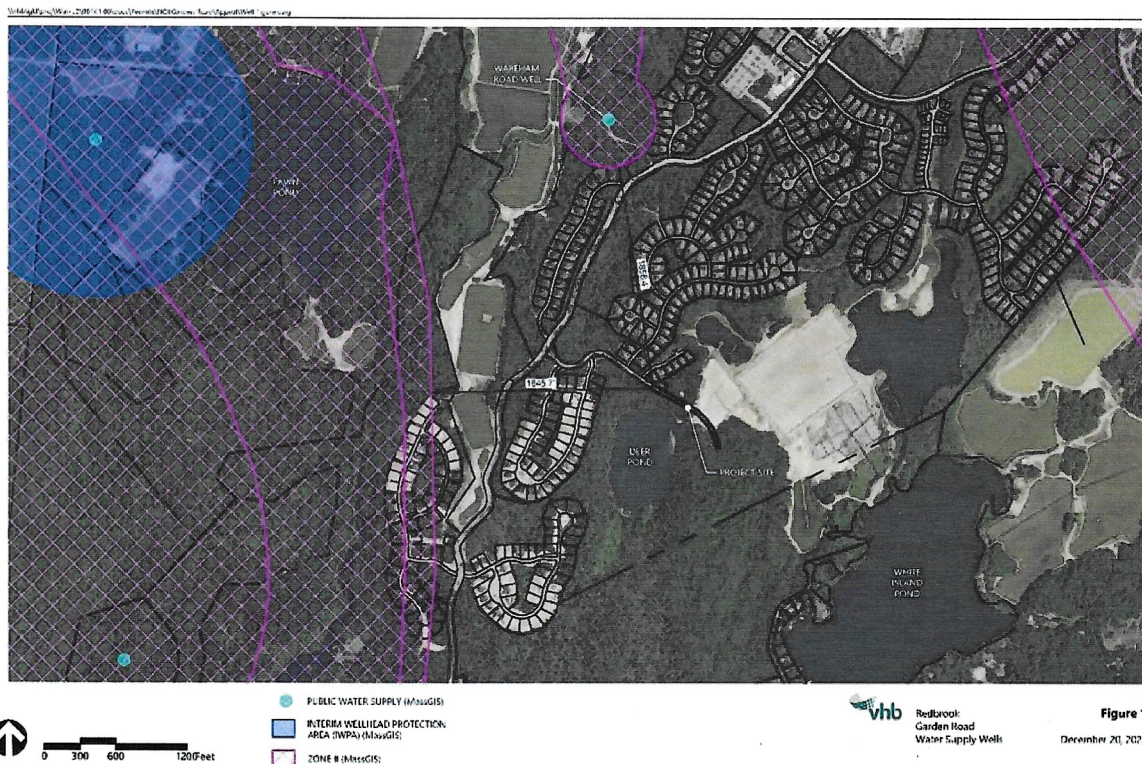


Figure 1.

The Letter then argues that the NOI was improperly granted waivers under the bylaw. *See* Letter at page 5. The local bylaw is not relevant to the instant appeal, as STPB is appealing the Order under state laws and regulations. Regardless, the appropriateness of waivers is discussed at length in the NOI filing. Waivers are properly granted at the discretion of the Commission, particularly if the work is unavoidable and cannot be constructed elsewhere, and where the buffer zone to be impacted is largely already disturbed, which is the case with this Project.



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c. Wetland Classification and Wetland Fill

STPB states, without support, that it “believes” that certain wetlands currently classified as Isolated Vegetated Wetlands are actually Isolated Land Subject to Flooding (“ILSF”). *See* Letter at page 6. These claims are unsubstantiated; STPB provides little to no data to support its contentions. As such, they should be disregarded as speculative and not compliant with the requirements of 310 CMR 10.05(7)(c).

Even were STPB correct, the Letter ignores that there is no buffer zone to ILSF. As the Project plans clearly depict, Makepeace does not propose doing any work in the area that STPB asserts may be ILSF. In fact, that is why the Isolated Vegetated Wetland was not evaluated by Makepeace for ILSF status. The classification of the wetland as ILSF would have no effect on the design, consideration, or permitting of the Project. Similarly, wildlife habitat interests were adequately protected, because no Project work is proposed to occur within an area that STPB alleges is a resource area.

The Letter then argues that portions of the existing cranberry bog adjacent to the Project site were illegally filled. *See* Letter at page 6. Once again, STPB makes this accusation without even attempting to provide support, and it should be disregarded.

E. Conclusion

We request that the DEP either (1) deny STPB’s request for a Superseding Order of Conditions for lack of standing, or (2) issue a Superseding Order of Conditions allowing the Project.

Thank you for your consideration of this matter.

Sincerely,

/s/ Michael K. Crossen

Michael K. Crossen

cc: Margaret Sheehan, Esq.
Gary Makuch
Richard Vacca
Michael McVeigh
Lea James, Esq.