

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 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.

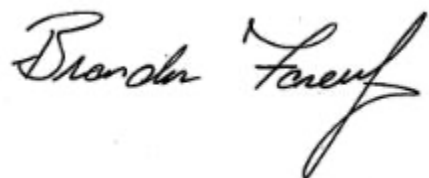
16. My ability to conduct an adequate, thorough and complete site investigation on July 17, 2024 was impaired by the following actions of the Department's representative, Attorney Hubbard, and the Applicant's representatives.

- 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 7<sup>th</sup> day of August 2024.

A handwritten signature in cursive script that reads "Brandon Faneuf". The signature is written in black ink on a white background.

Brandon Faneuf, PWS

# **EXHIBIT A**

# BRANDON FANEUF

## President & Principal Scientist

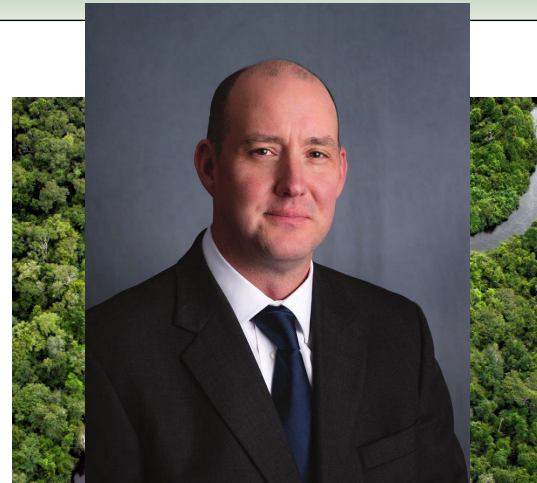
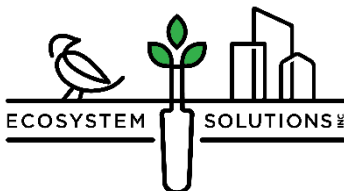
Brandon Faneuf is the Founder, President & Principal Scientist of Ecosystem Solutions, Inc. (ESI). With over 26 years of industry experience, Brandon specializes in wetland & soil science, wildlife studies, project management, land-use permitting & review, and academic instruction.

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**

