

Save the Pine Barrens, Inc.

158 Center Hill Preserve

Plymouth MA 02360

www.savethepinebarrens.org

environmentwatchesoutheasternma@gmail.com

March 9, 2022

By Hand

Conservation Commission

Town of Carver

Brooke Monroe, Conservation Agent

108 Main Street

Carver MA 02330

**Re: Request for Determination of Applicability
Slocum Gibbs Cranberry Company**

Location: Town of Carver Assessor's Map Map 97, Lot 2

Owner: Slocum Gibbs Cranberry Co., P.O. Box 6, South Carver MA

Dear Conservation Commission,

Attached please find a Request for Determination of Applicability (RDA) under the Wetlands Protection Act, M.G.L. c. 131, Section 40 ("the Act") and the regulations thereunder, 310 CMR 10.00 et seq. ("the Regulations").

This RDA is filed under 310 CMR 10.05(3) to request that the Commission determine whether the Act and Regulations apply to work by Slocum Gibbs Cranberry Co. ("Slocum Gibbs") on the land identified as Map 97, Lot 2 on the Carver Assessor's Map ("the Project Site"). Specifically:

- Whether the area depicted on the maps referenced below are areas subject to jurisdiction of the Wetlands Protection Act.
- Whether the boundaries of the resource areas depicted on the maps referenced below are accurately delineated.

- Whether the work depicted on the photographs referenced below and described below (commercial mining) is subject to the Wetlands Protection Act.

See, WPA Form 1 - Section B, attached.

Save the Pine Barrens (STPB) files this RDA under the Act on behalf of itself as an organization whose mission is to protect the land and water resources of Southeastern Massachusetts, including the Plymouth Carver Sole Source Aquifer where the Project Site is located. STPB also brings this RDA on behalf of individuals who are residents of Carver and rely on the Sole Source Aquifer for their drinking water. These members live, work and recreate in and on the waters, wetlands, and lands that are impacted by the actions described on the Project Site. These individuals are also members of STPB.

The attached DEP Form WPA, Form 1, Request for Determination of Applicability, is attached hereto.

The Project Site and Site Ownership

The Carver's Carver Assessor's Map and Property Record Card show that Map 97, Lot 2 is owned by Slocum Gibbs Cranberry Company.¹

Figure 1: Property Record Card. Source: Town of Carver Assessor's Office.

Key: 4027		Town of CARVER - Fiscal Year 2022										12/10/2021 5:44 pm		SEQ #: 3.984			
L E G A L	CURRENT OWNER		PARCEL ID		LOCATION		CLASS		CLASS%		DESCRIPTION		BN ID	BN	CARD		
	SLOCUM GIBBS CRANBERRY CO		97-2-0-R		0-REAR TREMONT ST		6010		100		CH61 FOREST				1 of 1		
	PO BOX 6 SOUTH CARVER, MA 02386		SLOCUM GIBBS CRANBERRY CO		03/23/1922 X		1		1409-106								
L A N D	CD	T	AC/SF/UN	Nah	INFL1	INFL2	ADJ BASE	SAF	INFL3	Lot	VC	CREDIT AMT	ADJ VALUE				
	100	S	60,000	SCR	1.00	1.00	1.00	94,300	1.00	1.00	SCR	1.00	601G	129,660	200		
	300	A	26,330	EXS	1.00	1.00	1.00	7,800	1.00	1.00	EXS	1.00	601G	201,600	3,770		
TOTAL		27.707 Acres		ZONING		RA	FRNT	0	ASSESSED		CURRENT	PREVIOUS					
Nah		SOUTH CARVER		N O T E		LAND		3,970		3,270							
INFL1		NO ADJUST.				BUILDING		0		0							
INFL2		NO ADJUST.				DETACHED		0		0							
						OTHER		0		0							
						TOTAL		3,970		3,270							
TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD	PHOTO									

Figure 2: Carver Assessor's Map 97, Lot 2. Source: Town of Carver Assessor's Office.

¹ The Project Site is classified as Chapter 61A agricultural use. Commercial mining operations is not an agricultural use under Chapter 61A..

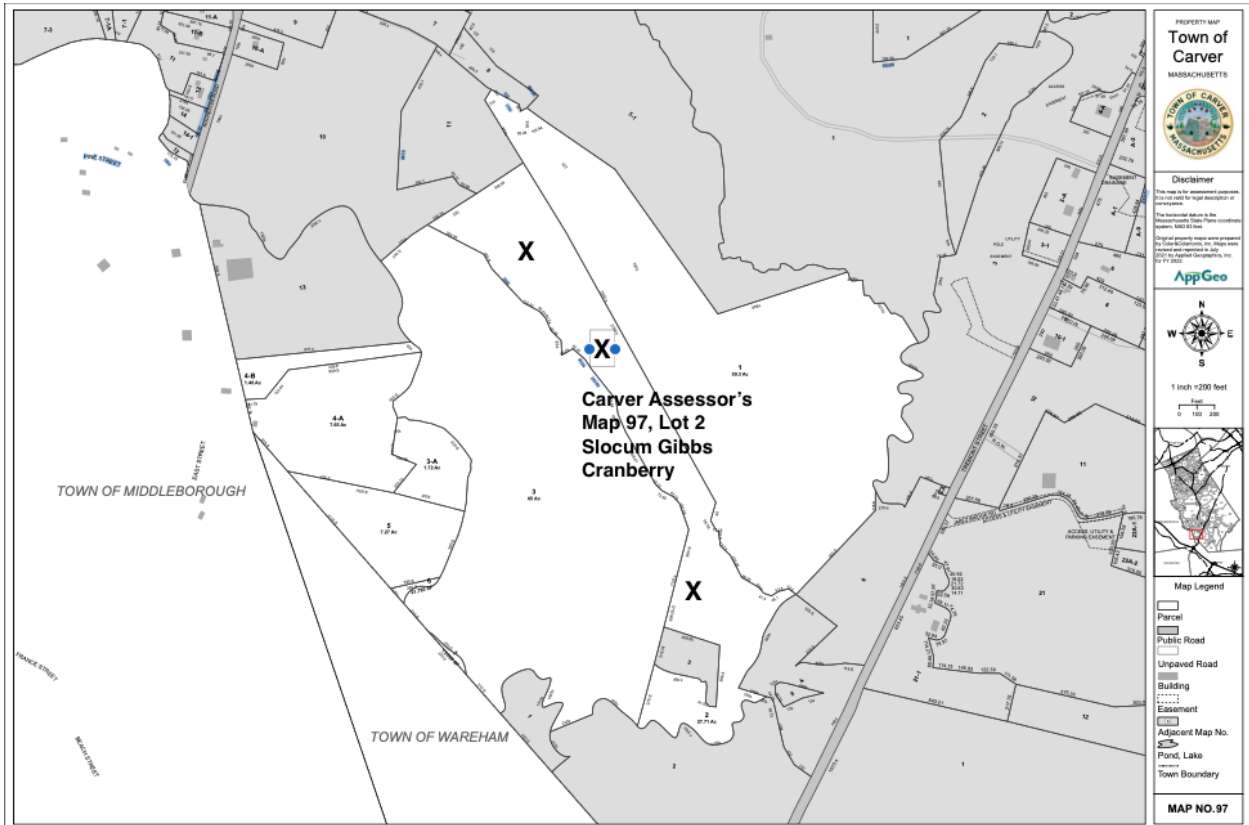




Figure 3 above is a USGS Topographic Quadrangle showing the Project Site. Source: MassMapper GIS, accessed 3/5/2022.

Figure 4 below shows the locations of wetlands on the Project Site. Source: MassMapper GIS, accessed 3/5/2022, Mass DEP Wetland Boundaries.



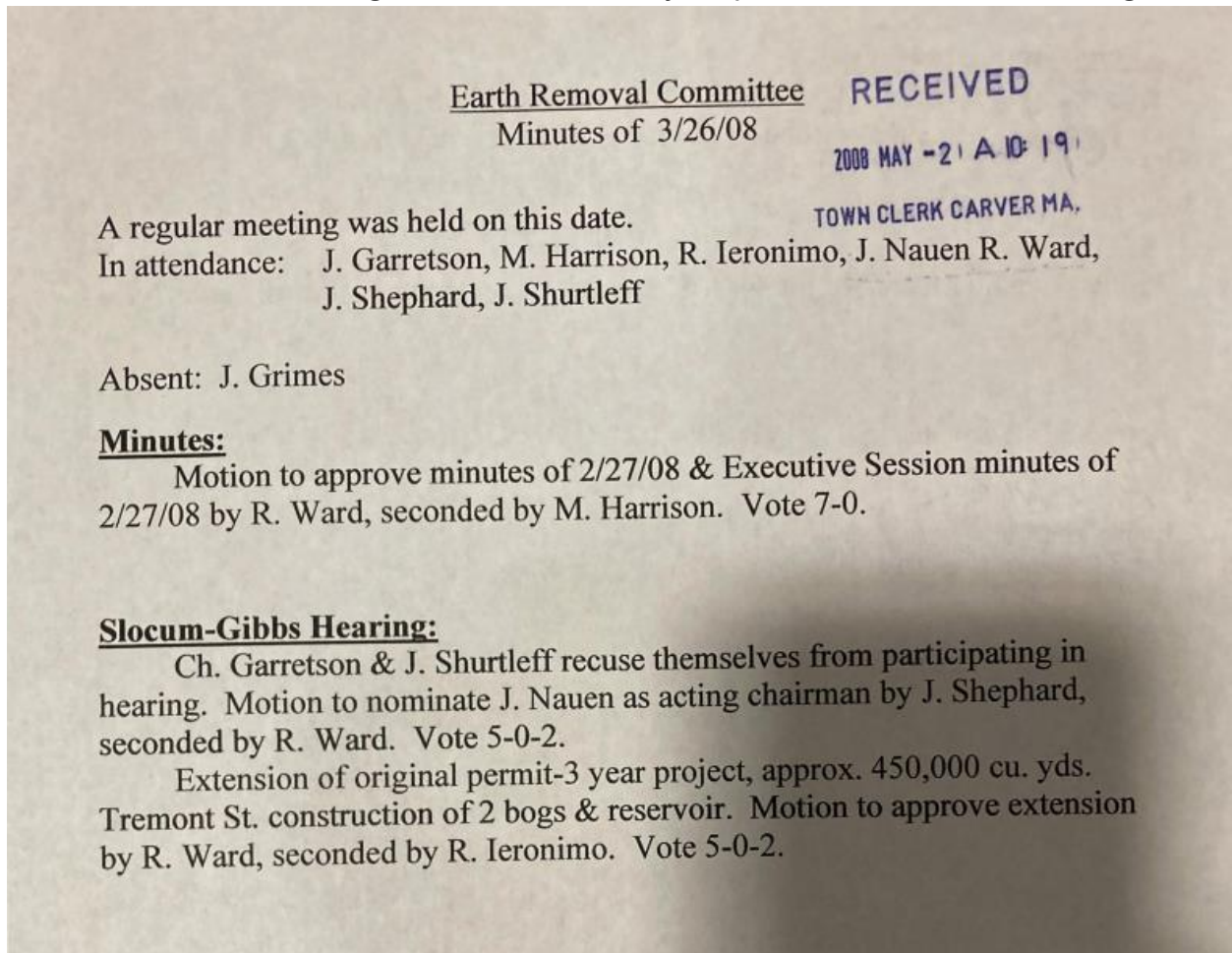
The Work

STPB is unaware of any permission from the Conservation Commission under the Act to conduct the work described in this RDA.

The Carver Earth Removal Committee issued an earth removal permit to Slocum Gibbs in approximately 2007 for a 3 year project to remove 450,000 cubic yards for

“construction of 2 bogs and a reservoir” on Tremont Street. This is for commercial mining as defined by the Bylaw. One record documenting Slocum Gibbs commercial mining is the ERC minutes of March 26, 2008 at which the ERC granted to extend the commercial mining permit.² John H. Garretson III (“Garretson”) was chairman of the ERC from about 1996 to Spring 2021. Garretson is and has been President, Treasurer and a Director of Slocum Gibbs Cranberry Company.

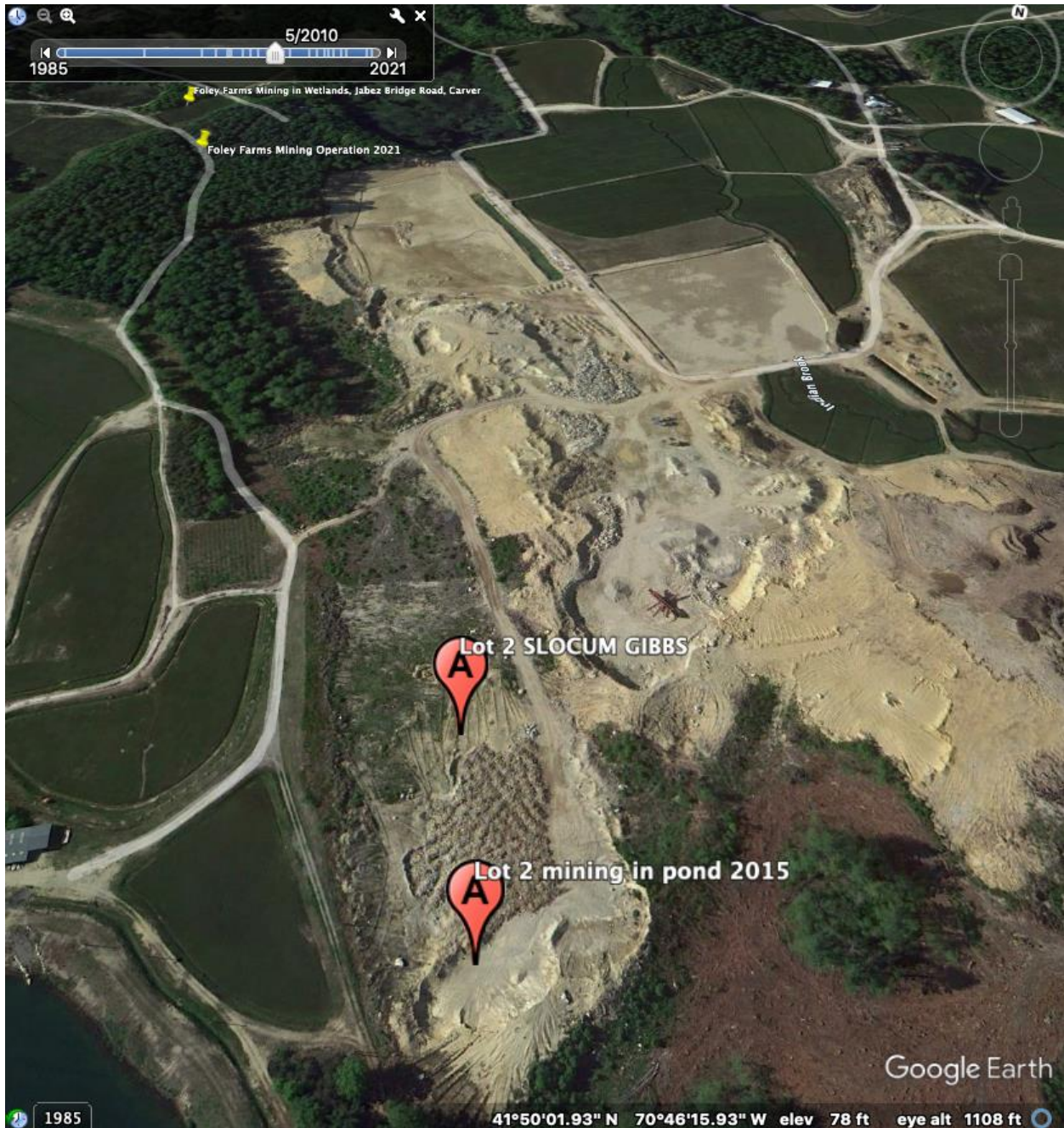
Figure 5 below is an excerpt from the March 26, 2008 minutes of the Carver Earth Removal Committee voting to extend the three year permit for commercial mining.



² Since the Slocum Gibbs earth removal permit was issued in about 2007, Garretson was responsible for overseeing enforcement of the Bylaw at his Project Site and collecting earth removal fees.

Figure 6 below shows work on the Project Site in May, 2010. Source: Google Earth Imagery.

Since May, 2010 work including land clearing and commercial mining has expanded across the Project Site. No cranberry bogs are visible on the Project Site as of October 2021 according to Google Earth imagery. Two ponds have been created by excavating into the groundwater. Satellite imagery shows industrial equipment in one of the ponds that appears to be extracting sand from in the pond in the groundwater aquifer.



Slocum Gibbs work on the Project Site is impairing the ability of the wetlands to further the interests of the Act, as shown below.

Slocum Gibb's commercial mining is an "Activity" subject to regulation under M.G.L. c. 131, Section 40 if it will remove, fill, dredge or alter the *Area Subject to Protection*,

under 310 CMR 10.02(2)(b), and/or is conducted within the *Buffer Zone* of 100 feet of a wetland, under 10.02(2)(b) or Riverfront Area.

Slocum Gibbs work on the Project Site is impairing the ability of the wetland resources to contribute to the following interests under the Act:

- Protection of public and private water supply
- Protection of ground water supply
- Flood control
- Storm damage prevention
- Prevention of Pollution
- Protection of fisheries
- Protection of wildlife habitat

310 CMR10.02(2).

At various locations throughout the Project Site, work is being done or has been done within 100 feet of Areas Subject to Protection under the Act, and Bordering Vegetated Wetlands (310 CMR 10.55). This includes forest cutting. There is no known Forest Cutting Plan under Chapter 132, the Forest Cutting Practices Act, and the regulations 304 CMR 11.00. This applies to forest lands and cites the purposes of “conserving water, preventing floods and soil erosion, improving the conditions for wildlife and recreation, protecting and improving air and water quality....” Department of Conservation and Recreation Landowner Information Sheet.



Figure 7 above shows work within 100 feet of Wooded Swamp wetland and Cranberry Bog wetland. Source: MassMapper, 2021, DEP Wetlands Delineated, DEP Wetlands Labels.

Figure 8 below shows work (excavation of a pond) within 62 feet of a wetland resource (Cranberry Bog) on the Project Site. Source: MassMapper Aerial Imagery, 2021.

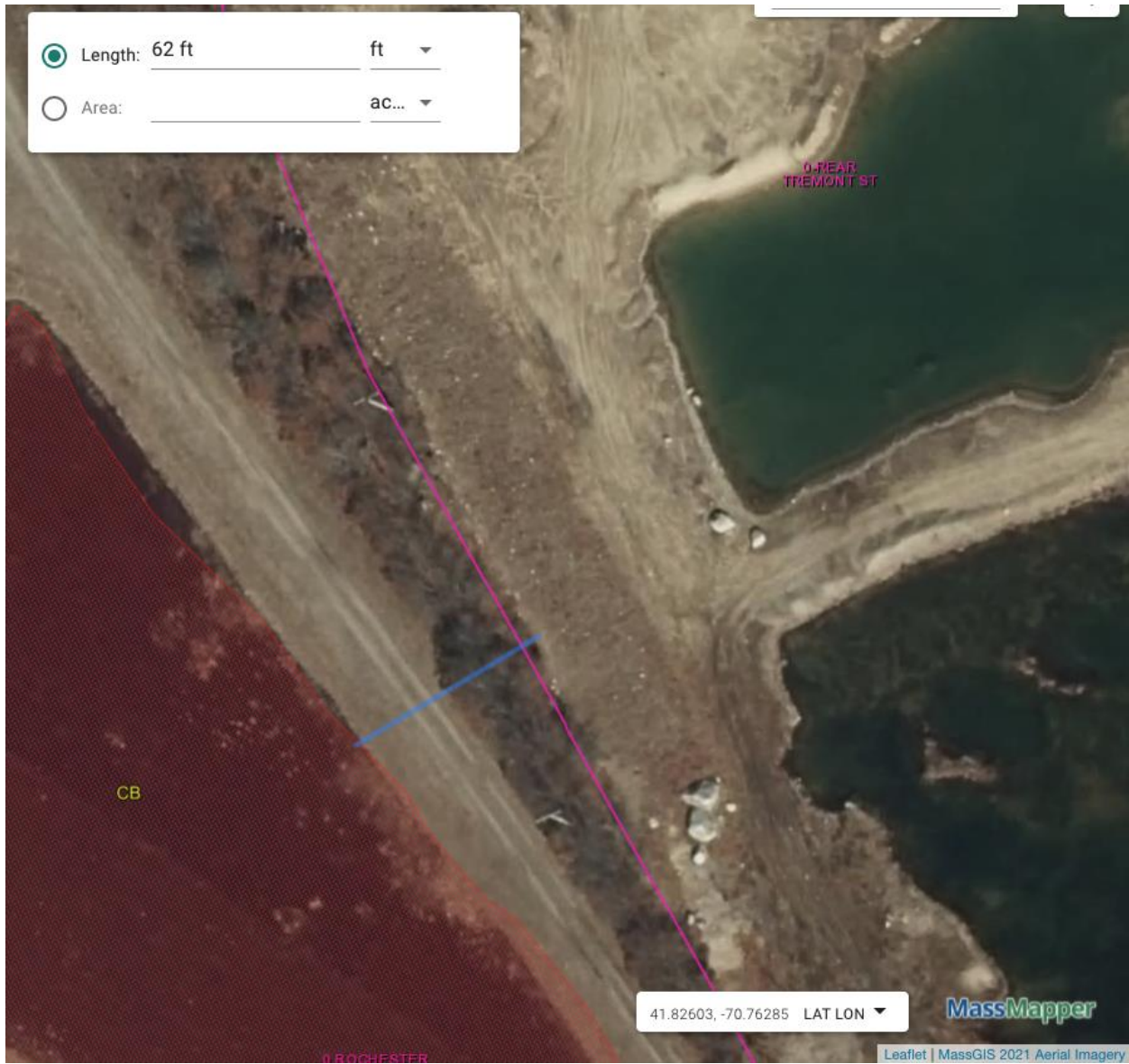


Figure 8 below shows work within 35 feet of a wetland resource on the Project Site.
Source: MassMapper Aerial Imagery, 2021.

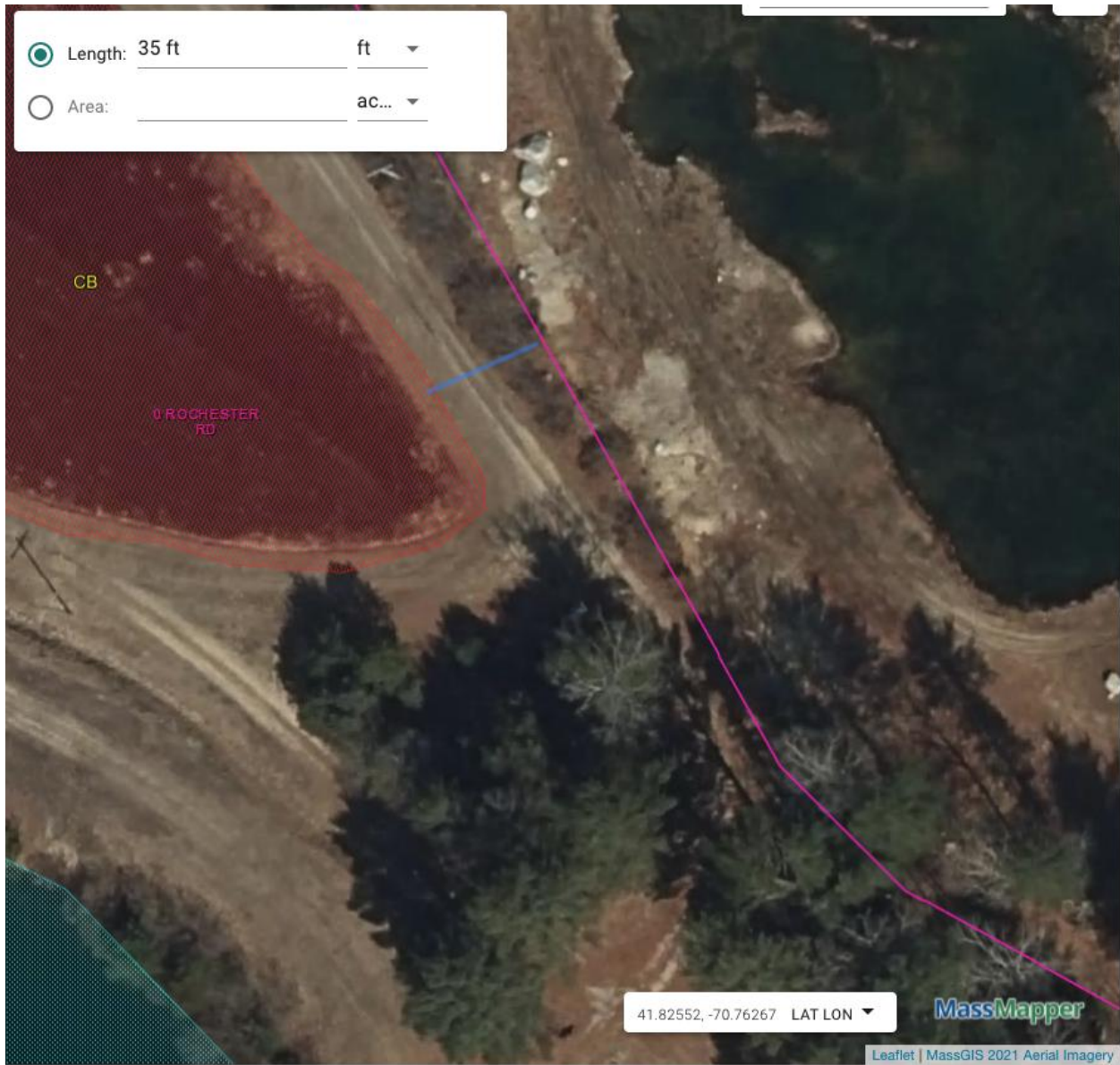


Figure 9 below shows creation of a pond on the Project Site in approximately 2014 by digging into the Plymouth Carver Sole Source Aquifer. Source: Google Earth Imagery, June 2014.

Figure 10 below shows creation of a pond on the Project Site in approximately 2014. Source: Google Earth Imagery, June 2014.

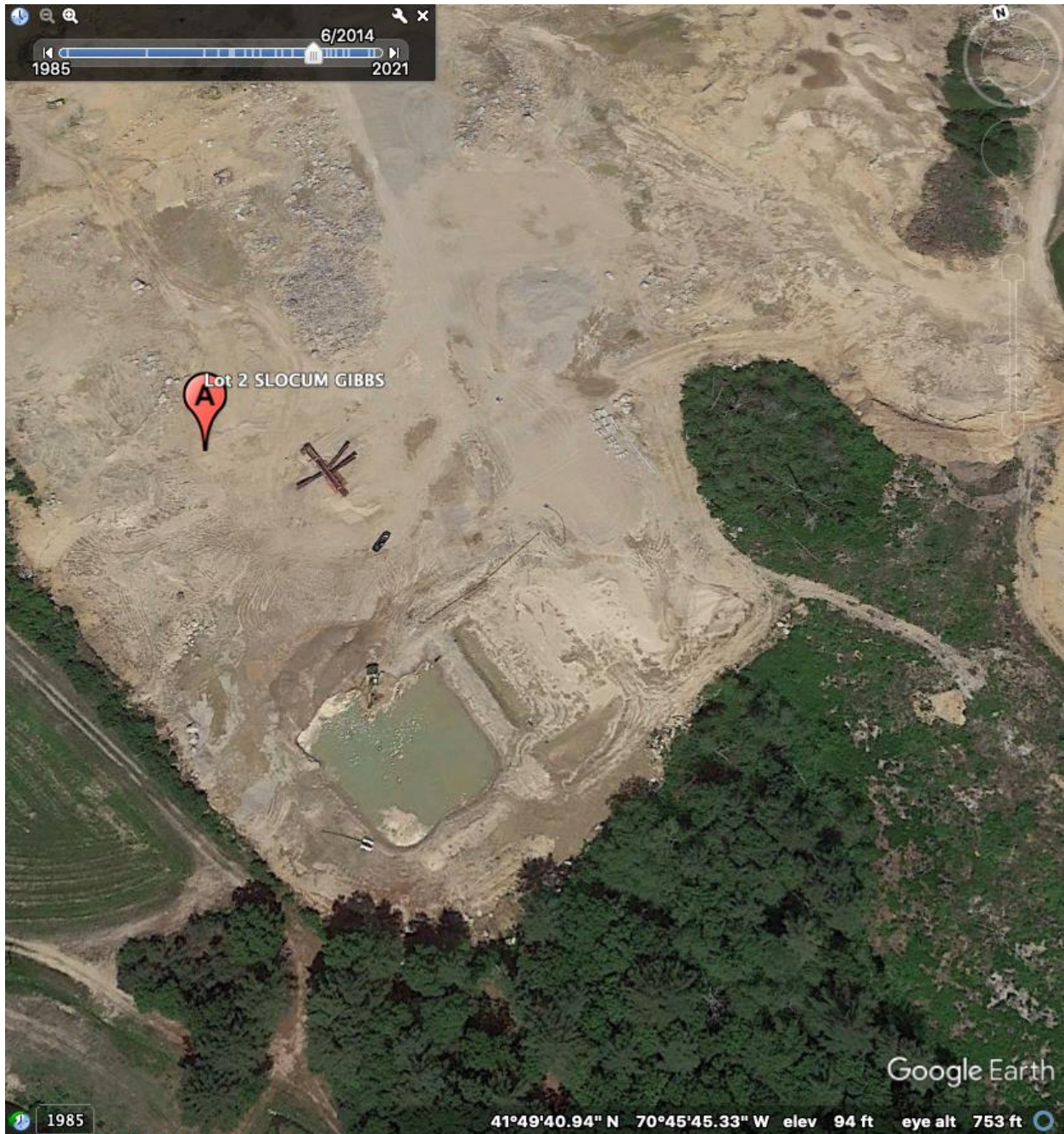


Figure 11 about one year later, below, is a close up of the mining operation on the Project Site. This shows a pipe in the pond that appears to be extracting sand from the

Sole Source Aquifer, and piling it on the nearby ground. Water appears to be discharging onto the surface. Source: Google Earth Imagery, May, 2015.



By 2018 a second pond has been created. The first pond seems to be filled in with materials, possible tree stumps from land clearing operations.

Figure 12 below, shows the 2021 status of the site. It appears the second pond was expanded and is being filled in.

In particular, the work shown by these satellite images in groundwater and within 100 feet of Areas Subject to Protection and Bordering Vegetated Wetlands is impairing the ability of the wetland resource areas to protect groundwater quality and drinking water supplies as well as other interests protected by the Act.

The Project Site overlays the Plymouth Carver Sole Source Aquifer, designed under federal law by the U.S. Environmental Protection Agency under the Safe Drinking Water Act. Almost all of Carver's drinking water comes from the Aquifer.

In 2007, Carver committed to the Plymouth Carver Sole Source Aquifer Action Plan following the Final Report of the Executive Office of Energy and Environmental Affairs (August 2007).

MassDEP Drinking Water Regulations prohibit the removal of soil, loam, sand and gravel within four feet of the historical high groundwater table elevation, unless the materials are redeposited on site within 45 days to achieve final grading greater than four feet about the historical high water mark. There is a narrow exemption if an order of conditions under the Act is obtained and the work is for foundations, utilities or wetlands restoration. 310 CMR 22.21(2)(b)(6).

Summary

On information and belief, the Commission never voted to authorize Slocum Gibbs to conduct work under the Act within the protected wetland resources areas.

For the reasons stated here, STPB, on behalf of itself and its members, including at least ten residents of Carver, requests that the Commission Issue a Positive Determination of Applicability under the Act and the Bylaw require Slocum Gibbs to come into compliance.

Please provide me with written notice of the public hearing as required by 310 CMR 10.05(3)(b)(1).

Thank you for your assistance.

Very truly yours,

Margaret E. Sheehan

Margaret E. Sheehan, Esq.
Save the Pine Barrens

Cc:

CERTIFIED MAIL

Mass DEP Southeast Regional Office

20 Riverside Drive

Lakeville MA

And by email to Dan Gilmore, Wetlands Division, SERO

CERTIFIED MAIL

John Garretson, III, President

Slocum Gibbs Cranberry Co., Post Office Box 6, South Carver MA 02366

Enclosed:

Six copies for the convenience of the Conservation Commission



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Carver
City/Town

WPA Form 1- Request for Determination of Applicability

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

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.



Applicant:

Save the Pine Barrens, Inc.

environmentwatchesoutheasternma@gmail.com
Name

E-Mail Address

158 Center Hill Road

Mailing Address

Plymouth

City/Town

MA

State

02360

Zip Code

508-259-9154

Phone Number

Fax Number (if applicable)

2. Representative (if any):

Firm

Meg Sheehan

Contact Name

E-Mail Address

Same as above

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

B. Determinations

I request the Carver Conservation Commission make the following determination(s). Check any that apply:

- a. whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
- b. whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
- c. whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
- d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance** or **bylaw** of:

Name of Municipality

- e. whether the following **scope of alternatives** is adequate for work in the Riverfront Area as depicted on referenced plan(s).



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C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

<u>0 Rear Tremont Street</u>	<u>Carver</u>
Street Address	City/Town
<u>97</u>	<u>1, 2</u>
Assessors Map/Plat Number	Parcel/Lot Number

b. Area Description (use additional paper, if necessary):

Cranberry Bogs, Wooded Swamp Deciduous, Shrub Swamp, Deep Marsh, Shallow Marsh
<https://www.youtube.com/watch?v=DN1-FhUj3Qo&list=PLDPPhmu8GbbLLvnDI-YOY1k1hIMOkChyu9>

c. Plan and/or Map Reference(s): See attached letter and photographs. Also:

<u>MassMapper DEP Wetland Features</u>	<u>2021</u>
Title	Date
<u>Carver Assessor's Map 97</u>	<u>2021</u>
Title	Date
<u>Google Earth</u>	<u>2021</u>
Title	Date

a. Work Description (use additional paper and/or provide plan(s) of work, if necessary):

Land clearance and earth removal which appears, based on the attached photographs, to be within the buffer zone for the above mentioned DEP wetlands features.



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C. Project Description (cont.)

b. Identify provisions of the Wetlands Protection Act or regulations which may exempt the applicant from having to file a Notice of Intent for all or part of the described work (use additional paper, if necessary).

Not exempt under 310 CMR 10.04 as "normal improvement of land under agricultural use"

3. a. If this application is a Request for Determination of Scope of Alternatives for work in the Riverfront Area, indicate the one classification below that best describes the project.
- Single family house on a lot recorded on or before 8/1/96
 - Single family house on a lot recorded after 8/1/96
 - Expansion of an existing structure on a lot recorded after 8/1/96
 - Project, other than a single-family house or public project, where the applicant owned the lot before 8/7/96
 - New agriculture or aquaculture project
 - Public project where funds were appropriated prior to 8/7/96
 - Project on a lot shown on an approved, definitive subdivision plan where there is a recorded deed restriction limiting total alteration of the Riverfront Area for the entire subdivision
 - Residential subdivision; institutional, industrial, or commercial project
 - Municipal project
 - District, county, state, or federal government project
 - Project required to evaluate off-site alternatives in more than one municipality in an Environmental Impact Report under MEPA or in an alternatives analysis pursuant to an



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application for a 404 permit from the U.S. Army Corps of Engineers or 401 Water Quality Certification from the Department of Environmental Protection.

- b. Provide evidence (e.g., record of date subdivision lot was recorded) supporting the classification above (use additional paper and/or attach appropriate documents, if necessary.)

D. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Request for Determination of Applicability and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.

I further certify that the property owner, if different from the applicant, and the appropriate DEP Regional Office were sent a complete copy of this Request (including all appropriate documentation) simultaneously with the submittal of this Request to the Conservation Commission.

Failure by the applicant to send copies in a timely manner may result in dismissal of the Request for Determination of Applicability.

Name and address of the property owner:

Slocum Gibbs Cranberry Bog Co.
Name

Mailing Address
Post Office Box 6 South Carver MA

City/Town

Massachusetts
State

02336
Zip Code

Signatures:

I also understand that notification of this Request will be placed in a local newspaper at my expense in accordance with Section 10.05(3)(b)(1) of the Wetlands Protection Act regulations.

Margaret E. Sheehan
Signature of Applicant

March 9, 2022
Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

Carver
City/Town

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Margaret E. Sheridan

March 9, 2022

Signature of Representative (if any)

Date