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August 1, 2024

Rebecca Tepper  
Secretary of Energy and Environmental Affairs  
c/o Tori Kim, Director  
MEPA Office  
Tori.kim@mass.gov

By email to [tori.kim@mass.gov](mailto:tori.kim@mass.gov) and Certified Mail

**Re: Operation of a Mine: 104 Tremont Street, Carver MA  
DEP Superseding Order SE 126-0672, April 12, 2024  
E.J. Pontiff Cranberry Co., Ryco Excavating, Inc.**

Dear Secretary Tepper,

This is to request that the MEPA Office immediately require that E.J. Pontiff Cranberry Co. (“Proponent”) file an Environmental Notification Form (ENF) and Environmental Impact Report (EIR) for the Commercial Sand and Gravel Processing operation it has unlawfully commenced at 104 Tremont Street, Carver MA (“the Project”). The area of land disturbance for the Project is 46.5 acres—an additional 28.7 acres over and above what the Proponent has represented in sworn permit applications.

The Project is subject to MEPA jurisdiction and requires an ENF because the Project:

1. Exceeds the 25-acre threshold of the MEPA Regulations, 301 CMR 11.03(1)(b)(1) for Land and possibly the thresholds for Wetlands and State Listed Species, and
2. Requires a Permit, a Superseding Order of Conditions (“SOC”) from the Department of Environmental Protection (MassDEP) and a Conditional Take Permit from National Heritage and Endangered Species Program.

## **Background**

In approximately February, 2024, the Proponent engaged in the Commencement of Construction<sup>1</sup> of a 1,533,706 cubic yard commercial mine and Construction Sand and Gravel Processing operation on the eastern border of a large parcel located at 104 Tremont Street, Carver, MA (“Site”). The Site and the Project abut Myles Standish State Forest.

The Project is regulated by the Federal Mine Safety Act as a sand and gravel mine. This is documented by a sign posted in the area of the Work stating “PIT 37” and identifying the Mine Safety Health Administration standards that regulate the activity. It is also subject to regulation by the U.S. Environmental Protection under the Clean Water Act under SIC Code 1442.



*Above: July 17, 2024, 104 Tremont Street, site of Project that is the subject of MassDEP SOC 126-0672.*

The Site is located in an Environmental Justice Community and Priority Habitat 601 for a federally and state endangered species. The operation entails excavation on about 46.5 acres of forested uplands, Construction Sand and Gravel processing and a trucking operation with about 127,000 truck trips. The diesel trucks will travel through the Environmental Justice community six days a week for at least four years.

The Proponent, MassDEP and the Natural Heritage and Endangered Species Program (“NHESP”) claim the work is merely disturbing 17.8 acres for the construction of “cranberry bogs”. This is a material misrepresentation. The Proponent’s August 23, 2023 cover letter to the Carver Conservation Commission with its Notice of Intent for the Project under the Wetlands Protection Act, G.L. c. 131, § 40 (“Act”) and the Regulations 310 CMR 10.00 (“Regulations”) states the applicant is seeking “approval to construct 17.8 acres of cranberry bogs.” No where does the Proponent state that the actual area of land disturbance and construction is about 46.5

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<sup>1</sup> 301 Mass. Reg. 11.02(a). Commencement of Construction: “Initiation of on-site physical or construction work or activity.”

acres. The NOI misrepresents the project as “Agriculture.” There is no timetable or requirement that Pontiff ever build the bogs. The Project is not exempt agriculture under any local, state or federal law, including the Massachusetts Endangered Species Act.

On April 12, 2024, MassDEP issued Superseding Order of Conditions (“SOC”) 126-0672 upholding the Carver Conservation Commission Order of Conditions for the Project. The SOC inaccurately states, “The proposed project is for the construction of five (5) cranberry bogs on 17.8 acres of land.” No where does MassDEP acknowledge or state that the actual area of the Work under the Act and Regulations 46.5 acres, not 17.8 acres. Nor does MassDEP acknowledge that the project is an active sand and gravel mine. MassDEP purports to exempt the Project from the Stormwater Standards under the Regulations with no explanation.

On April 26, 2024, a Ten Residents Group appealed the SOC to the Office of Appeals and Dispute Resolution. The adjudicatory proceeding is open. See, DEP Southeast Region, WET 2024-011.

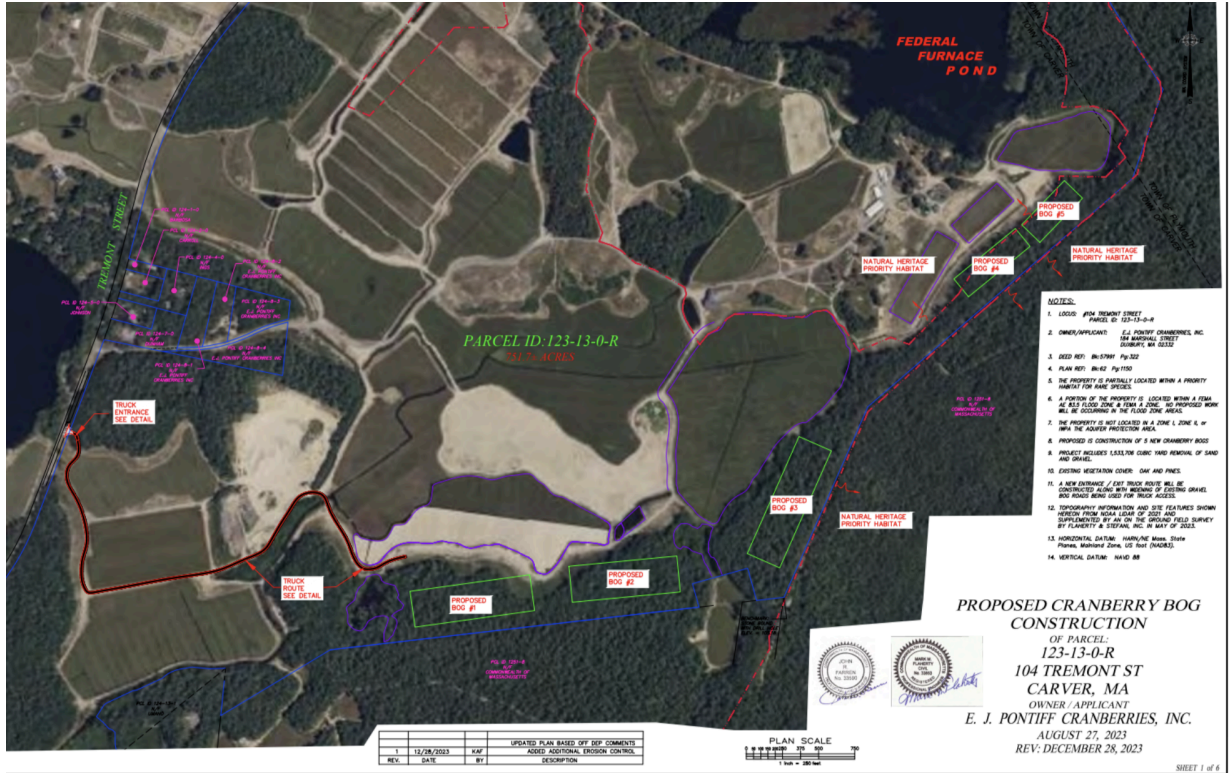
The Proponent started the Work without a Final Order in violation of the Act and Regulations. See 310 CMR 10.05(7)(j)2.g. Despite this, MassDEP refuses to take enforcement action to stop the work being done in blatant and egregious violation of the Act and Regulations. The Proponent has mined directly up to the border of Myles Standish State Forest. The Project is shown in this May 15, 2024 drone video. <https://www.youtube.com/watch?v=57iGPEWnsfM&t=17s> See, 1:02.

### **Land Threshold, 301 CMR 11.03(1)**

The threshold for land alteration, 301 CMR 11.03(1)(b)(1) states the “direct alteration of 25 or more acres of land, unless the Project is consistent with an approved conservation farm plan or forest cutting plan or similar generally accepted agricultural or forestry practices” requires an ENF and EIR if the Secretary requires one.

As noted, the Proponent and MassDEP erroneously claim the Work will disturb only 17.8 acres. The Applicant’s Site Plan (“Plan”) by Flaherty & Stefani, Inc. shows the outline of the five alleged future bogs that cover 17.8 acres. **The SOC and the Proponent fail to state the actual area of disturbance by excavation on the Site includes an additional 28.7 acres of Work for a total of 46.5 acres.**

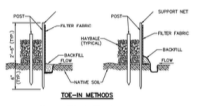
**Figure 1** below is the Proponent’s permit plan, adopted by MassDEP in the SOC, showing the **green outline of the bogs totaling 17.8 acres** and ignoring the additional 28.7 acres of excavation surrounding those footprints.



Figures 2, 3 and 4<sup>2</sup> below show the actual area of excavation around the footprints of the 5 bogs based on the Applicant's own plans. **The area of actual excavation shown on the Proponent's own plans is 46.5 acres not 17.8 acres as the Applicant and MassDEP try to claim.**

**Figure 1 below: Bogs 1 and 2**

<sup>2</sup> Figures 2, 3, and 4 are for demonstration purposes only and are intended only to show the boundaries of the excavation for purposes of this letter. They do not purport to use or adopt the professional engineering or land surveying work of Flaherty & Stefani, Inc.



**SEEDING & MULCHING**

1. SEEDING SHALL BE INSTALLED ON ALL DISTURBED SURFACES WITHIN 14 DAYS AFTER FINAL CONSTRUCTION AND CLEANUP.
2. SEED SHALL BE 1/4" OF THE MIXTURE INTO SUBGRADE.
3. SOIL SURFACES SHALL NOT EXCEED 5:1.
4. MULCHING SHALL BE APPLIED TO ALL CUTS & FILLS EXCEPT DOWN SLOPE SITES SHALL BE FINISHED GRADED TO SLOPES OF 10:1.
5. SEEDING SHALL BE APPLIED TO ALL CUTS & FILLS EXCEPT DOWN SLOPE SITES SHALL BE FINISHED GRADED TO SLOPES OF 10:1.
6. SEEDING SHALL BE APPLIED TO ALL CUTS & FILLS EXCEPT DOWN SLOPE SITES SHALL BE FINISHED GRADED TO SLOPES OF 10:1.
7. SEEDING SHALL BE APPLIED TO ALL CUTS & FILLS EXCEPT DOWN SLOPE SITES SHALL BE FINISHED GRADED TO SLOPES OF 10:1.
8. SEEDING SHALL BE APPLIED TO ALL CUTS & FILLS EXCEPT DOWN SLOPE SITES SHALL BE FINISHED GRADED TO SLOPES OF 10:1.
9. SEEDING SHALL BE APPLIED TO ALL CUTS & FILLS EXCEPT DOWN SLOPE SITES SHALL BE FINISHED GRADED TO SLOPES OF 10:1.
10. SEEDING SHALL BE APPLIED TO ALL CUTS & FILLS EXCEPT DOWN SLOPE SITES SHALL BE FINISHED GRADED TO SLOPES OF 10:1.

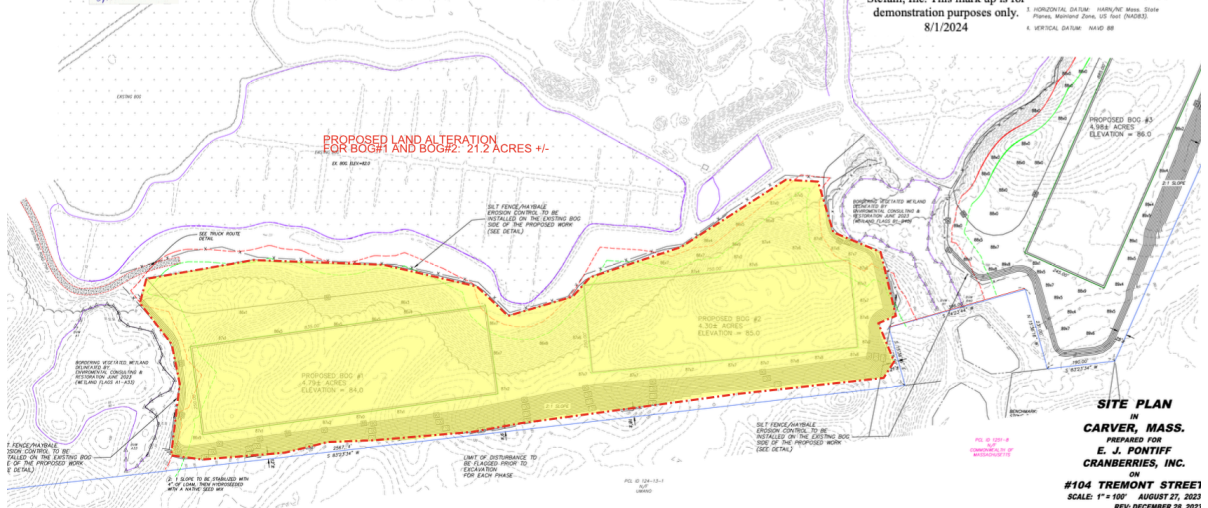
**EROSION CONTROL**

1. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION AND THROUGHOUT THE LIFE OF THE PROJECT.
2. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION AND THROUGHOUT THE LIFE OF THE PROJECT.
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10. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION AND THROUGHOUT THE LIFE OF THE PROJECT.



1. LOCAL AREA DEMONSTRATION PROJECT: PAGES 02-123-123-1
2. OWNER/CLIENT: E. J. PONTIFF CRANBERRIES, INC. 100 BROADWAY STREET, BOSTON, MA 02102
3. DESIGN: 04-123-123-123-1
4. PLAN SET: 04-123-123-123-1
5. THE PROPERTY IS PARTIALLY LOCATED WITHIN A FLOOD HAZARD ZONE AND OTHER REGULATIONS.
6. A PORTION OF THE PROPERTY IS LOCATED WITHIN A FLOOD HAZARD ZONE AND OTHER REGULATIONS.
7. THE PROPERTY IS PARTIALLY LOCATED WITHIN A FLOOD HAZARD ZONE AND OTHER REGULATIONS.
8. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
9. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
10. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
11. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
12. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
13. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
14. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
15. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
16. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
17. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
18. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
19. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.
20. PROPOSED CONSTRUCTION OF A NEW CRANBERRY BOSS.

Disclaimer: This is not intended to adopt the engineering plan of Flaherty & Stefani, Inc. This mark up is for demonstration purposes only. 8/1/2024



PLAN SCALE  
1" = 40'

NO.	DATE	BY	DESCRIPTION
1	12/28/2023	KAF	UPDATED PLAN BASED OFF REP COMMENTS ADDED ADDITIONAL EROSION CONTROL

**SITE PLAN**  
IN  
**CARVER, MASS.**  
PREPARED FOR  
**E. J. PONTIFF**  
**CRANBERRIES, INC.**  
ON  
**#104 TREMONT STREET**  
SCALE: 1" = 40'  
REV: DECEMBER 28, 2023  
PREPARED BY  
**FLAHERTY & STEFANI, INC.**  
67 SAMOSET STREET  
PLYMOUTH, MASS.

Figure 3 below: Bog 3

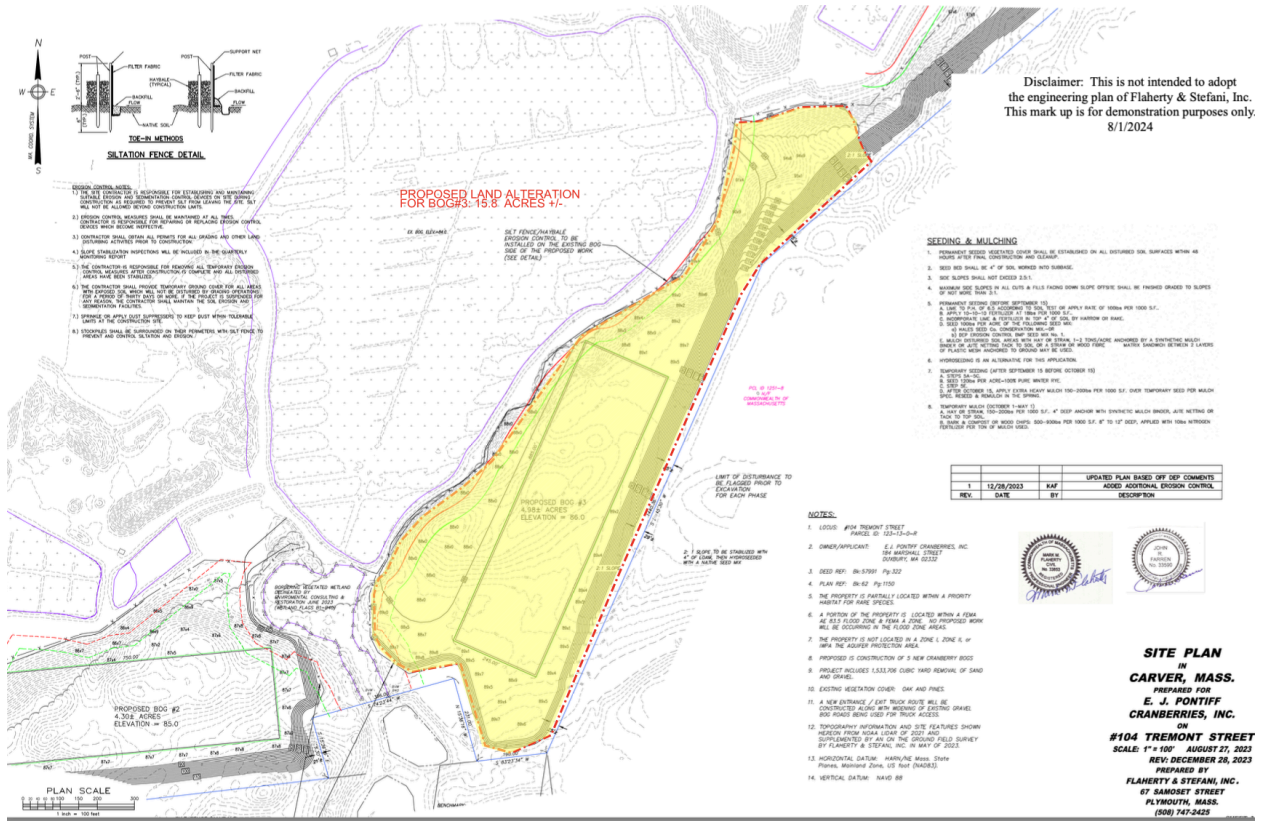
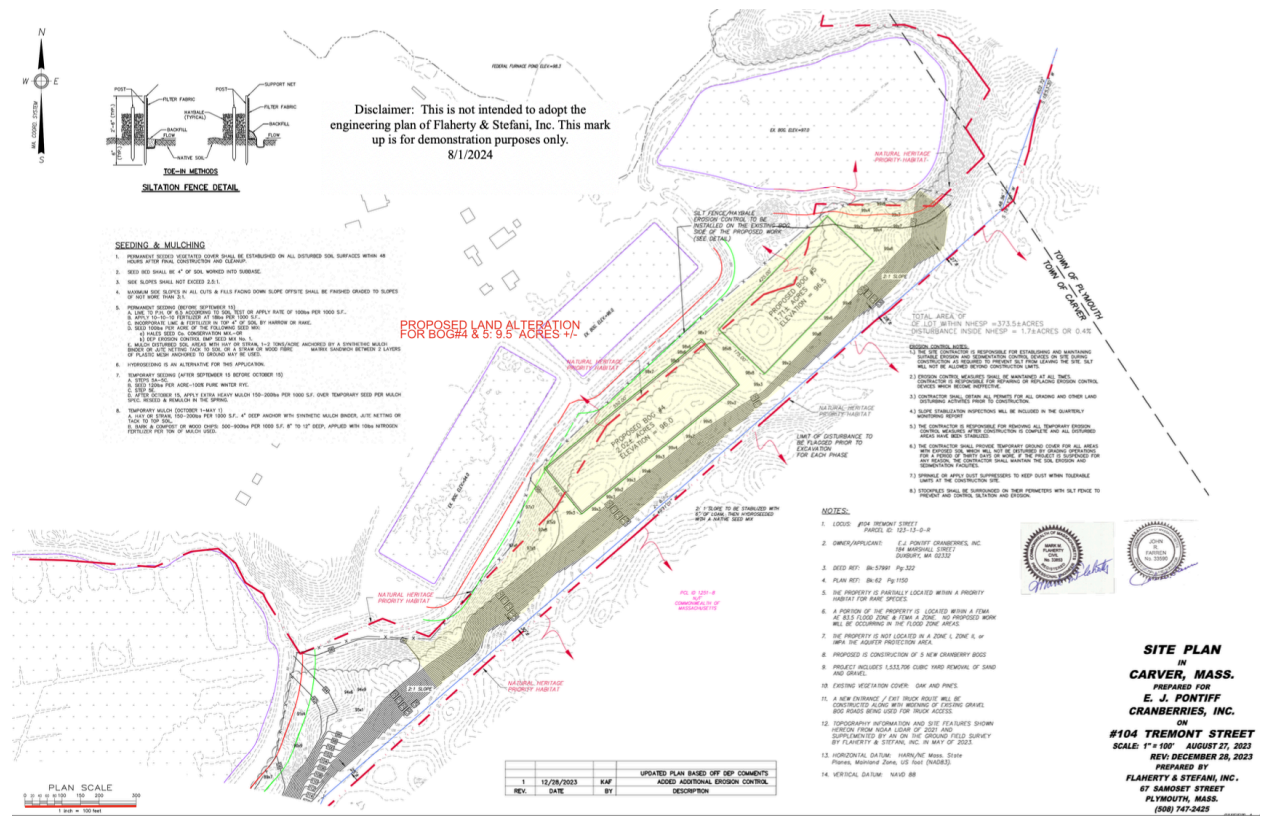


Figure 4 below: Bogs 4 and 5



The difference in acres between what the Proponent and MassDEP represent and the actual land disturbance is summarized below.

Location	Applicant/DEP Land Disturbance (acres)	Actual Land Disturbance (acres)	Difference
Bog 1 and 2	4.79 and 4.30=9.09	21.2	
Bog 3	4.98	15.8	
Bog 4 and 5	2.02 and 1.71=3.73	9.5	
<b>Total</b>	<b>17.8</b>	<b>46.5</b>	<b>28.7 acres</b>

For purposes of 301 CMR 11.03(1)(b)(1), neither the MassDEP nor the Proponent assert the Project is consistent with an approved conservation farm plan, forest cutting plan, or similarly accepted agricultural or forestry practice. As such, the MEPA threshold for land alteration has been met.

The NOI the Applicant submitted to the Carver Conservation Commission and NHESP states the Project Type is “Agriculture.” This is false and misleading. This Project is not “Agriculture” under the Act or Regulations or under MEPA.

### **State Listed Species Threshold, 301 CMR 10.03(2)**

Greater than 2 acres of “disturbance of designated priority habitat, as defined in 321 CMR 10.00 that results in a take of a state-listed endangered or threatened species or species of special concern” requires an ENF and other MEPA review if the Secretary so requires. 301 CMR 10.03(2). The Take Permit decision by NHESP, File No. 23-8375, the Project misrepresents the Project as “Agriculture.” There is no MESA exemption for Priority Habitat for sand and gravel mining.<sup>3</sup> The Project is not “Land in Agricultural Use”, “Normal Maintenance of Land in Agricultural Use” or “Normal Improvement of Land in Agricultural Use” under 321 CMR 10.02.

The Project will destroy at least 1.7 acres of Priority Habitat under the Massachusetts Endangered Species Act (MESA) and regulations 321 CMR 10.00. The Proponent did not disclose to NHESP the full extent of the actual grading and excavation for the sand and gravel mining which is at least 46.5 acres. The Project could result in the disturbance of greater than 2 acres of Priority Habitat for the federal and state listed Northern cooter. There must be a plan by an independent Professional Land Surveyor to determine the actual area of excavation and Commercial Sand and Gravel processing that will occur in the Priority Habitat.

### **Wetlands, Waterways, and Tidelands Threshold 301 CMR 10.03(3)**

With the SOC, MassDEP issued *Findings Pursuant to M.G.L. c. 30, s 61H, Inclusive M.E.P.A.* that the Project is “categorically exempt” because it is below the thresholds specified in 310 CMR 11.03(3) (Wetlands, Waterways, and Tidelands) for work in areas subject to the Wetlands Protection Act, G.L. c. 131, § 40 (“Findings”). This was in error. The Proponent has not met its burden of proving that the Project does not trigger any threshold under 301 CMR 10.03(3).

The Site encompasses Federal Pond, Crane Brook, and other various Resource Areas under the Act. The Project includes a roadway in the River Front area and excavation of about 46.5 acres adjacent to Bordering Vegetated Wetlands.

MEPA should look into the Wetlands, Waterways, and Tidelands threshold and satisfy itself and the public that no threshold is met. On a Site this large and with so many Resource Areas, the Proponent should bear the burden of proving no threshold is met. MEPA needs to independently confirm the Resource Areas and scope of the Project area.

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<sup>3</sup> NHESP has previously claimed a similar mining operation, Firehouse Road in Plymouth, by the same Proponent (NHESP 08-24767) is “agriculture” which is clearly erroneous.



## **Unlawful Segmentation**

The Proponent has segmented numerous projects on this Site for purposes of evading, deferring and curtailing MEPA review. This has previously been brought to the attention of MassDEP and MEPA. A Project Proponent may not phase or segment a Project to evade, defer or curtail MEPA review. 301 CMR 11.01(2)(c). 301 CMR 11.01(2)(c) provides,

The Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether various work or activities constitute one Project including, but not limited to, whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative.

301 Mass. Reg. 11.01. The Proponent has segmented several sand and gravel mining operations on the Site and segmented almost 90 acres of industrial scale solar that involved deforestation and sand and gravel mining. This is documented on the attached Exhibit 1, which is a summary of 104 Tremont Street, Carver MA (source: SandWars.org).

## **Conclusion**

Save the Pine Barrens, Inc. requests that the Secretary immediately require the Proponent to file an ENF and an EIR for the Project. If the Proponent fails to do so after 30 days' written notice, we request that MassDEP file the ENF on behalf of the Proponent. 301 CMR 11.05(11). ("If an Agency's ability to undertake an action enforcing its statutory or regulatory obligations is impeded by the failure of the Proponent to file an ENF, the Agency may, with the consent of the Secretary and after 30 days written notice to the Proponent, file an ENF on behalf of the Proponent.")

The Secretary should refer the obvious permit misrepresentations and the ongoing work without a Final Order of Conditions for enforcement to the Attorney General's criminal division given the misrepresentations contained in permit documents. We also request an investigation into the failure of MassDEP and NHESP to accurately evaluate the Project and to take enforcement actions.

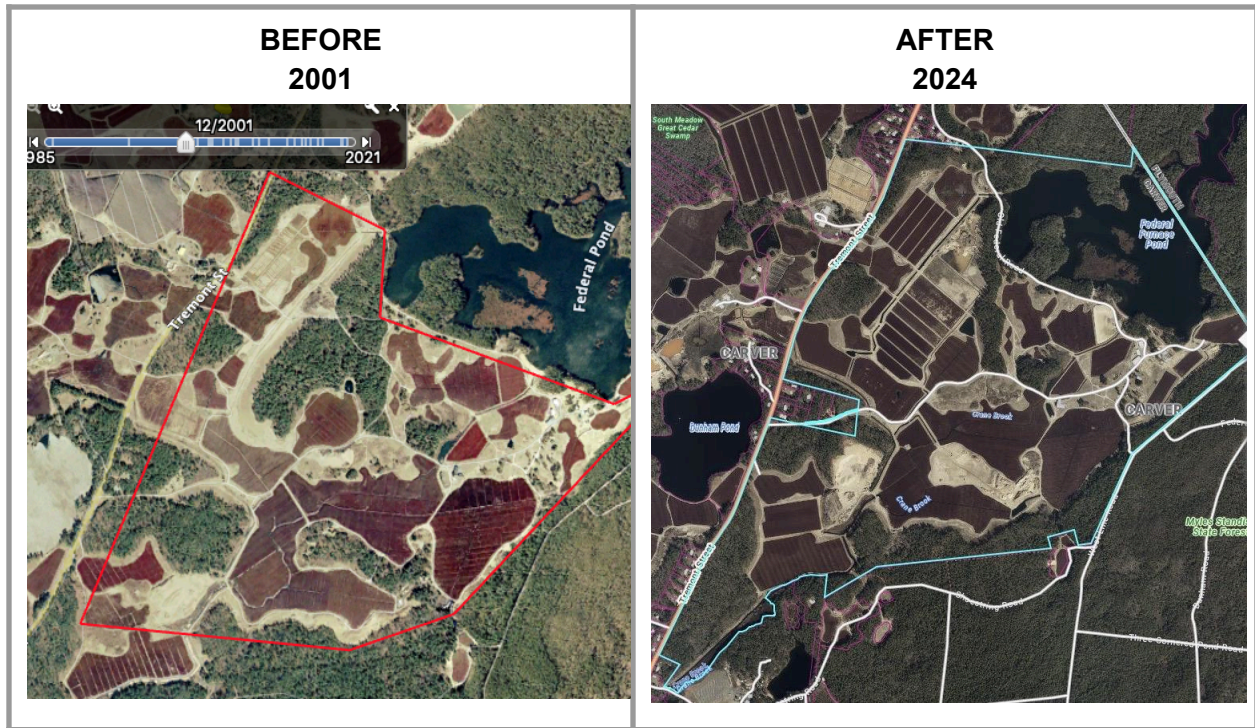
Very truly yours,

*/s/ Margaret E. Sheehan*

Margaret E. Sheehan, Esq.  
Save the Pine Barrens, Inc.  
Community Land & Water Coalition  
PO Box 1699  
Plymouth MA 02362  
[ecolawdefenders@protonmail.com](mailto:ecolawdefenders@protonmail.com)

cc: Commissioner, Department of Conservation and Recreation By email  
Eve Rose Schulte, Ph. D, Assistant Director, NHESP By email

Location: 104 Tremont Street, Carver, MA



- **Owner:** Federal Furnace Cranberry Co./Operator Gary Weston/Excavator G.Lopes Construction. Walter E. Morrison III, trustee of Federal Furnace Cranberry Co. It dissolved in 2022.
- **Volume of Earth Removed:** New earth removal permit issued in March 2024 to allow for additional 1,533,706 cubic yards of earth removal on another 17 acres. Total Removed will be: 4,243,706 cubic yards.
- **Earth Removal Permit:** Yes, the Carver Earth Removal Committee granted earth removal permits in 2006, 2008, 2015, 2019, and 2024 under the pretense of agricultural excavation. A large portion of the mined area is being used for industrial solar and there is no agriculture on these portions of the site.
- **Area Impacted:** Federal Furnace Cranberry owns or owned a parcel of about 790 acres off Tremont Street abutting Myles Standish State Forest. At least 102 acres have been mined since 2010 to present at several locations across the site and about 479 acres have been impacted since 2001. Cranberry bogs were installed in some areas after the mining.

- **Claimed Reason for Mining:** Proposed 5 new bogs under March 2024 Earth Removal Permit for Cranberry Agriculture; Large Scale Ground Mounted Solar: Syncartha Solar installing a project, July 2023.
- **Solar:** Yes
- **Aquifer:** Yes. Mined in the Sole Source Aquifer. Satellite images show dewatering and mining in the aquifer 2018 at one of several locations.



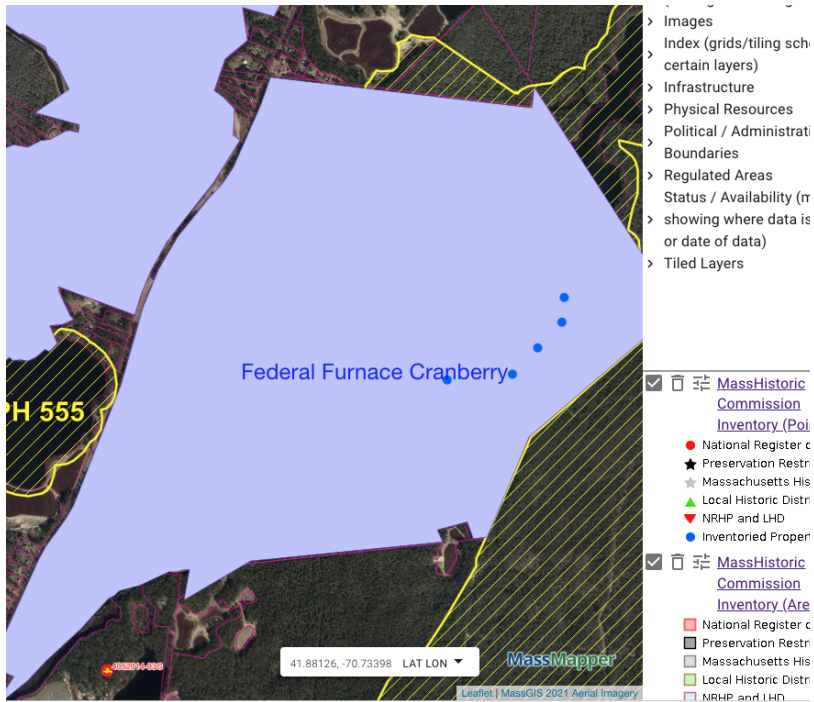


Below: mining in the Aquifer at the location of the Syncartha Solar installation, January 2021:

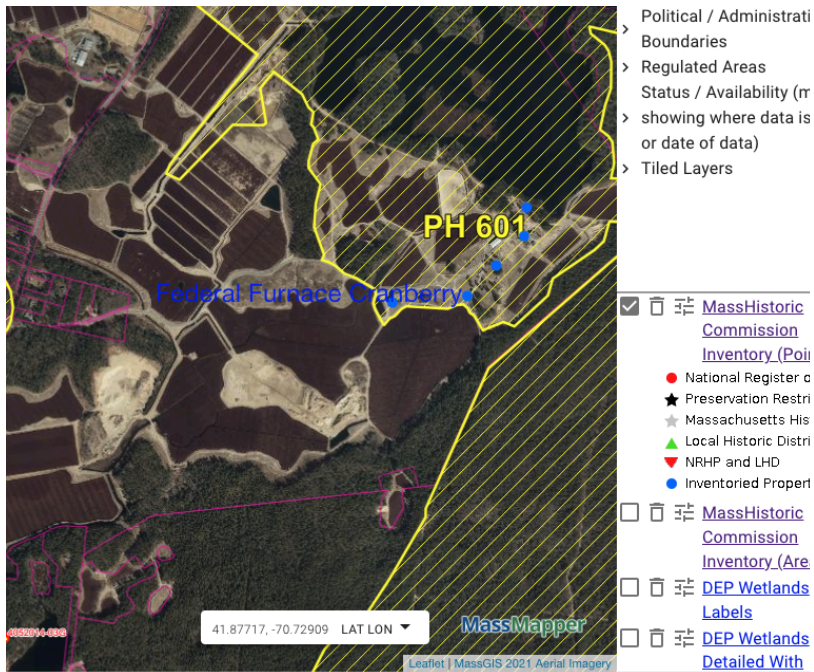


- **Wetlands and Waterways:** Yes. [2021 Wetlands Order of Conditions](#) for Syncartha Solar project; [2009 Wetlands Order of Conditions](#) for mining and bog. In 2022, Save the Pine Barrens [asked MassDEP](#) to enforce the Wetlands Protection Act and the 2009 Wetlands Order of Conditions. No action has been taken by the agency.
- **Archaeological Impacts:** Entirely within a Massachusetts Historic Commission Inventoried Area and Inventory Points: map below purple is inventoried area, blue dots are “points”. This area has been mined extensively and cranberry bogs

installed.



Satellite map below shows mining in Priority Habitat area 601 and in area of Massachusetts Historic Commission Inventory area and points



Satellite map below shows mining in the Massachusetts Historic Commission mapped area.



**Environmental Justice Population:** Yes entirely within an EJ community (Income)

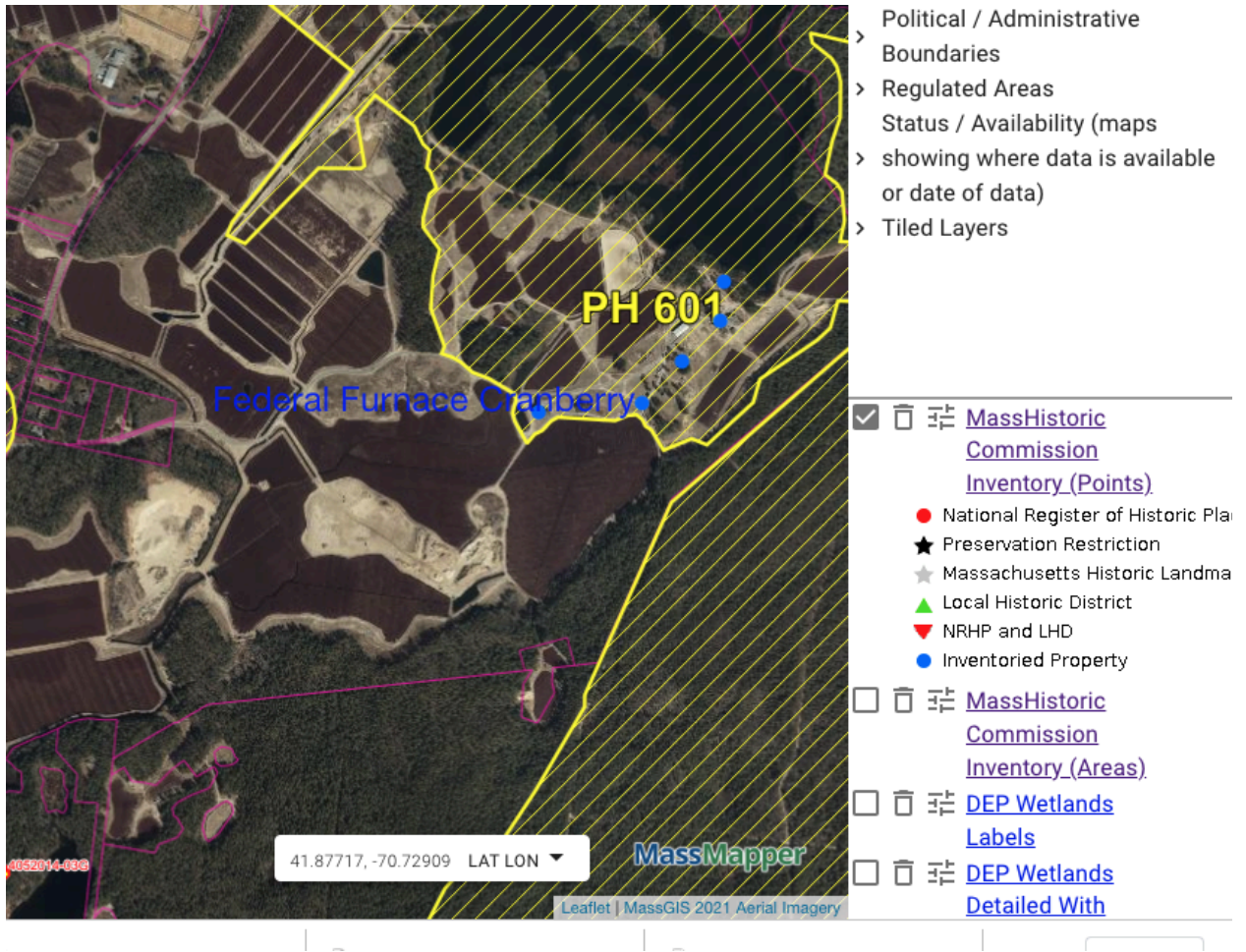
- **Ecological Impacts:** Proposed bogs abut bordering vegetated wetlands, federal furnace pond, and Natural Heritage Priority Habitat for rare species. Past and future land alterations meet or exceed MEPA thresholds. Additional 17 acres will be clearcut, and stripped of topsoil and vegetation.



Additional 17 acres shown below in red triangle.



Natural Heritage and Endangered Species Program (NHESP), BioMap3: Rare Species Core (and more): See map below showing mining in Priority Habitat 601



- **Water source:** Abuts homes and private wells
- **Public Subsidies:**
  - Mass Department of Agriculture, Cranberry Revitalization Grants, 2019 to 2022 total: \$124,000
  - USDA: Yes
  - Solar subsidies/SMART program: solar underway
- **Other:** Walter E. Morrison III, trustee and apparent operator of Federal Furnace Cranberry Co. was appointed to the Town of Plymouth Conservation Commission in June, 2023.

Federal Furnace Cranberry Co. sold bogs in south Plymouth to EJ Pontiff Cranberry Co. in approximately 2018. The Plymouth site is being extensively mined under the pretense of building a “tailwater recovery pond” for EJ Pontiff Cranberry bogs. See the listing for 140 Firehouse Road, Plymouth MA in this report for details on the site. In about 2017, Federal Furnace entered into a MOU with MassDEP and U.S. EPA to reduce pollutant loads discharged to White Island Pond. The Plymouth site is also approved for solar: floating solar by Borrego Solar (2 MW).

