

COMMUNITY LAND & WATER COALITION
SAVE THE PINE BARRENS, INC.

May 13, 2021

Building Department/Permitting Department
Town of Carver
108 Main Street
Carver MA 02330
Via certified mail and website

John Garretson, III, Chairman
Earth Removal Committee, Town of Carver
via website and email

Dear Chair Garretson and Building Inspector,

On April 6, 2021 Community Land & Water Coalition asked the Carver Earth Removal Committee (ERC) and the Building Inspector to issue a cease and desist order to AD Makepeace Company (ADM) suspending all earth removal activities in Carver and to take other steps to enforce the Earth Removal Bylaw. Under Massachusetts General Laws Chapter 40A, Section 7 the ERC was required to respond in writing with 14 days to our April 6, 2021 letter. We have not received a response granting or denying our request.

We appreciate your convening ERC meetings to meet with us on [April 14](#) and [April 22](#) to discuss the issues and violations and your willingness to address these matters informally. In good faith we presented the ERC with information documenting violations, outlined our concerns and responded to your questions.

We were scheduled to meet in person on May 5 and May 12, but you rescheduled the meeting twice now to May 26, which will be 8 weeks past the date of our April 6 letter. In the meantime, violations continue.

The ADM commercial mining in Carver is causing irreparable harm to the environment. This harm extends far beyond abutters to the project sites or residents of Carver: this strip mining has global implications. The mining is destroying globally rare Atlantic Pine Barrens ecosystems, one of three on Earth and home to species of plants and animals listed as endangered, threatened or special concern under state and federal laws. [One million species are threatened with extinction](#) and this mining is contributing to the collapse in biodiversity globally. In addition, it threatens the Plymouth Carver Sole Source Aquifer by removing topsoil, vegetation and vast amounts of sand that filters and purifies our water.

These alleged violations warrant civil and/or criminal penalties for each day of violation under the Bylaw, Section 9.1.9d and 9.1.9.f and an order under Section 9.1.f requiring restoration of the sites. The Committee has confirmed that the AD Makepeace operations are commercial mining for profit or sale and not exempt from the Bylaw as an “agricultural operation.”

Makepeace’s expansion of commercial mining at the Golden Field Pond site at 59 Federal Road under Carver Earth Removal Permit #76 (over 4 million cubic yards) is especially egregious. The Committee must immediately suspend this permit and all others in light of the persistent ongoing permit violations we have presented to you and that are obvious to even the casual observer.

If the Committee does not issue a cease and desist by the close of business on May 17, 2021 we will consider that to be a denial of our April 6, 2021 request.

Violations at the Makepeace active commercial mining sites include:

- **Unsafe operations** as documented in the [video of an accident](#) involving a tractor trailer with Maine plates hauling sand from a Makepeace mining site. The truck flipped and hit a pole almost hitting a motorist on the winding narrow road. In the [police recording](#) the eyewitness says “This guy was flying, he almost hit me and my granddaughter” and that he travels the road all the time and the trucks are “flying.” There has been no investigation or attempt to hold anyone responsible for this egregious violation of traffic rules for trucks leaving Makepeace sites. Under the ERC Bylaw 9.1.9a, if the ERC believes operations “constitute a nuisance or public danger” it “shall order the operator to immediately cease and desist specific activities or the entire operation.” We are unaware that the ERC has done anything other than place a call to ADM.
- **Violating limits on number of trucks** allowed under the Earth Removal Permits. Casual observations and video documentation of the traffic on Tihonet Road/Federal Road/Farm to Market Road, the route used by AD Makepeace for the commercial mining trucks over the past several years if not decades show plainly that ADM ignores the truck limits in the Carver ERC permits. You reported at the [April 22, 2021](#) (video starting at 1:19) meeting that CEO Kane admitted that the truck trips exceeded 50. The truck limits themselves (100 roundtrips a day per site) are unreasonable and completely arbitrary. Specific examples:

May 12, 2021 Read Custom Soils site, Lot 2-4, Federal Road, subject of three earth removal permits (total of about 3 million cubic yards 2008 to present): between the hours of 7 a.m. and 4 p.m. [a total of 258 trucks](#) entered and left the

site. The limit is 50 truck trips, for a total of 100 in and out. **AD Makepeace exceeded the permit limit by more than 150%.**

April 7, 2021 [video](#) showing one truck per minute exiting Tihonet Road on to Route 25 in Wareham. This would mean about 480 trucks a day and 2,800 trucks a week for 5.5 days of operation (the permits allow operation on Saturdays 7-12).

April 13, 2021 [video](#) showing 14 trucks in 14 minutes making 448 trucks a day and about 2,400 trucks a week.

At the [meeting on April 22, 2021](#) you reported Makepeace CEO Jim Kane claimed the excessive truck trips resulted from “misinterpretation of the agricultural exemption” for truck trips by Makepeace. This apparently means that the truck trips and volumes reported to the ERC by Makepeace undercount the volumes and truck trips resulting in evading the payment of earth removal fees.

Even the Makepeace Truck Sheets show violations of the 50 truck trips a day limit. Here is one example:

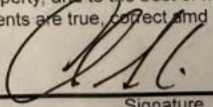
Must be submitted with payment:
Submit To:

3/31, 6/30, 9/30 & 12/31
Earth Removal Committee, 108 Main St., Carver MA 02330
or elaine.weston@carverma.org

Name of Permit Holder ADM Cranberry Co LLC Address of Removal Federal Road - Location #2

Date Use one line per day	Name of Truck Co	# of Trucks	Cubic Yards	at \$0.10 per yard	Amount Due
7/1/20		173	4185	418.50	\$ 418.50
7/2/20		130	3191	319.10	\$ 319.10
7/6/20		81	2086	208.60	\$ 208.60
7/7/20		150	3733	373.30	\$ 373.30
7/8/20		114	2732	273.20	\$ 273.20
7/9/20		124	3140	314.00	\$ 314.00
7/10/20		146	3619	361.90	\$ 361.90
7/13/20		224	5421	542.10	\$ 542.10
7/14/20		160	3937	393.70	\$ 393.70
7/15/20		156	3874	387.40	\$ 387.40
7/16/20		168	4220	422.00	\$ 422.00
7/17/20		137	3380	338.00	\$ 338.00
7/20/20		151	3602	360.20	\$ 360.20
7/21/20		99	2502	250.20	\$ 250.20
7/22/20		102	2467	246.70	\$ 246.70
7/23/20		113	2598	259.80	\$ 259.80
7/24/20		101	2270	227.00	\$ 227.00
7/27/20		119	2895	289.50	\$ 289.50
7/28/20		106	2612	261.20	\$ 261.20
7/29/20		73	1803	180.30	\$ 180.30
7/30/20		72	1809	180.90	\$ 180.90
7/31/20		91	2091	209.10	\$ 209.10
Totals:		2,790	68,167	6,816.70	\$ 6,816.70

Signature of Permit Holder: _____ This list, prepared or examined by me, includes all removal from my property, and to the best of my knowledge and belief, it and all accompanying schedules and statements are true, correct and complete under the penalties of perjury.



11/5/20
Date

You acknowledged that CEO Kane's "misunderstanding" of the multiple earth removal permits his company has been operating under since 2008 "shows a weakness that we need to do something about." [You discussed a letter to permittees](#) but have since reneged on sending that. To our knowledge there have been no penalties or sanctions for the excessive violations

that have been documented and that are consistent with eyewitness testimony covering years. Clearly, your phone call to Makepeace and CEO Kane after our April 12, 2021 meeting had no effect since the truck traffic is as bad or worse as documented by video on May 12, 2021.

We note that the Carver earth removal permit #76 requires trucks to use Wareham roads. This serves to attempt to foist the responsibility for ensuring proper road maintenance and repair on to the abutting town and away from the ERC.

3. All trucks are to make a RIGHT turn on to Federal Road towards Wareham to minimize traffic onto Cranberry Road.

Figure 2: Quote from Carver Earth Removal Permit #76, Condition 3

- **Operating outside the hours of operation of the permits**

May 12, 2021, operations at the Read Scale house began before 7:30 a.m. which is the start time in the permit. Before 7:30 a.m. 2 front loaders and 15 trucks entered the site and 11 trucks exited.

[May 10, 2021, Saturday](#) operations at the Golden Field/Lot 1-2C site were conducted past 12 p.m. in violation of the permit.

- **Not following permit plans for agricultural projects**

The Earth Removal Bylaw requires the Committee to determine that every project conforms to “correct land use.” The ADM commercial mining projects are all located on land zoned residential/agricultural. To be a “correct land use” under the Bylaw, Section 9.1.7(a) the use must be one or the other: residential or agricultural. They are neither. They are industrial aggregate mining operations.

Repeatedly since 2008, ADM via its engineer G.A.F. Engineering has submitted earth removal permit applications describing agricultural projects apparently in an attempt to fit the industrial mining operations into the Bylaw as a “agricultural” use. The agricultural projects either have not been done, are behind schedule, or are a blatant ruse for obtaining an earth removal permit. The Committee does not require as-built plans to confirm that the work was done according to the permits there is no public record to show compliance with the plans.

Examples:

- **2008 Permit:** Earth removal operations at Map 131-Lot 2-4, a 538 acre parcel encompassing the Read Scale House on Federal Road, have been ongoing since at least 2008 when your ERC issued a permit for the removal of 719,000 cubic yards of earth. **It appears Makepeace is conducting an uncontrolled, unregulated commercial mining**

operation across the 538-acre parcel. (Permits total about 3 million cubic yards for this parcel)

- **2011 Permit:** It is unclear whether the bogs have been built according to the plans for Map 131, Lot 2-4.
 - **2017 Permit:** The bog on Map 131-Lot 2-4 is not being built as of May 2021, four years later. You reported Makepeace told you they had “changed their plans” and were “working at other sites and building solar.”
 - **2019 Permit:** The reservoir at 0 Hammond Street is not being built.
 - **2020 Permit (Golden Field Pond expansion)** At a time when the cranberry industry is in an economic crisis and desperately seeking state subsidies, Makepeace claims it must excavate over 4 million cubic yards in order to expand its operations on to 100 acres and build 18 acres of cranberry bogs and an 8-acre reservoir on one of the last remaining hills in the area. A few miles away in Plymouth, Makepeace has stopped construction at the Frogfoot bogs even though it cleared 120 acres and strip mined 6.5 million cubic yards under permits intended for bog expansion. This agricultural plan appears to be a ruse for another commercial mining operation.
- **Misrepresentations about volume of earth removal and lack of earth removal permit for Golden Field solar site**

The operations at Golden Field Pond are a prime example of the failure to follow the Bylaw and the shell game being played. AD Makepeace started earth removal activities near Golden Field Pond in approximately 2016 without an Earth Removal Permit. It excavated out the entire 50-acre area for the Borrego Solar “Golden Field” (Phase C6) project. This site had elevations up to 118 feet. See Figure 2 below. ADM stripped trees, topsoil, vegetation and about 2-4 million cubic yards of sand and/or gravel. It reduced the elevation across the 50 acres by about 30 feet. This would require about 160 truck trips per day for 2-3 years to remove.

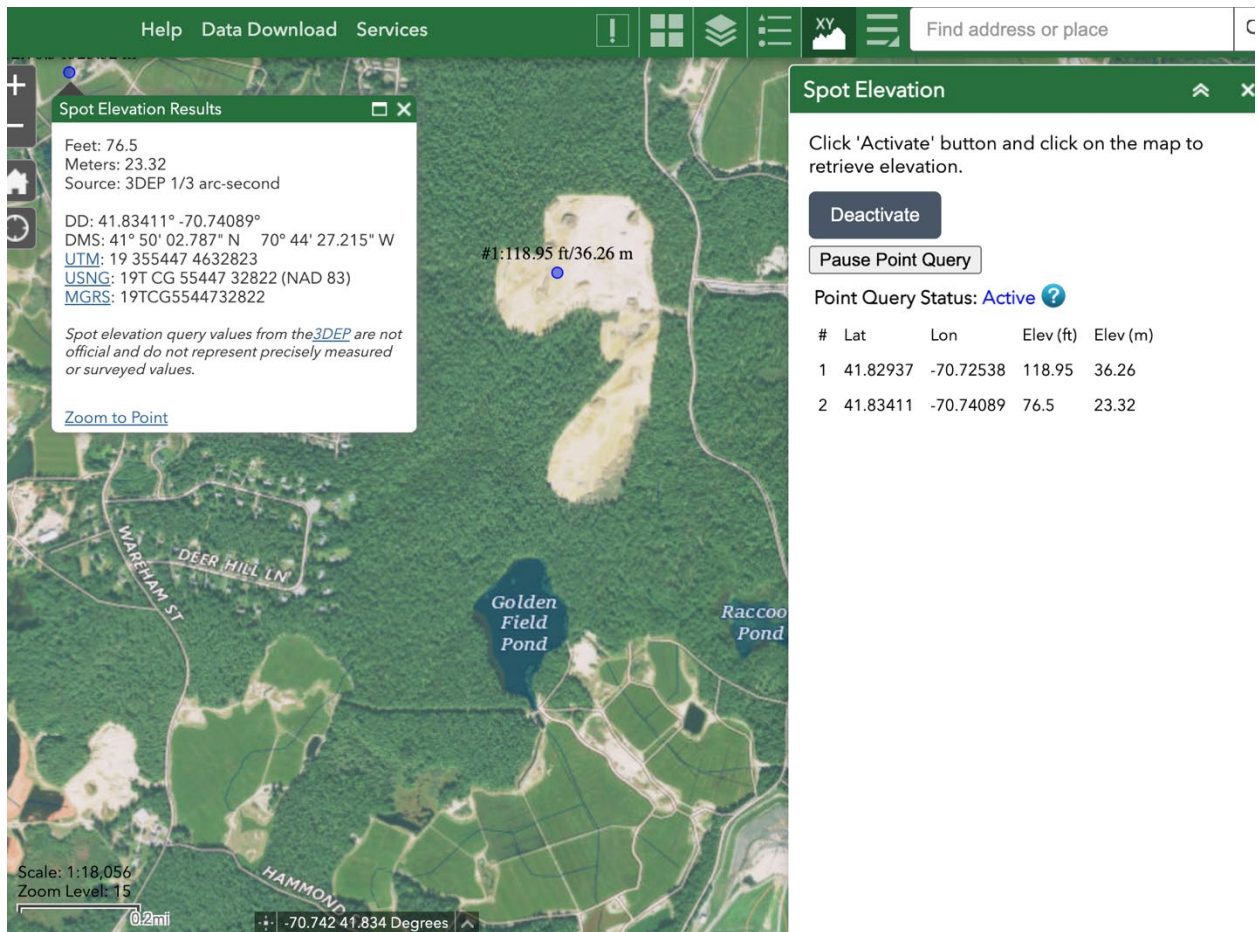


Figure 2: Spot elevation Golden Field Solar site at 118 feet. Approximate date 2017.

The ADM and Borrego Solar operations at the Golden Field site destroyed a pristine globally rare Pine Barrens habitat. The site was identified as an area with evidence of Native American use and occupation. **There has been no public accounting of the volume of earth removed and no credible assessment of the damage to the ecosystem or Native American heritage.**

AD Makepeace and Borrego Solar provided inaccurate and misleading information to state regulators about the volume of earth removed from the Golden Field solar site. They reported under oath that at 40,000 cubic yards would be removed and this is “the volume of cut necessary to grade the site [and] is **anticipated to be readily stored or used elsewhere on ADM’s overall landholdings.**” See, MEPA Environmental Notification Form 15617. AD Makepeace and Borrego Solar apparently gave the Carver Planning Board the same misinformation because the Board approved the Golden Field solar project saying “independent review from the Carver Earth Removal Committee will not be required because **the sand to be removed from the site will be used to maintain or improve the applicant’s [AD Makepeace] contiguous or non-contiguous land for agricultural operations and is not being**

removed for sale, trade or other consideration. (See Section 9.1.8D of the Earth Removal Bylaw).” August 9, 2016 Planning Board Special Permit & Site Plan Review.

In 2016, CEO Kane [explained the AD Makepeace business strategy](#) of clearing land, leasing it for solar for 20 years and when the solar “fad” is over and the company removes its “junk” the land will be ready for residential development.

Your Committee is responsible for ensuring that all earth removal in the Town of Carver complies with the Bylaw. Enforcement of the Bylaw means that Makepeace must be required to provide credible documentation to your Committee and the Carver Planning Board that the volume of earth removed from the Borrego Golden Field solar site was NOT sold for commercial purposes but was used on Makepeace land for agriculture.

The Makepeace and Borrego Solar claim that the sand removed from the Golden Field solar site was used on Makepeace properties is not credible for many reasons including that it is inconsistent with observations by the plain eye and GIS topographic maps. Another reason is that at about the same time ADM was conducting a 2-4 million cubic yard earth removal operation at Golden Field for solar it was also mining 2-3 million cubic yards at the Borrego Phase C5 solar site at 160 Tihonet Road in Wareham, MA. On March 22, 2021 Makepeace CEO Jim Kane was recorded to say he would “absolutely” meet with the public to personally account for all of the material taken from the AD Makepeace 160 Tihonet Road solar site. Mr. Kane has not responded to a written request for this public session.

Barry C. Cosgrove
49 Blackmore Pond Circle
West Wareham, Ma 02576

SENT RETURN RECEIPT REQUESTED

April 1, 2021

Jim Kane
CEO
AD Makepeace Co.
158 Tihonet Road
Wareham, Ma. 02571

Dear Mr. Kane

During your MEPA Public Information Meeting on March 22, 2021 you were recorded to say that you “absolutely” would meet with the public to personally account for all of the material taken from the AD Makepeace Company’s 160 Tihonet Road location. You also agreed to show where the material went for agricultural purposes.¹

You also promised to conduct this meeting soon.¹ Accordingly, this letter is to inquire about the date time and location of this public session.

Sincerely

Barry C. Cosgrove

¹ <https://www.facebook.com/103162998437962/videos/717227405638082>

cc:

Wareham Board of Selectmen/Wareham Conservation Commission/
Wareham ZBA/Wareham Town Manager/Wareham Assessor/ Wareham Tax Collector

For all of the reasons stated here and in our April 6 letter, we reiterate our request for a cease and desist order. If we do not receive a written response granting or denying this request by the close of business Monday, May 17, 2021 we will consider the request denied.

Feel free to contact me if you have questions.

Very truly yours,

Meg Sheehan
Volunteer
Community Land & Water Coalition

Copy: Town of Carver: Building Inspector, Chair Board of Selectmen
Conservation Commission representative to Earth Removal Committee
MEPA, Alex Strycky, MEPA Analyst
Massachusetts Attorney General's office
Board of Selectmen
DEP-Johnathan Hobill