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# Massachusetts Great Ponds

*Conservation Commissions' Important Role  
in Permitting & Stewardship*

FALL 2021 MACC Workshop  
Sylvie Agudelo & Frank O'Brien, Archdale Conservancy

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# welcome!

What is a Great Pond?

History & Regulatory Framework

Current Issues & Looking Ahead

Open Discussion





# What is a Great Pond?

*Onota Lake Pittsfield, MA*

## **A pond that exceeds ten acres in its natural state is a great pond.**

G.

*L. c. 91, § 35; 310 Code Mass. Regs. § 9.02 (2014); Opinion of the Justices to the Senate. 474 Mass. 1201. April 13, 2016 - May 26, 2016; Gregor I. McGregor, Esq. (2020) "Boundaries in Massachusetts Property, Land Use, and Environmental Law, Where They Are, and How They Change."*

- **1640 Common Law**
- **Boston Harbor and Land Commission**
- **Commonwealth of Massachusetts**  
**EEOA**  
**DEP Waterways**  
**Office of the Attorney General**

**ANY pond ten acres or more is assumed to be a great pond by The Commonwealth, and it is subject to Wetlands Protection Act Ch. 91 regulation and enforcement**

*even*

*if: it is now less than 10 acres;  
there is no dedicated public access;  
it is surrounded by privately owned land;  
it is not identified as a great pond*

*until the applicant proves otherwise through  
process outlined in 310 CMR 9.10*

**References may be inaccurate,  
*it might still be a great pond***

- **Commonwealth Great Pond List**  
<https://www.mass.gov/doc/massachusetts-great-ponds-list/download>
- **GIS, mapping tools, virtual visits**
- **Paper and in person**  
Wetlands Ordinance, Registry, Deeds, Surveys,  
Newspapers, Advertisements, Cases

# Brooks Pond Spencer

If a pond is presently less than ten acres and is not included on the Great Pond List, then that pond is generally presumed not to be a Great Pond. Topographic, historic, or other information must credibly demonstrate that the pond was greater than ten acres in its natural, original state.

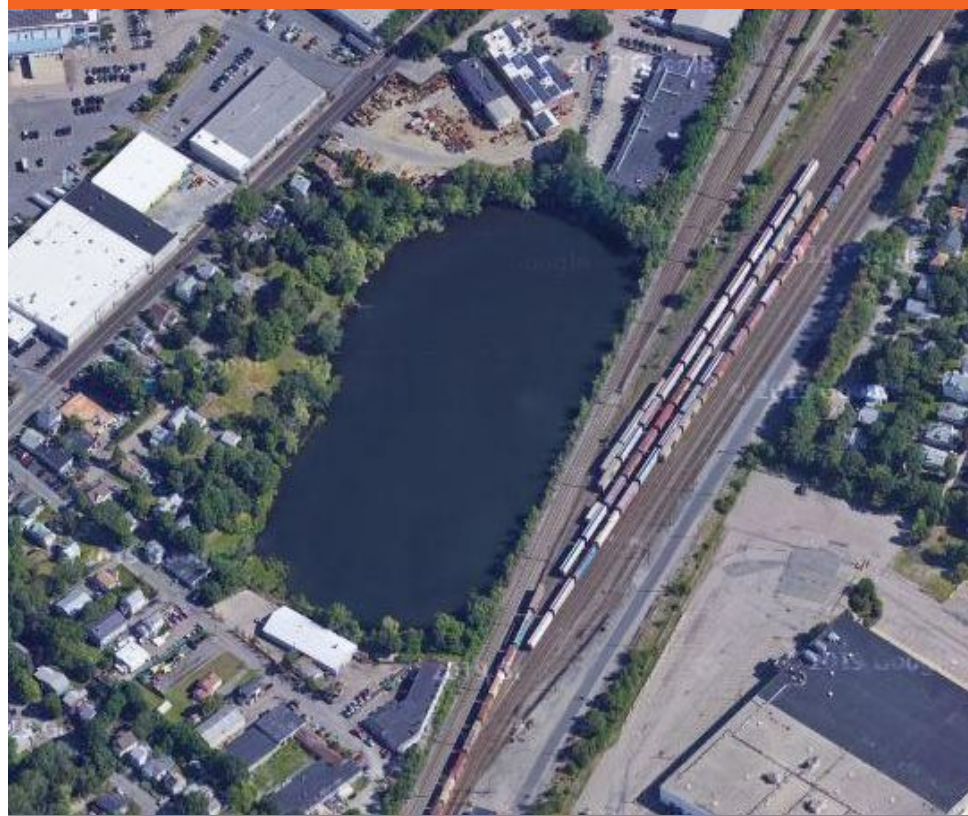
*Brooks Pond Conservation Association v. Starr,*  
79 Mass. App. Ct. 1130 (2011)



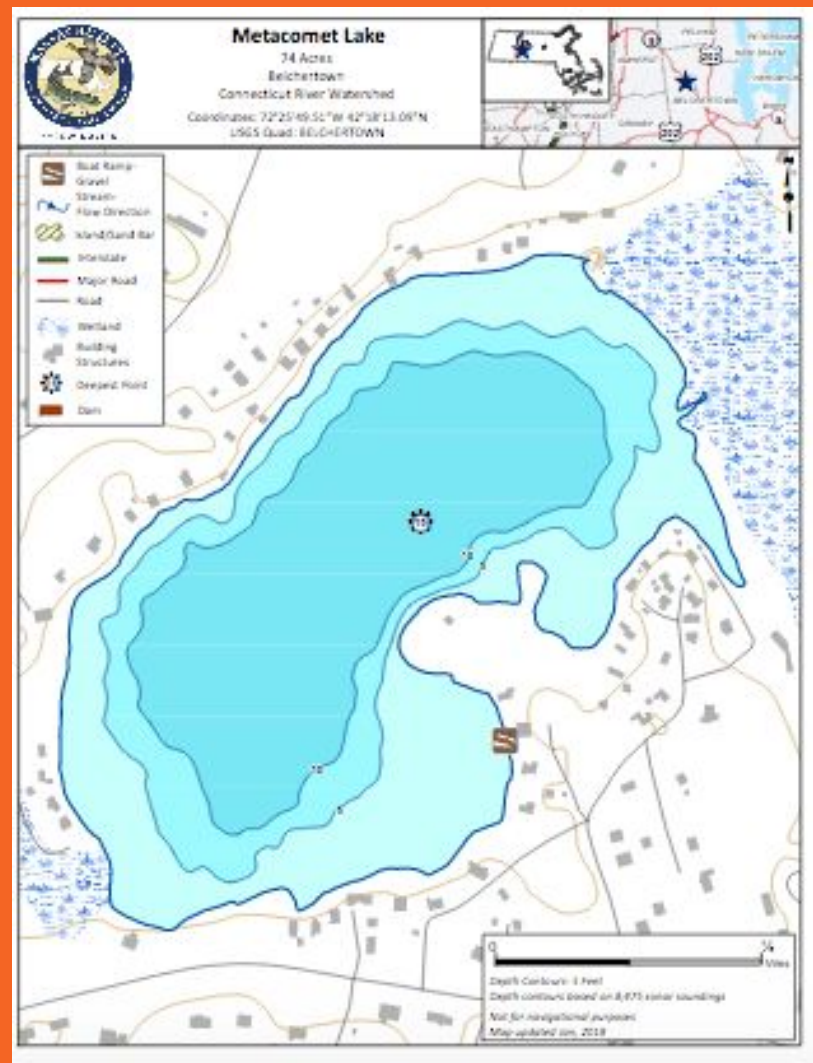
Photographed by Richard B. Johnson from his Grunman Cheetah

# Sprague Pond, Dedham & Boston

A pond presently less than ten acres that is not included on the Great Pond List, is found to be a great pond.

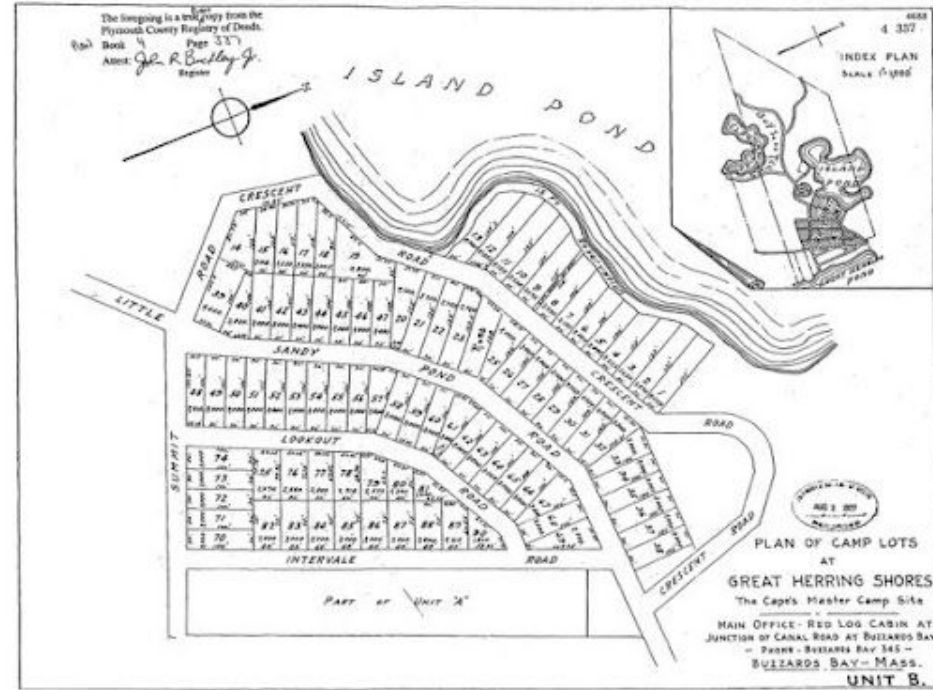


# Metacomet Lake, Belchertown

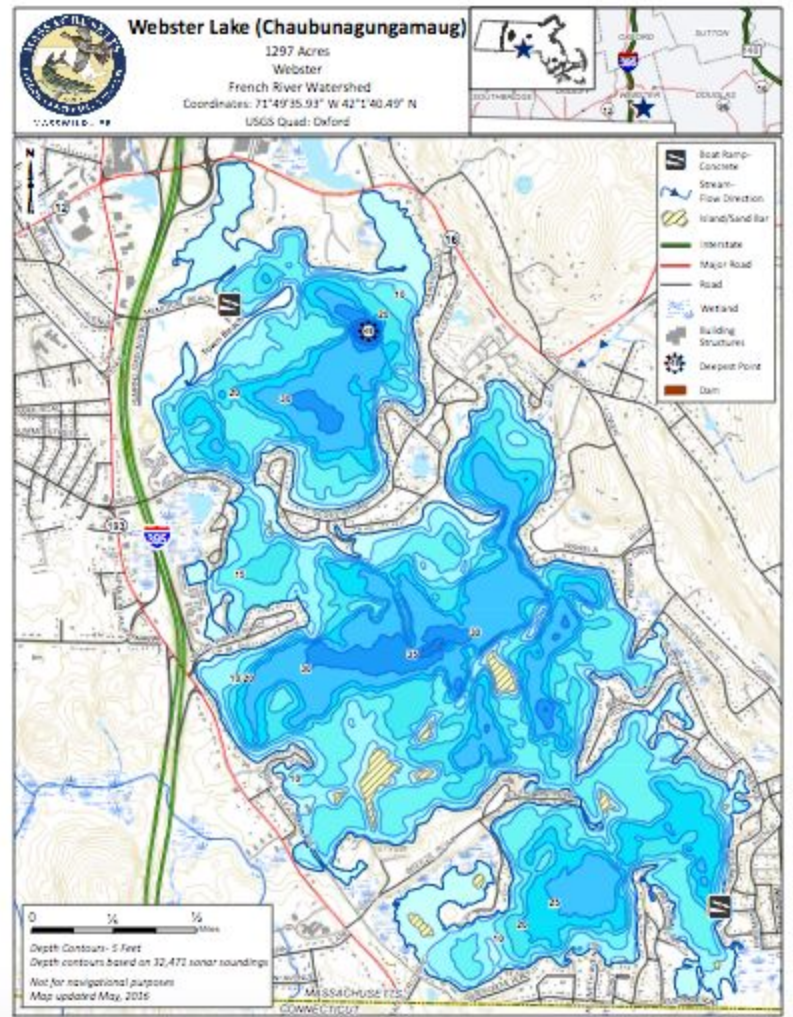


# Island Pond, Great Herring Shores

A private residential association asserting private ownership of a great pond



# Webster Lake



# Massachusetts Great Ponds

## History & Regulatory Framework

Public Trust Doctrine

1641 - 1647 Body of Liberties

Colonial Ordinances



# A Great Pond is a Public Resource





The title to land below the natural low water mark is held by the Commonwealth in trust for the public, subject to any rights which are demonstrated have been granted by the Commonwealth.

*310 CMR § 9.02 Definitions.*

**Colonial ordinance of 1641-47,  
relating to great ponds. . .for great ponds lying in  
common, though within the bounds of some town,  
it shall be free for any man to fish and fowl there,  
and may pass and repass on foot through any  
man's property for that end, so they trespass not  
upon any man's corn or meadow."**

**Anc. Chart. 148.**

**The Colony Ordinances provided that natural ponds containing over ten acres be public for fishing and fowling. These have by judicial decision been extended to include contemporary uses, including boating, bathing, skating or riding upon the ice, taking water for domestic or agricultural purposes, the cutting and taking of ice, or for use in the arts.**

# **History & Regulatory Framework**

Court Decisions

19th Century Harvesting of Ice

20th - 21st Century Public Access & Use

Massachusetts Supreme Judicial  
Court Chief Justice Marcus Morton,  
decision

*People's Ice v. Davenport*

**sprague pond, a  
great pond**

***Decisions argued March-May 1889***

PEOPLE'S ICE COMPANY *vs.* CHARLES E. DAVENPORT.

Norfolk. March 25, 1889. — May 14, 1889.

Present: MORTON, C. J., FIELD, DEVENS, W. ALLEN, & HOLMES, JJ.

*Great Pond — Ice — Title — Conversion.*

The owner of an icehouse upon the shore of a great pond, who scrapes the snow from about half the ice therein, marking it off with stakes, and then suspends operations upon it, acquires no title to the ice scraped such as will enable him to maintain an action against the owner of another icehouse on the pond, who five days later begins to cut and gather such ice, for its conversion.

TORT for the conversion of and damage to certain ice. Trial in the Superior Court, before *Aldrich, J.*, who reported the case for the determination of this court, in substance as follows.

The plaintiff and the defendant were proprietors of icehouses on Sprague Pond, a great pond in Dedham and Hyde Park, and had an equal and common right, or right in common, to take ice from any and all parts of the pond.

JUDGES

OF THE

SUPREME JUDICIAL COURT

DURING THE TIME OF THESE REPORTS.

HON. MARCUS MORTON, CHIEF JUSTICE.  
HON. WALBRIDGE A. FIELD.  
HON. CHARLES DEVENS.  
HON. WILLIAM ALLEN.  
HON. CHARLES ALLEN.  
HON. OLIVER WENDELL HOLMES, JR.  
HON. MARCUS P. KNOWLTON.

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ATTORNEY GENERAL

HON. ANDREW J. WATERMAN.

Massachusetts Supreme Judicial  
Court Chief Justice Marcus Morton,  
decision

*People's Ice v. Davenport*

**the property in the great  
ponds is in the  
Commonwealth; the public  
have the right to use them;  
owners of the shores have no  
exclusive rights**

*Decisions March-May 1889*

PEOPLE'S ICE COMPANY vs. CHARLES E. DAVENPORT.

did not. It is too well settled to be disputed that the property in the great ponds is in the Commonwealth; that the public have the right to use them for fishing, fowling, boating, skating, cutting ice for use or sale, and other lawful purposes; and that the owners of the shores have no exclusive rights in them except by a grant of the Legislature. *Hittinger v. Eames*, 121 Mass. 539. *Gage v. Steinkrauss*, 131 Mass. 222.

The right to cut ice is common to all the public. The plaintiff has this right in common with the rest of the public, but it cannot by its own act appropriate a part of the pond by scraping it, or setting up stakes, and exclude the public from it. The ice until it is cut remains a part of the realty, and no one has any exclusive title in it. There is no statute or other law which enables an owner of the shore, or any other person, thus to exclude the public.

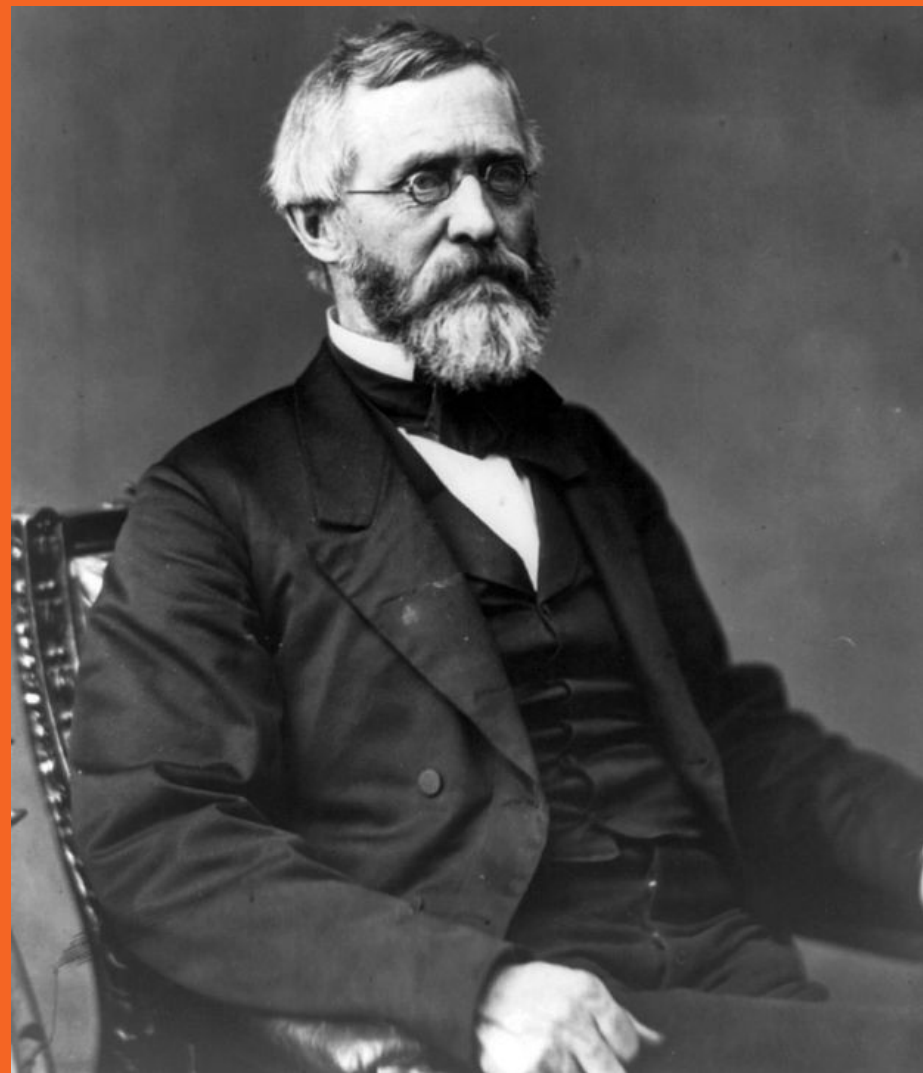
## Ebenezer Rockwood Hoar

*February 21, 1816 - January 31, 1895*

American politician, lawyer, and jurist from Massachusetts. He served as U.S. Attorney General from 1869 to 1870, and was the first head of the newly created Department of Justice.

Hoar assisted Grant in appointing two Supreme Court justices and was nominated himself to the Court. His nomination was rejected by the Senate, in part for his positions on patronage reform.

A dignified and impressive presence, long familiar to the courts of this Commonwealth, is henceforth but an inspiring memory. A place at the bar is vacant, that will not soon be filled.



Massachusetts Supreme Judicial  
Court Mr. Justice Hoar,

**..devotion to public  
use is sufficiently  
broad to include  
them all..**

*West Roxbury v. Stoddard 1865*

*With the growth of the  
community, and its progress in  
the arts, these public  
reservations, at first set apart  
with reference to certain special  
uses only, become capable of  
many others which are within  
the design and intent of the  
original appropriation.*

*The devotion to public use is  
sufficiently broad to include  
them all, as they arose.*

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*Stoddard, 89 Mass.(7 Allen) at 167.*

# History & Regulatory Framework

## Nexus for Project Review

Great Ponds: Chapter 91 -> MassDEP / Licence

WPA + Local by-Law or Ordinance ->

Conservation Commission

RDA / NOI / Order of Conditions



Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Kathleen A. Theoharides  
Secretary

Martin Susberg  
Commissioner

October 13, 2021

Mr. Michael King  
Hyde Park Historical Society  
25 Homewood Ave.

MassDEP Waterways  
Program Chief  
Daniel Padien  
issued letter confirming  
**sprague pond,**  
**is a great pond**

**October 13, 2021**

Based on its review and analysis of the information provided by the Hyde Park Historical Society, supplemented by its own research, the Department hereby determines that the water body known as Sprague Pond located in part within the Hyde Park neighborhood of Boston (Suffolk County) and in part within the Town of Dedham (Norfolk County) occupied ten (10) or more acres in its natural state. Pursuant to M.G.L. c. 91, section 35, and 310 CMR 9.02 & 9.04, Sprague Pond shall be regulated in accordance with the provisions of 310 CMR 9.00, including *Activities Subject to Jurisdiction*, pursuant to 310 CMR 9.05.

acres in its natural state and therefore subject to the

In response to your request, Waterways Program staff conducted field and cartographic research to supplement the original Department, in the Spring of 2021, the Hyde Park Historical Society provided information describing the history of Sprague Pond.

On May 13, 2021, the Department convened a virtual public hearing notice announcing the time, date and method for participation as advertised in the Massachusetts Environmental Monitor (May 10, 2021) and the Hyde Park Bulletin (May 6, 2021). The Department accepted public comments in this hearing.

Sincerely,

Daniel J. Padien  
Program Chief  
Waterways Regulation Program

- Cc: State Senator Michael Rush  
State Representative Robert Consalvo  
Mayor Kim Janey  
Boston City Councilor Richard Arroyo  
Boston City Councilor Annissa Essaibi-George  
Boston City Councilor Michelle Wu  
Boston City Councilor Julia Mejia  
Boston City Councilor Michael Flaherty  
Boston Conservation Commission  
Dedham Select Board  
Dedham Conservation Commission  
Neponset River Watershed Association  
Tom Sullivan, Hyde Park Historical Society  
Frank O'Brien, Sustainable Hyde Park  
Sylvia Agudelo, Sustainable Hyde Park  
Martha McDonough, Concerns Citizens of Readville  
Robert Boerjes and Juliette Rorie, 102 Sprague Street, Boston  
Richard Nylén: Lynch, DeSimone & Nylén, LLP

# Conservation Commission Issues

Jurisdiction

Chapter 91: Land below the natural low water mark including Great Ponds

WPA + Local by-Law or Ordinance:  
Wetlands and land bordering waters

# jurisdiction

310 CMR 9.02 defines for waterways within Chapter 91 jurisdiction:

A “waterway” is any area of water and associated submerged land or tidal flat lying below the high-water mark of any navigable river or stream, any Great Pond, or any portion of the Atlantic Ocean within the Commonwealth, which is subject to 310 CMR 9.04.

McGregor (2020) Boundaries in Massachusetts Property, Land Use, and Environmental Law.

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# Conservation Commission Issues

## NOI/Project Review

Is the project on a Great Pond

Do plans clearly and accurately delineate resources

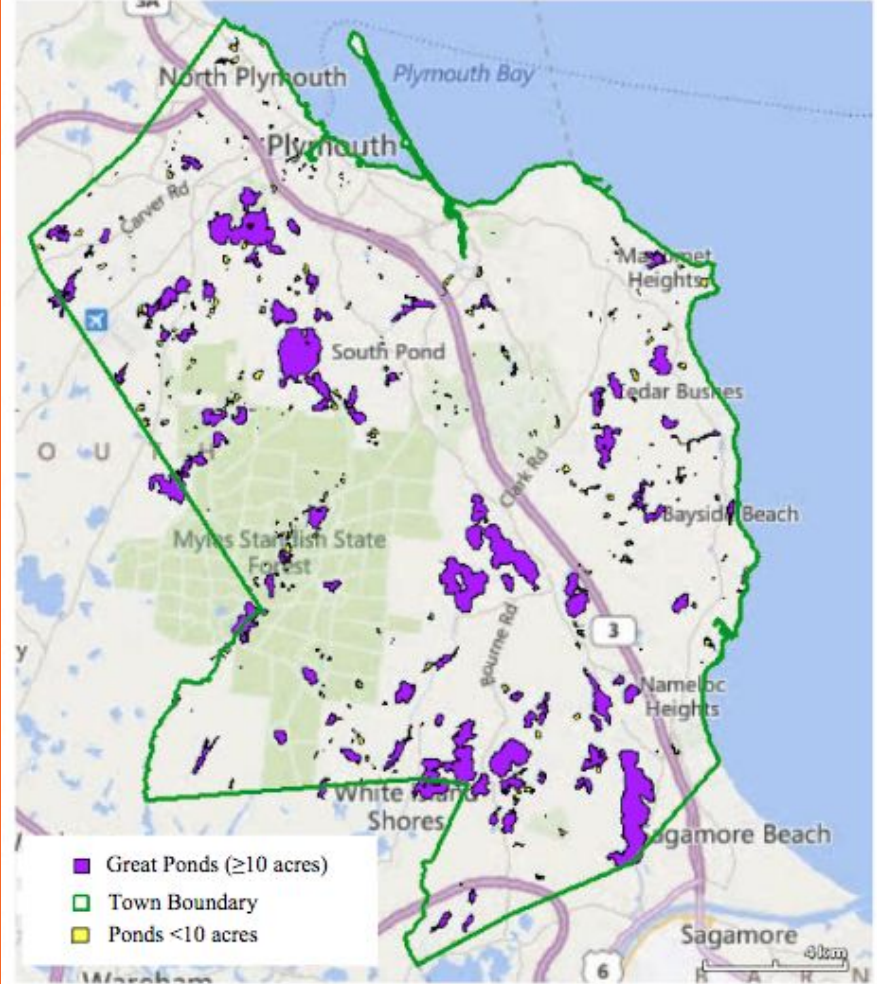
Is there a question of public access and public use

Has proponent applied for all permits and licences

## Lists and designations

There were an estimated 1300 great ponds in 1984 (MDC),  
MassDEP lists 200 great ponds in 2017

Plymouth lists 83 great ponds  
The Commonwealth lists 19



**Figure 5. Map of Plymouth Ponds.** Great Ponds are greater than 10 acres in area and are publicly owned resources under Massachusetts law. There are 83 Great Ponds and 367 smaller ponds within the Town of Plymouth. 19 Ponds on state Great Pond List for Plymouth



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- Long Beach Cobble Nourishment Fact Sheet
- Long Beach Information
- Off-Highway Vehicle Information
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# Pond and River Information

[Pond Access Information](#) | [Interactive Pond Map](#) | [Bathymetric Maps](#) | [Pond Monitoring Program](#) | [Pond and Watershed Studies](#) | [Biological Monitoring](#)

## Ponds Access Information

[Quick Reference Guide to 10+ Acre Accessable Ponds](#)

## Pond Maps



### 10 Acre Public Ponds - Quick Reference Chart

Acreage	Pond Name	Acreage	Pond Name
10	Abner Pond	12	Indian Brook Reservoir
31	Bartlett Pond (5)	14	Island Pond (North)
20	Big Rocky Pond	53	Island Pond (South)
148	Big Sandy Pond (4)(6)	24	King's Pond
44	Big West Pond	81	Little Herring Pond (5)(6)
269	Billington Sea (4)(6)	37	Little Island Pond
98	Bloody Pond (2)(4)	50	Little Long Pond (5)(6)
20	Briggs Reservoir (North)	10	Little Micajah Pond
19	Bump's Pond	45	Little Pond (2)
18	Charge Pond	12	Little Rocky Pond
14	Clear Pond	34	Little Sandy Pond
50	College Pond (6)	66	Little South Pond (6)(7)
25	Cook's Pond (7)	28	Little West Pond
45	Curlew Pond	224	Long Pond (3)(6)
35	Darby Pond (6)	20	Lout Pond
91	East Head Reservoir	25	Micajah Pond
27	Fearing Pond	26	Morey's Pond
140	Federal Pond	10	Morton Pond
67	Fresh Pond	22	New Long Pond
51	Gallow's Pond	62	Pinewood Lake
20	Grassy West Pond	22	Rocky Pond
419	Great Herring Pond (4)(6)	48	Russell Mill Pond (5)
84	Great Island Pond (3)(4)	20	Shallow Pond
290	Great South Pond (7)	14	Ship Pond (6)
29	Gunner's Exchange Pond (6)	20	South Triangle Pond (7)
229	Halfway Pond (4)(6)	15	Three-Cornered Pond
30	Hedge's Pond	37	White's Pond
22	Hoyt Pond	26	Widgeon Pond

- Highlighted ponds are 30 acres or less – Prohibited to internal combustion engines. Electric trolling motors and paddle sports are acceptable.
- Internal combustion engines are prohibited between Memorial Day and Labor Day. Electric trolling motors and paddle sports are acceptable.
  - 50 HP limit for powerboats.
  - PWC use permitted by acreage - State law prohibits PWC traffic on ponds under 75 acres.
  - Pond has an average depth of five feet or less; no internal combustion engines allowed. Electric trolling motors and paddle sports are acceptable.
  - Massachusetts listed Great Pond
  - Internal combustion engines prohibited per the Town Forest Conservation Restriction. Electric trolling motors of 10HP or less, and paddle sports are acceptable.



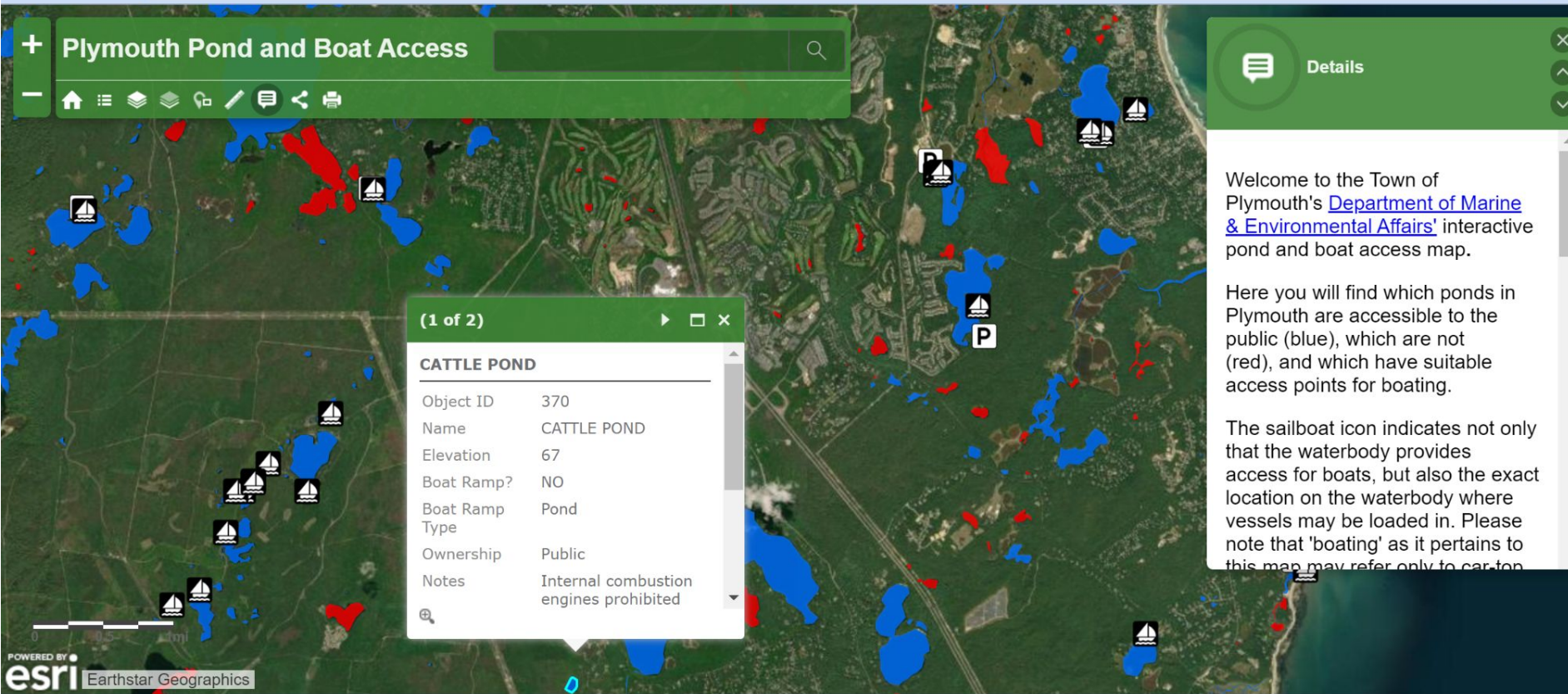
### Ponds with Designated Public Boat Ramps & Parking Areas

Pond	Road
Big Sandy Pond	Gunning Point Road
Billington Sea	Morton Park Road
Fresh Pond	Bartlett Road
Great Herring Pond	Little Sandy Pond Road
Little Long Pond	Clark Road
Little Pond	Morton Park Road
Long Pond	Clark Road

### Ponds with Designated Public Parking Areas Only

Pond	Road
Bloody Pond	Bog Hill Road
Brigg's Reservoir (North)	Black Cat Road
Center Hill Pond	Center Hill Road
Charge Pond	Charge Pond Road
Clear Pond	Surrey Drive
College Pond	Lower College Pond Road
Cook's Pond	Long Pond Road
Curlew Pond	Curlew Pond Road
Darby Pond	Graffam Road
East Head Reservoir	Lower College Pond Road
Fearing Pond	Circuit Drive
Gallow's Pond	West Long Pond Road
Grassy Pond	Bog Hill Road
Great Island Pond	Savery Road
Great South Pond	Drew Road
Halfway Pond	Mast Road
Hedge Pond	Standish Avenue
Hedge's Pond	Hedges Pond Road
Jake's Pond	Spinnaker Drive
Jenny Pond	Spring Lane
Little Clear Pond	Graffam Road
Little Harlow's Pond	Long Pond Road
Little Island Pond	Beaver Dam Road
Little Sandy Pond	Little Sandy Pond Road
Little South Pond	Drew Road
Lout Pond	Billington Street
Russel Pond	Boume Street
Russel Mill Pond	Long Pond Road
Sawmill Pond	Boume Street
South Triangle Pond	Drew Road
White's Pond	Raymond Road

Accessibility- transparency of government; inclusivity; encouraging participation



**(1 of 2)**

**CATTLE POND**

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Object ID	370
Name	CATTLE POND
Elevation	67
Boat Ramp?	NO
Boat Ramp Type	Pond
Ownership	Public
Notes	Internal combustion engines prohibited

Welcome to the Town of Plymouth's [Department of Marine & Environmental Affairs'](#) interactive pond and boat access map.

Here you will find which ponds in Plymouth are accessible to the public (blue), which are not (red), and which have suitable access points for boating.

The sailboat icon indicates not only that the waterbody provides access for boats, but also the exact location on the waterbody where vessels may be loaded in. Please note that 'boating' as it pertains to this map may refer only to car-top

# local ordinances

310 M.G.L. c. 131, §40, along with MassDEP regulations 310 CMR §§ 10.01-99, set out a comprehensive scheme of protection for wetlands and land bordering waters, by governing activity that entails “removal, filling, dredging, or alteration of wetlands and lands bordering waters.”

Municipal laws, in the form of wetland protection ordinances or bylaws, may offer more stringent protection of wetlands and other natural resource areas than the WPA does.

McGregor (2020)

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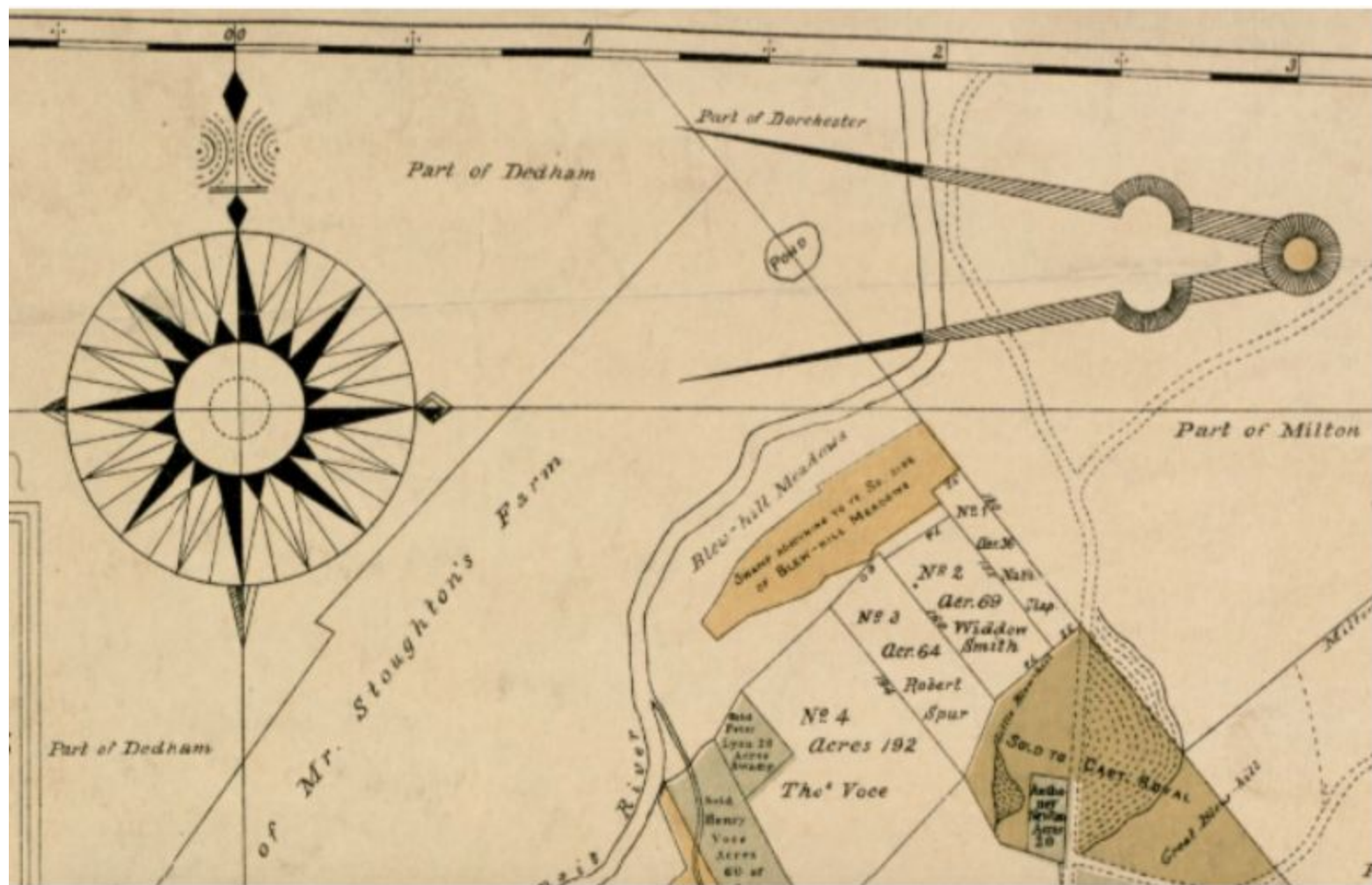


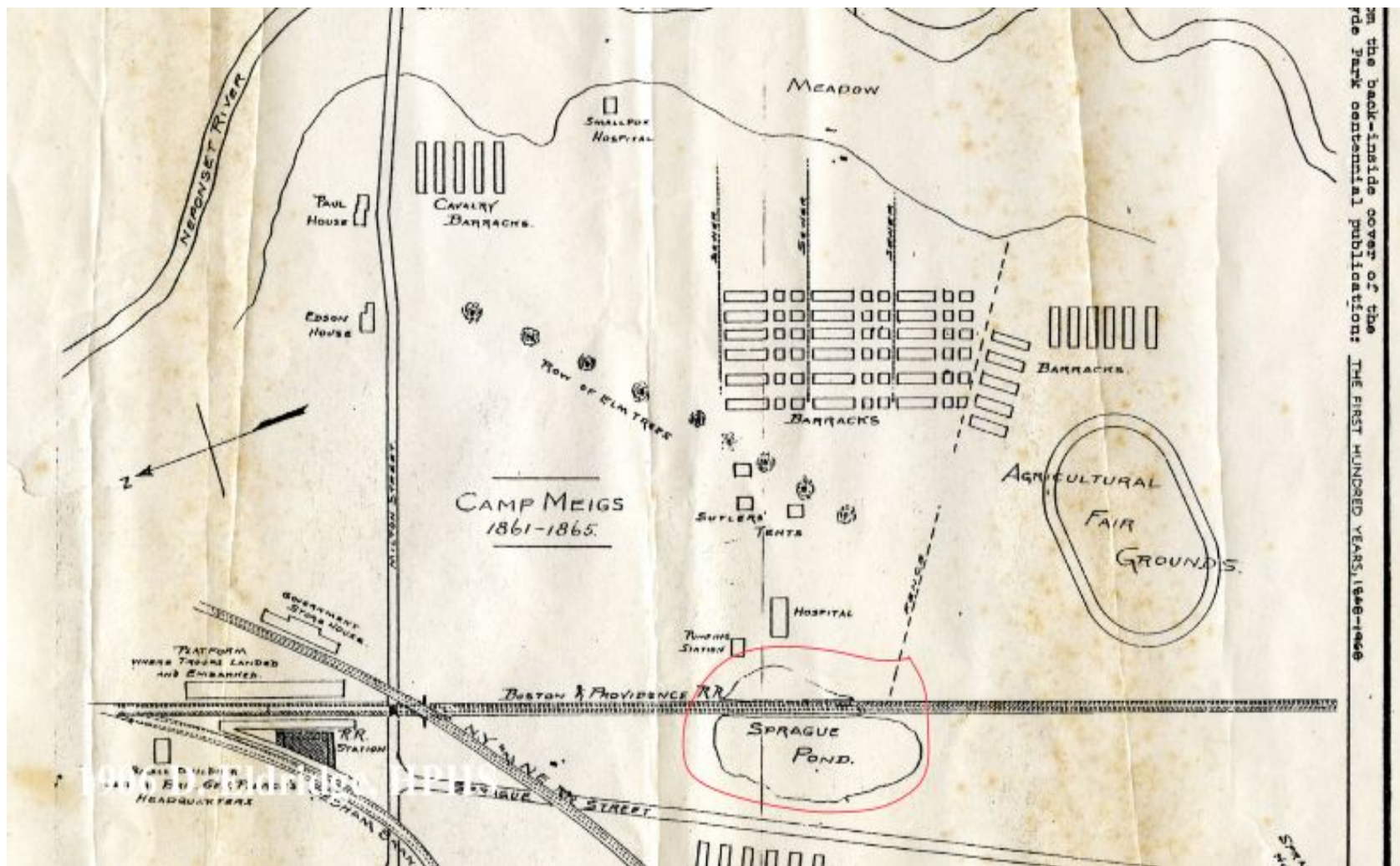
Exhibit 4.1 Blake 1696.1697



Exhibit 4.2 Hale. 1819



Exhibit 4.4 Smith 1851



on the back-inside cover of the  
 the Park centennial publication: THE FIRST HUNDRED YEARS, 1848-1948

Entered according to Act of Congress in the Year 1888 by E. Robinson in the Office of the Librarian of Congress at Washington, D.C.

Part of the  
TOWN OF  
**HYDE PARK**

Scale 250 feet to an inch.  
E. Robinson



Exhibit 2

Sprague Pond: Robinson Map of 1888. Showing division of Pond by Boston-Providence railroad.





# Massachusetts Great Ponds

## Current Issues & Looking Ahead

Pond Designation & Lists

Accuracy of Plans Submitted

Timing of Review

Public Access

Private Property Rights

# Massachusetts Great Ponds

Current Issues & Looking Ahead (*continued*)

Public Access

Private Property Rights

Water Quality & Biodiversity / Habitat

Climate Change & Environmental Justice

# Massachusetts Great Ponds

What is a Great Pond?

History & Regulatory Framework

Current Issues & Looking Ahead

**Open Discussion**

Challenges, Best Practices, Solutions

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# Massachusetts Great Ponds

*Conservation Commissions' Important Role  
in Permitting & Stewardship, Fall 2021*

# THANK YOU!

*-Sylvie Agudelo & Frank O'Brien, Archdale Conservancy*

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