

# McGREGOR & LEGERE

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**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

June 29, 2021

Robert C. Francis, Building Commissioner  
Town of Carver  
Municipal Building  
108 Main Street  
Carver, MA02330

**RE: Demand for Zoning Enforcement**  
**Our File No. 2972**

Dear Mr. Francis:

This Firm represents Save the Pine Barrens, Inc., a non-profit corporation, and its program, Community Land & Water Coalition (collectively “STPB”). This is a demand pursuant to G.L. c. 40A, sec. 7 for enforcement of the Carver Zoning Bylaw (“Bylaw”). STPB demands enforcement against ADM Makepeace, Inc. (“ADM”) on account of past and continuing earth removal activities in the Town of Carver’s RA zoning district (“RA District”) with and without an Earth Removal Permit that are prohibited by the Bylaw. We request that you immediately order ADM to cease and desist all such activities.

**The Zoning Enforcement Officer Must Take Enforcement Action or Respond in Writing**  
**Why He is Declining Enforcement**

Previously, STPB served written demands for enforcement of the Bylaw upon the Carver Building Department on April 6, 2021 and May 13, 2021. The Building Department took no action and made no written response to those written requests.

The state Zoning Act, G.L. c. 40A, sec. 7, explicitly requires a zoning enforcement officer who receives a written enforcement request to take enforcement action or to notify the person requesting enforcement in writing that he is declining to take enforcement action and the reasons therefor.

**Earth Removal for Sale or Profit is Commercial Mining and Prohibited in the RA District**

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The Bylaw states in Section 2200: Uses not expressly provided for herein are prohibited. Commercial mining is a use not expressly allowed in the RA District and is therefore prohibited.

Earth Removal is allowed in the RA District with approval of the Earth Removal Committee.

“Earth Removal” is defined under Article VI of the Bylaw as follows:

“removal of clay, gravel, sand, loam, soil, stone or other earth materials; provided, however, that the moving of earth materials under the provisions of a duly approved subdivision plan. Work necessary for the construction of streets and the installation of utilities; work in connection with the excavation and grading of land incidental to construction of a duly permitted structure; and work performed in normal cranberry related maintenance or improvement of contiguous or non-contiguous land for agricultural purposes, shall not constitute earth removal.”

Article 9, Section 9.1.2 of the Carver General Bylaws defines “Commercial Mining” as “[t]he business of extracting ore, earth, or minerals from the ground for sale unless conditionally exempted under Section 9.1.8.”<sup>1</sup>

ADM currently is conducting or has conducted earth removal from the sites listed below from at least 2008 through the present under the representation that the activity was for agricultural purposes. That was and is a pretext to conduct its commercial mining operations at various sites in Carver with and without permits from the Earth Removal Committee.

### **Commercial Mining Unlawfully Conducted on Land Zoned RA Without Earth Removal Permits**

1. Map 131, Lots 1-1, 1-2, 1-3, and 5.0: “Golden Field” Solar. Prior to the construction of the Borrego Solar industrial energy generating station at this 50-acre site, ADM used this site from about 2016 to present for commercial mining removing about two to four million cubic yards, an operation that would take about 2 years and 180 trucks a day to complete. The volume of earth was never reported to or accounted for by the Earth Removal Committee. This commercial mining was not for agricultural purposes nor was it necessary and incidental to ADM’s agricultural operations.
2. Map 131, Lots 2-1, 2-2, 2-3: Federal East Solar. Prior to construction of the Borrego Solar industrial energy generating station at this approximately 50-acre site, ADM used the site for commercial mining removing an unknown quantity of earth. The

<sup>1</sup> The exception in Section 9.1.8 of the General Bylaw includes: “Removal necessary for cranberry related activities or other agricultural uses as defined under M.G.L. c. 131, sec. 40, 310 CMR 10.04.”

commercial mining was and is not for agricultural purposes nor was it or is it necessary and incidental to ADM's agricultural operations. The total volume of earth was never reported to or accounted for by the Earth Removal Committee.

3. Map 134, Lot 4-2: 0 Hammond Street Solar. Prior to the construction of the Borrego Solar industrial solar energy generating station at this 50-acre site, ADM used this land for commercial mining from about 2018 to the present removing about two to four million cubic yards, an operation that would take about two years and 180 trucks a day to complete. The volume of earth was never reported to or accounted for by the Earth Removal Committee. The commercial mining was and is not for agricultural purposes nor was it or is it necessary and incidental to ADM's agricultural operations.

### **Commercial Mining Conducted Unlawfully on RA Land Under the Pretense of Earth Removal Permits**

ADM conducted commercial mining at the following sites under the false pretense that the activity would be conducted for "agricultural purposes."

1. Map 131: Lot 2-1C: "59 Federal Road" is a 100-acre site being used for commercial mining, not an agricultural use. ADM's claim that the removal of 4.4 million cubic yards on a 100-acre parcel is necessary and incidental to the construction of 18 acres of agricultural bogs and a reservoir is not credible. There are no legitimate agricultural plans for this site.
2. Map 131: Lot 2-4: This is a 538-acre site being used for at least the last ten years for commercial mining. Numerous Earth Removal Permits have been issued under the pretense that the earth removal was necessary and incidental to ADM's agricultural operations. Bogs and tailwater recovery systems depicted on plans from 2012 and 2017 have not been built. The earth removal activities at this site are not an agricultural use and there are no legitimate agricultural plans.
3. Map 131: Lot 1-4: Hammond Street. This large site is being used for commercial mining, not for an agricultural use. There are no legitimate agricultural plans for this parcel. The earth removal is not necessary and incidental to ADM's agricultural operations.

ADM is the largest aggregate provider east of the Mississippi River. The Read Custom Soils website boasts: We operate from a state-of-the-art blending facility in Carver, Massachusetts

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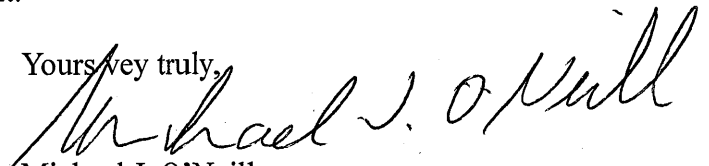
(located in the heart of our enormous reserves of USGA quality sand).” This is an admission that ADM’s “enormous reserves” of sand in Carver are being extracted for resale rather than agriculture and have been amassed by commercial mining, in blatant disregard of the Bylaw prohibition against unauthorized use.

**Immediate Enforcement is Essential**

ADM has illegally excavated and is excavating its “enormous reserves” of soil, in blatant and continuing violation of the Bylaw. It has denuded and is continuing to denude the landscape. Immediate enforcement is necessary.

STPB demands that you issue an order to ADM to immediately cease and desist from all earth removal at the sites listed above, and order ADM to restore those sites to their condition before ADM’s illegal excavations. STPB further demands, if ADM does not comply, that you bring suit in superior court or land court to enforce the Bylaw and restrain ADM’s violations of it by its continuing excavation and refusal to restore it.

Yours very truly,



Michael J. O'Neill