

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

In the Matter of E.J. Pontiff
Cranberries, Inc.
Carver, Massachusetts

OADR Docket Number: WET-2024-011
DEP File No. SE 126-0672

AFFIDAVIT OF MARGARET E. SHEEHAN, ESQ.

I, Margaret E. Sheehan, being duly sworn, depose and state as follows:

1. I am an attorney and member of the Massachusetts Bar.
2. I am the authorized representative of the Ten Residents Group in the above matter.
3. I participated in a site investigation on July 17, 2024 at the location that is the subject of the April 12, 2024 Superseding Order of Conditions (“SOC”) appealed by the Ten Residents Group that is the subject of this proceeding (“Site Investigation”).
4. At the start of the Site Investigation, I explained to the assembled group, including Attorney Hubbard (“Attorney Hubbard”) representing the Department of Environmental Protection (“Department”), that the Ten Residents’ representatives planned to investigate the three Resource Areas identified in the SOC determine whether the SOC adequately protected those Resource Areas.
5. The Ten Residents’ arranged at great expense to hire four professionals to conduct the Site Inspection in order to prepare testimony for this proceeding: Brandon Faneuf, PWS (“Faneuf”), Margaret Bacon, P.E (“Bacon”), Katherine Harrelson, environmental scientist and Aaron Keaton, environmental scientist. These professionals and myself, an attorney with over 40 years of environmental law experience, were treated in a demeaning and insulting manner throughout the Site Inspection by Attorney Hubbard. This included angry remarks in a raised voice such as,

“You know Meg, if you don’t like the Department’s position about the site visit, there is a gold domed building next to our office where you can go and get the law changed.”

6. When the Ten Residents’ professionals Faneuf, Bacon and myself stated we intended to view the Riverfront area shown on the SOC Site Plans where the roadway shown on the Site Plans crosses the Riverfront area, Attorney Hubbard joined the Applicant’s attorney Robb D’Ambruoso in taking affirmative steps to attempt to prevent us from walking on the roadway to view the Riverfront area. They both yelled to the effect, “Meg where are you going, you can’t go there.” Mr. D’Ambruoso yelled out several times when I was about 50 feet away, “we will call the police if you don’t come back.” Attorney Hubbard joined in stating to the effect, “that’s not the buffer zone to the Bordering Vegetated Wetlands, it’s not allowed.” This was entirely uncalled for and inappropriate because the SOC states the Project Site includes Riverfront area and we previously informed Hubbard we intended to view the roadway shown on the Site Plans where the roadway crosses over the Riverfront area. We proceeded to view the Riverfront area despite these threats.
7. I observed Attorney Hubbard act in a dismissive manner, demeaning and insulting manner when Ms. Harrelson called for a safety moment due to the mining operations on the site.
8. Throughout the three-hour site visit, Attorney Hubbard, joined by Attorney D’Ambruoso, continually yelled out to me and the Ten Residents’ representatives to the effect, “where are you going,” “that’s not allowed,” “you can’t go there.” I attempted to explain to Ms. Hubbard that I was accompanying the wetlands professionals and the professional engineer who were investigating the Resource Areas subject to the SOC. Ms. Hubbard’s behavior created a threatening and confrontational atmosphere that prevented me from focusing on the Site Investigation itself and put me in the position of constantly having to defend against her aggressive behavior instead of on carrying out the inspection in an efficient and professional manner.
9. At approximately 12:50 p.m. during the Site Inspection, Mr. Faneuf stated a request to investigate Resource Areas near proposed Bogs 4 and 5. Ms. Hubbard joined with Attorney D’Ambruoso in

insisting this would not be allowed. Given the allotted time for the Site Inspection was near an end, the Ten Residents offered a temporary compromise, without waiving rights to a complete inspection, and stated they would use the remaining few minutes to collect a sample on only one spot on a bog adjacent to the Project Site. Still, Attorney Hubbard and Attorney D'Ambruoso refused access. I then sent the email to the Presiding Officer informing him of this and requesting a discovery order. See, Figure 1 to the Ten Residents' Memorandum for a Discovery Order. Shortly thereafter Attorney Hubbard changed her mind and informed me that she and Pontiff would agree to allow the requested access. However, Attorney Hubbard continued to join in the Applicant's position that no other access would be allowed. The Applicant's attorney shouted at me, "you have three minutes, Meg you better get going, this is over, you need to leave."

10. Attorney Hubbard's remarks, actions and attitude tainted the Site visit and created a hostile and toxic environment. Attorney Hubbard's behavior during the Site visit prevented the Ten Residents Group from obtaining evidence to which they are entitled under the OADR regulations and the Wetlands Regulations.

Signed under the pains and penalties of perjury this 7th day of August, 2024.



Margaret E. Sheehan

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AFFIDAVIT OF BRANDON FANEUF, PWS

I, Brandon Faneuf, Professional Wetlands Scientist (“PWS”), being duly sworn, depose and state as follows:

1. I am President of Ecosystem Solutions, Inc. (“ESI”), 100 Jefferson Boulevard, Suite 225, Warwick, RI 02888, an environmental consulting firm.
2. I have been a professional wetland scientist, soil scientist, and certified wildlife biologist on a full-time basis for more than twenty-six years. As a Wetland Scientist at ESI, I regularly conduct wetland boundary determinations (including Bordering Vegetated Wetland and Bank), Riverfront Area studies, wildlife habitat evaluations, and soil evaluations for a variety of clients in the private and public sector. During this time, I have routinely prepared reports and permit applications applying and interpreting the regulations, performance standards and policies of the Massachusetts Wetlands Protection Act (“WPA”) and the Massachusetts Department of Environmental Protection (“DEP”). I have experience providing professional wetland consulting services to numerous Conservation Commissions throughout Massachusetts. My private clients include real estate developers, contractors, builders, professional engineers, land surveyors, and private landowners. My resume is attached as **Exhibit A**.

3. ESI and I have been retained to provide expert testimony on behalf of the Ten Residents Group (“Ten Residents” or “Petitioner”) in the above-captioned matter (“Matter”) with regard to the appeal of the April 12, 2024 Superseding Order of Conditions (“SOC”) issued by the Massachusetts Department of Environmental Protection (“DEP”) upholding Carver Conservation Commission Order of Conditions SE-126-0672.

4. The primary purpose of this Affidavit is to provide my expert opinion in support of the Ten Residents’ Motion for a Discovery Order and to explain why such an Order is necessary, and to describe the Site Investigation on July 17, 2024.

5. The SOC identifies three Areas Subject to Protection on the Project Site. SOC, page 1. 310 CMR 10.02(1). These are: Bordering Vegetated Wetlands (“BVW”), Riverfront Area, and Bordering Land Subject to Flooding (“BLSF”).

6. To provide complete expert testimony in this matter it is necessary for me to investigate the areas marked on the attached **Exhibit B, “Figure 1” Supplemental Investigation Areas** with yellow circles. I prepared this map.

7. An Area Subject to Protection is also “Resource Area” defined by the DEP wetlands regulations (“Regulations”) 310 CMR 10.00, to mean any of the areas specified in 310 CMR 10.25 through 10.35 and 10.54 through 10.58. I use the term Resource Areas synonymously with Area Subject to Protection under M.G.L. c.131, § 40, each one of which is enumerated.

8. The SOC Site plans (“Site Plans”) are entitled “Proposed Cranberry Bog Construction of Parcel 123-13-0R,” consist of six (6) sheets, dated August 27, 2023, and have a final revision date of December 28, 2023, by Flaherty & Stefani, Inc., stamped by Mark M. Flaherty, P.E. and John R. Farren, PLS. See, Department Basic Document 7b.

9. I estimate that the Work under the SOC covers approximately 46.5 acres plus a roadway. Resource Areas are interspersed throughout the Project Site. My evaluation of the Project Site and the Work indicates that there is or may be Work within 200 feet of Riverfront area and within 100 feet.

10. I was asked by the Ten Residents Group to conduct a site investigation for purposes of preparing my testimony in this Matter. It is my position that such an investigation is a critical part of preparing and providing complete and accurate testimony in an adjudicatory proceeding under the Wetlands Protection Act, the Regulations and the OADR rules at 310 CMR 1.01. Without conducting a full and thorough site investigation of the Resource Areas and the Work proposed in a Notice of Intent, the ability to provide such testimony is curtailed and risks being inaccurate and incomplete. Such investigations for OADR proceedings that I have been involved with routinely involve investigating the Resource Areas to confirm the Department's SOC wetlands delineations which are the basis for the Department's conclusions that the SOC does or does not adequately protect the interests of the Act.

11. On July 17, 2024, I participated in a site investigation on behalf of the Ten Residents Group in my professional capacity as a PWS ("Site Investigation"). I was accompanied by my staff member, Margaret Bacon, a Professional Engineer and Professional Wetland Scientist with over 30 years' experience ("Ms. Bacon"). I understand the Site Investigation duration was agreed to in advance by the lawyers for the parties. It was limited to three hours. I had estimated my investigation would take three hours. This did not take into account new facts and evidence that became apparent to me on the Site Investigation and subsequently when I reviewed the Site Plans in light of what I had observed on the Site.

12. The purpose of the Site Investigation was related to the SOC and the issues for adjudication in this proceeding. This was a routine site investigation in which I planned to investigate the three Resource Areas identified in the SOC and to perform my own observations, tests and sampling to confirm the Resource Area delineation relied upon by the Department.

13. During the Site Investigation the Applicant refused to allow me to investigate certain Resource Areas on the Project Site which prevented me from conducting a thorough investigation in order to prepare my testimony. These areas include but are not limited to the Riverfront Area that the SOC acknowledges is on the Project Site.

14. In addition to refusing to allow me access to Resource Areas for purposes of preparing my testimony, the three-hour time allotted for the Site Investigation was inadequate. At the end of the three-hour period, the Applicant's attorney demanded that the Ten Residents representatives including myself and Ms. Bacon immediately leave the Site.

15. In my professional opinion it is necessary to conduct a further site investigation to provide accurate and reliable testimony in this proceeding, as shown on Figure 1/Exhibit B.

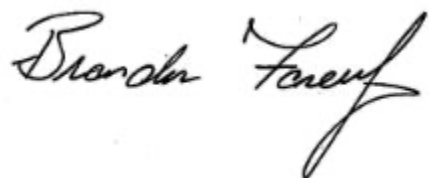
16. My ability to conduct an adequate, thorough and complete site investigation on July 17, 2024 was impaired by the following actions of the Department's representative, Attorney Hubbard, and the Applicant's representatives.

- a. The Department and Applicant's representatives stated to me to the effect that I would not be allowed to view and investigate the body of the Bogs 1 and 2 because the Applicant's wetland consultant had already done that and essentially the Ten Residents were required to rely on that delineation, which is what the Department

relied upon, and it would be a “waste of time” for me to view and attempt to verify those findings. It is standard practice for a petitioner in an OADR appeal to conduct its own wetlands delineation to verify the Department’s findings.

- b. For the other proposed bog areas shown on the Site Plans, the Applicant and the Department again stated to the effect that my investigation and delineation was a “waste of time” and had already been done by the Applicant.
- c. I attempted to investigate and view the area of the Work around proposed Bog 3. Attorney Hubbard questioned me as to why this was necessary. I responded that it was necessary to carry out my investigation of the Resource Areas identified by the Department as being present on the Site.
- d. Attorney Hubbard and the Applicant’s attorney informed me I would not be able to investigate Resource Areas and their Buffer Zones on the western side of the areas marked proposed Bogs 4 and 5. Therefore, I was not able to access these areas. My request to access this area was made close to the end of the Site visit and the Applicant’s attorney said to the effect, “it’s time to go, you have used up your time, let’s get going.” At this point, I proposed an alternative to try to collect at least some information about this Resource Area. At first the Applicant and the Department objected. After some discussion, the Applicant and the Department allowed me limited access to the south bog to conduct soil testing. The Applicant’s attorney stated to the effect, “you have three minutes”.
- e. I was not able to conduct all the required investigation due to insufficient time and the refusal by the landowner, whose position was supported by the Department as it appeared to me, that I could not have access to Resource Areas.

Signed under the pains and penalties of perjury this 7th day of August 2024.

A handwritten signature in cursive script that reads "Brandon Faneuf". The signature is written in black ink and is positioned centrally on the page.

Brandon Faneuf, PWS

EXHIBIT A

BRANDON FANEUF

President & Principal Scientist

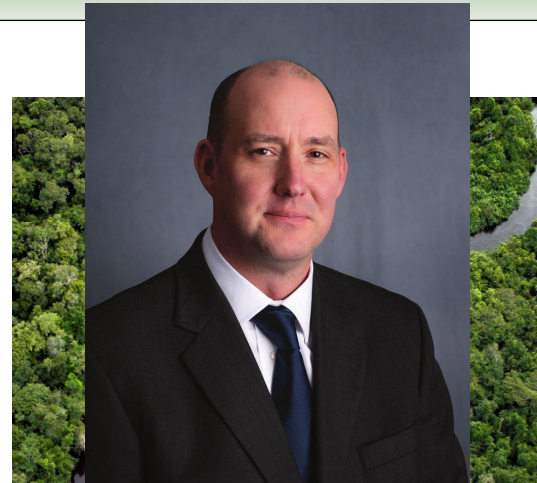
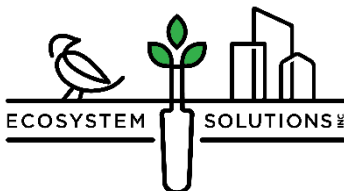
Brandon Faneuf is the Founder, President & Principal Scientist of Ecosystem Solutions, Inc. (ESI). With over 26 years of industry experience, Brandon specializes in wetland & soil science, wildlife studies, project management, land-use permitting & review, and academic instruction.

A native of the Blackstone River Valley, Brandon began his career with the Rhode Island Department of Environmental Management, working in the Wetlands Permitting, Total Maximum Daily Load (TMDL), and Shellfish Protection Programs. This varied background in water resources protection led him to found ESI in 2003 where he helps private and municipal clients. He has delineated over 2,500 wetlands in Rhode Island, Massachusetts, and Connecticut, performed over 750 soil evaluations and infiltration tests for septic and stormwater systems in Rhode Island, and has conducted over 1,200 peer reviews of wetland applications for Conservation Commissions in Massachusetts.

Among his many achievements, Brandon has had a long-standing relationship with the Massachusetts Association of Conservation Commissions (MACC), serving on the Board of Directors. This includes work on the Education Committee, as co-chair of the Annual Environmental Conference put on at Holy Cross College each year in March, and is on the Bylaw Committee. He co-teaches a wetland delineation techniques workshop in Marion, MA twice yearly, as well as a wetlands enforcement workshop.

Notable Project Experience

- Wrote and oversaw a seven (7) acre wetland restoration project on Almeida Road in Rehoboth, MA, as well as a two (2) acre wetland restoration at the Shawmut Landfill in Fall River, MA.
- Permitting for river re-alignment along Tanyard Brook in Bristol, RI, to alleviate flooding and high tides in Bristol Harbor.
- Two years of erosion & sedimentation control monitoring at a large-scale solar project in West Greenwich, RI. Responsible for weekly and post-rain event logs.
- Continuing services contractor for peer review services in the Towns of Sutton and Mattapoisett, MA.



Education

- M.S., Wetlands Conservation, University of Massachusetts, Amherst
- B.S. Wildlife Biology, University of Massachusetts, Amherst
- 12 post-graduate credits, soil science, University of Rhode Island

Credentials

- Professional Wetland Scientist, PWS 1614, Society of Wetland Scientists (2006)
- Certified Wildlife Biologist, The Wildlife Society (2010)
- Certified Professional in Soil Erosion & Sediment Control, CPESC 2694, SWCS & IECA (2003)
- New England Regional Soil Science Certificate (2006)
- Registered Professional Soil Scientist, SSSNE (2006)
- Class IV Soil Evaluator, D4059, RI Department of Environmental Management (2003)
- Certified Coastal Invasives Manager, RI Coastal Resources Management Council (2009)

Professional Affiliations

- Massachusetts Association of Conservation Commissions (Board of Directors)
- Association of Massachusetts Wetland Scientists
- Society of Wetland Scientists
- Society of Soil Scientists of Southern New England
- International Erosion Control Association
- Soil & Water Conservation Society

Relevant Experience (B. Faneuf)

Project/Location: Various locations in southeast Massachusetts.
Client/Industry: Save the Pine Barrens & Community Land & Water Action Coalition
Role: Abutter & Ten Resident Advocate
Description: Acted as environmental expert in client's efforts to curb illegal sand & gravel removal at over a dozen sites in Carver, Plymouth, and Wareham, MA. Involves representation at local Conservation Commission and Soil Removal Committee meetings, Department of Environmental Superseding Order site meetings, and Office of Appeals and Dispute Resolution (OADR) hearings. Example of work includes disputes associated with removal of sand and gravel and squaring off of bogs under the 310 CMR 10.04 Agriculture exemption, under the Massachusetts Wetlands Protection Act. Work involves preparation of pre-filed testimony and testifying at OADR hearings as wetland scientist & regulatory expert.

Project/Location: Sutton and Douglas, Massachusetts
Client/Industry: Towns of Sutton and Douglas / Conservation Commission
Role: Enforcement Officer
Description: Four (4) enforcement actions where M.G.L. c.40, §21D non-criminal disposition allows ticketing for M.G.L. c.131, §40 and local Bylaw violations. One instance involved a single-family residence where the individual was fined \$8,500 for non-compliance with the approved Order of Conditions. This case was appealed by the violator at Uxbridge District Court. Brandon represented the Conservation Commission in front of the Clerk Magistrate in their efforts to bring the owner into compliance. Two instances involve a large-scale solar project where the project was in Douglas, but impacts were in Sutton. Brandon performed review of the restoration plan, weekly site inspections of the construction site, helped the Douglas Conservation Commission steer the issues involved in bringing the project back into compliance, and oversaw clean-up efforts on property in Sutton where the majority of sediment was deposited.

Professional Affiliations (cont.)

- The Wildlife Society
- Rhode Island Forest Conservator's Organization

Qualifications

- Wetland Delineation
Qualified to perform wetland delineations under the Rhode Island Department of Environmental Management (RIDEM) Freshwater Wetlands Program Guidelines, Connecticut DEP, and under the Massachusetts Wetlands Protection Act.
- Wildlife & Wildlife Habitat
Qualified to perform wildlife & wildlife habitat assessments under the RIDEM Freshwater Wetlands Program Guidelines
- Qualified to perform wildlife habitat evaluations under Massachusetts Wetlands Protection Act.
- Prequalified under the Massachusetts Natural Heritage and Endangered Species Program for rare species habitat assessments (Box and Blanding Turtles).
- RI Coverts Cooperator Training Completion Certificate (2010)

Expert Qualifications

- Massachusetts Department of Environmental Protection Office of Appeals and Dispute Resolution
- Expert in Wetland Science, RI Coastal Resources Management Council

Other

- Chair, International Erosion Control Association (IECA) Northeast Chapter 2013 Annual Conference, Warwick, RI
- State Chair for Rhode Island IECA Chapter, 2009-2013
- Environmental Instructor- Wetlands, Rhode Island Realtor's Association, 2005-2012.



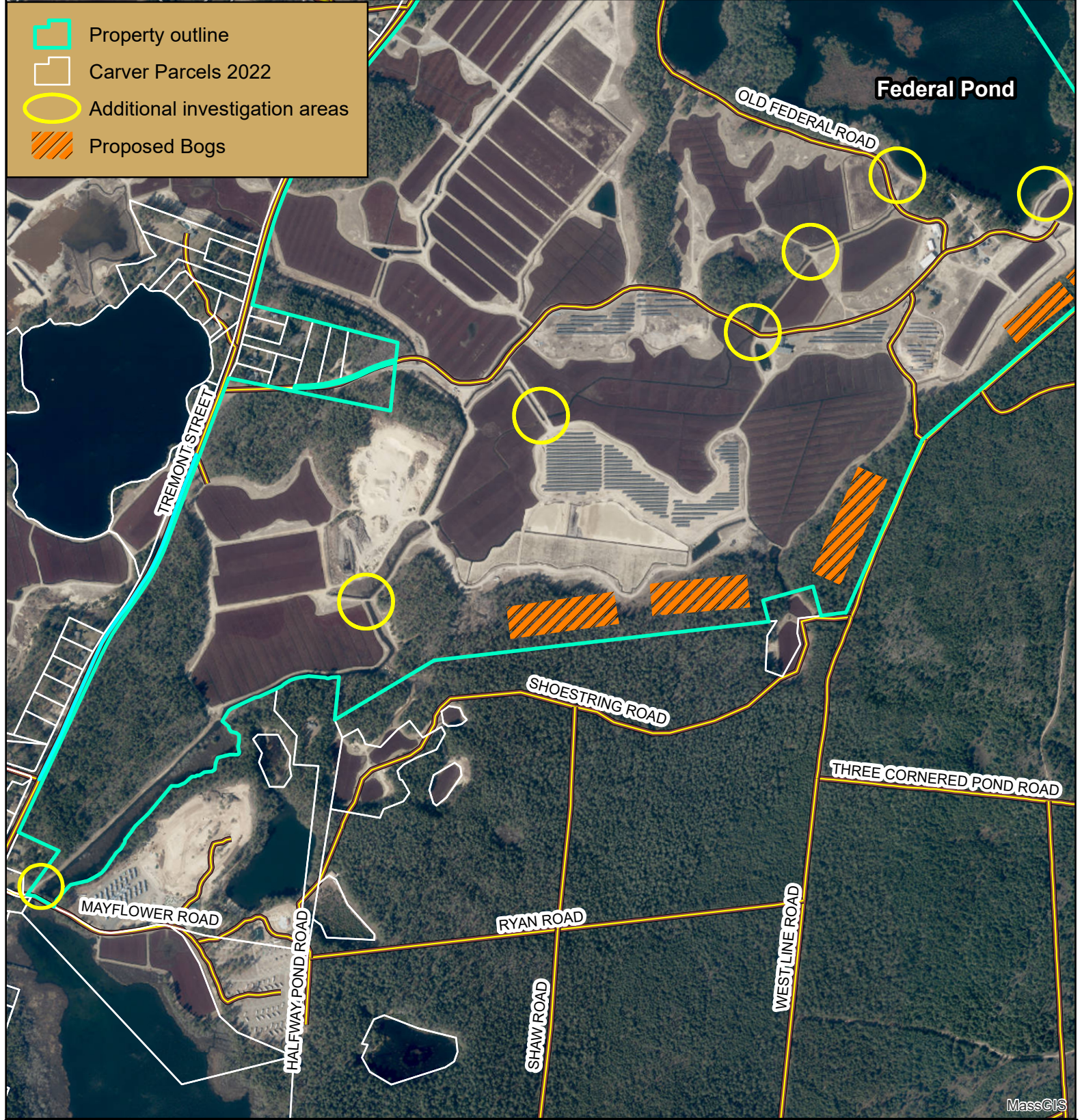
Project/Location: Eastern Massachusetts
Client/Industry: Vanasse-Hangen-Brustlin (VHB)
Role: Wetland delineator
Description: Due to the immense scale and need, Brandon participated in the field work for the Interstate Reliability Project (IRP). ESI was sub-contracted by VHB to delineate over 52 miles of electrical rights-of-way in eastern Massachusetts, including an eighteen (18) mile stretch of right-of-way between the Uxbridge/Burrillville line and Medway, MA. Work was performed between June and December of 2010.

Project/Location: Sutton, Massachusetts
Client/Industry: Sutton Conservation Commission
Role: Conservation Consultant
Description: Brandon starting reviewing applications coming into the Conservation Commission as a subcontractor to Steven Zisk in 2006, taking the position of Conservation Consultant after Mr. Zisk left in 2008, through an RFP process. Since that time, Brandon has reviewed over 750 applications, including Requests for Determination of Applicability (RDA's), Abbreviated Notice of Resource Area Delineation (ANRAD's), Notice of Intent (NOI's), Emergency Certificates (EC's), as well as Enforcement Orders (EO's). Work involves project and site plan review, preparing comments, coordination with applicants and their consultants, including civil engineers, attending all Conservation Commission meetings in-person and providing oral commentary, as well as being able to project plans, pictures, and GIS overlays on-screen using a laptop computer, drafting Determinations of Applicability, Orders of Conditions, Orders of Resource Area Delineation, Emergency Certificates, Enforcement Orders, and Certificates of Compliance. Brandon and his team at ESI provide services through the construction process, providing site inspections for compliance with Orders under the Wetlands Protection Act and Sutton Article 12. ESI handles enforcement of Article 12, including ticket-writing and representation at the District Court. Municipal work is a team effort. Brandon currently brings a team of five (5), including three biologists, a construction inspection and GIS expert, and Professional Engineer. Costs have been 100% covered by 53G during ESI's tenure.

Project/Location: Mattapoisett, Massachusetts
Client/Industry: Mattapoisett Conservation Commission
Role: Conservation Agent
Description: Brandon and ESI was hired as a private consultant to act as the Conservation Agent in 2021, with most costs associated with hiring through the 53G process. Work is similar to that in Sutton, except that Mattapoisett only works under M.G.L. c.131, §40, and has no local Bylaw. ESI has reviewed over 300 applications during their tenure. Most costs are covered under 53G, but the Board of Selectmen have dedicated up to \$30,000/yr for non-53G related work.



EXHIBIT B



- Property outline
- Carver Parcels 2022
- Additional investigation areas
- Proposed Bogs

100 Jefferson Blvd., Ste. 225
Warwick, RI 02888

Figure 1

Supplemental Investigation Areas 104 Tremont Street / Map 123, Lot 13 Carver, Massachusetts			
DATE:	07-31-24	PROJECT #:	W23-1848
CREATED BY:	BF	SCALE:	1 inch = 1,000 feet

2023 Aerial Photo

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Cranberries, Inc.
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OADR Docket Number: WET-2024-011
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AFFIDAVIT OF KATHERINE B. HARRELSON

I, Katherine B. Harrelson, being duly sworn, depose and state as follows:

1. I am employed by Save the Pine Barrens, Inc. as a staff scientist and outreach coordinator.
2. I have a Bachelors of Science in Evolutionary Anthropology, Minor Geological Sciences, graduating summa cum laude from Rutgers University, and a Masters of Science in Applied GeoSciences from the University of Pennsylvania.
3. I hold professional certifications in Construction Site Supervision and OSHA 10 General Industry from the Occupational Safety and Hazard Administration and First Aid and Adult CPR from the American Safety and Health Institute. I have a professional training certificate in Wetlands Delineations from Rutgers University and became a Certified Stream Monitor for the New Jersey Department of Environmental Protection in 2017.
4. I have post-graduate Continuing Education Credits in Site Remediation, Practical Applications in Hydrogeology, Water and Wastewater Chemistry, and Stormwater Management for Engineers from the Rutgers University Office of Continuing Professional Education.
5. I have 18 years experience conducting inspections and investigations on construction sites, sand and gravel mines, rock quarries, landfills, electric generating facilities, liquid terminals, oil refineries, chemical, auto and other manufacturing facilities, and solar arrays amongst other

locations in order to evaluate compliance with wetlands rules, collect samples and assess other aspects of regulatory compliance.

6. During my 18 years of experience I have received on the job training in site-specific safety protocols at facilities and sites regulated by the Department of Labor, Mine Safety and Health Administration (“MSHA”).
7. A standard best practice in my profession, and that I have used or seen used multiple times, is a ‘safety moment.’
8. I am familiar with the location of the E.J. Pontiff Cranberries, Inc. project site at 104 Tremont Street (“the Site”) that is the subject of the Superseding Order of Conditions issued by the Department on April 12, 2024 (“SOC”) that is the subject of this OADR Appeal.
9. I have studied the SOC, the Site Plans referred to in the SOC, the Notice of Intent filed by the Applicant, E.J. Pontiff Cranberries, Inc. (“Pontiff”) and the Department’s Basic Documents submitted in this Appeal. I have also viewed aerial photographs, drone footage and maps of the Project Site.
10. I attended the Department's on site meeting prior to the SOC issuance (but was denied access to the Site itself), the Site Investigation on July 17, 2024 and the Earth Removal Committee public hearings on the earth removal permit for the work described in the SOC.
11. On July 17, 2024, I accompanied representatives of the Ten Residents Group on a site investigation (“Site Investigation”) at 104 Tremont Street, Carver MA. This included Attorney Margaret Sheehan, Professional Wetlands Scientist Brandon Faneuf, and Margaret Bacon who I understand to be a licensed Professional Engineer, and Aaron Keaton, an environmental scientist. I understood the purpose of the Site Investigation to be to delineate and investigate Resource Areas subject to protection under the Wetlands Protection Act and Regulations for purposes related to the SOC. The representatives of the Department included Attorney Brett Hubbard (“Attorney Hubbard”) and Department Environmental Analyst Whitney McClees.

12. The Site Investigation began at the entrance to 104 Tremont Street in Carver. After a short meeting to discuss the purpose and scope of the investigation, the representatives of the Department, the Applicant and the Petitioner drove down a gravel road to a parking area next to a sand and gravel mining operation.
13. When we parked at the entrance to the excavation area on the Project Site, I observed a large sign, "PIT 37, Notice this Mine Operates Under MSHA Federal Guidelines, Authorized Personnel Only." The sign also states that Personal Protective Equipment (PPE) is required. A photo of the sign is below (Photo 1). This area corresponds generally to the area of "Proposed Bog 1" on the Department's Basic Documents 7b, the Site Plans. This was at the western end of the gravel road shown on the Site Plans.
14. After parking at the end of the roadway, I saw tractor trailer trucks entering and exiting and traveling on the roadway where we were standing, a dust control water sprayer truck, and sand and gravel processing equipment (Photos 2, 3 and 4). The mine appeared to be in operation.
15. Since we were on a mine site regulated by MSHA according to the "PIT 37" sign (Photo 1), and the conditions presented a safety hazard in my professional opinion, I called for a "safety minute." I approached Attorney Hubbard with the idea privately out of earshot of others on the site visit, and she put her hand on my shoulder and said words to me to the effect of, "We don't do that during these things, dear."
16. After Attorney Hubbard rejected my request for a safety meeting, I continued to observe tractor trailer trucks traveling to and from the area where excavation was occurring, using the same road we were walking on to conduct our Site investigation. The Site conditions continued to present a safety hazard in my opinion.
17. I asked the group including Attorney Hubbard to gather to review safety concerns and to agree on protocols. The representatives of the Ten Residents Group stopped and gathered to listen to my request, followed by the Department and the Applicant's representatives. In effect, my request was dismissed by the Department. Attorney Hubbard stated something to the effect of, "You are

here on your own recognizance.” The Applicant’s attorney made a remark to the effect of, “let’s get going, there’s no point to this.”

18. In my opinion the DEP was uncooperative during the safety minute, as they did not contribute safety observations or suggestions for protocol, and seemed eager to conclude with the proceedings. I did not consider that to be a professional response regarding a Site Investigation on an MSHA regulated job site, as safety should be the Department’s concern. Identifying potential safety issues and related safety protocol benefits everyone, including the DEP personnel who were present.

19. In my opinion Attorney Hubbard’s response was unprofessional considering that the Project Site is a mine and was in operation at the time the Site Investigation was taking place.

Signed under the pains and penalties of perjury this 6th day of August, 2024

Katherine Harrelson

Katherine Harrelson

Photo 1: MSHA Entrance Sign, 104 Tremont Street (“the Site”)



PIT 37
NOTICE THIS MINE OPERATES UNDER
MSHA FEDERAL GUIDELINES
AUTHORIZED PERSONNEL ONLY

- SPEED LIMIT 10 MPH
- BACKUP ALARMS REQUIRED
- LOADER HAS RIGHT OF WAY
- DRIVERS REMAIN IN CAB WHILE BEING LOADED
- SEAT BELTS REQUIRED
- LOADERS ON C&E CH-423
- PPE REQUIRED

Photo 2: Tractor trailer exiting the Site



Photo 3: Dust control water sprayer truck



Photo 4: Sand and gravel processing equipment

