

**McGREGOR  
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**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

March 15, 2022

**Notice Pursuant to G.L. c. 214, sec. 7A of Violation of Law to Prevent  
Damage to the Environment and Intent to File Suit**

Robert J. Ieronimo, Chair  
James Nauen  
John G. Shurtleff  
Richard Ward  
William Garnett  
Michael C. Harrison  
Earth Removal Committee  
Town of Carver  
Municipal Building  
108 Main Street  
Carver, MA 02330

Paul Boucher  
Building Commissioner/Zoning  
Enforcement Officer  
Town of Carver  
Municipal Building  
108 Main Street  
Carver, MA 02330

Stephen G. Gray, Chair  
Sharon Clarke  
Frances Mello  
Eric Mueller  
Mark Poirier  
Kelly DiCarli  
Carver Zoning Board of Appeals  
Municipal Building  
108 Main Street

## McGREGOR LEGERE &amp; STEVENS

Carver, MA 02330

Maura Healy, Attorney General  
One Ashburton Place  
Boston, MA 02108

James F. Kane, President  
A.D. Makepeace Company  
c/o A.D. Makepeace Co.,  
158 Tihonet Road, Wareham, MA 02571  
Robert Karam, Chairman  
A.D. Makepeace Company  
Board of Directors  
James F. Kane, President and Chief Executive Officer

Michael F. Hogan  
President and CEO  
Agawam Development Company  
c/o A.D. Makepeace Company  
158 Tihonet Road  
Wareham, MA 02571

Christopher Ieradi  
General Manager  
Read Custom Soils  
AD Makepeace Company  
Sales Office  
158 Tihonet Road  
Wareham, MA 02571

Dear Sirs and Madams:

This Firm represents ten or more persons domiciled in the Commonwealth of Massachusetts (collectively, the “Ten Residents Group”).<sup>1</sup>

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<sup>1</sup>Members of the Ten Residents Group are: Melissa Ferretti, 9 Everett Road, Buzzards Bay, MA, Herring Pond Wampanoag Tribal Member, Tony Ferretti, 9 Everett Road, Buzzards Bay, MA, Herring Pond Wampanoag Tribal Member (Honorary); Tory Currence, 406 Village Drive, Bourne, MA, Herring Pond Wampanoag Tribal Member; Katherine Hunt, 192 Herring Pond Road, Plymouth MA, Herring Pond Wampanoag Tribal Member; Madison Hunt, 192 Herring Pond Road, Plymouth MA, Herring Pond Wampanoag Tribal Member; Jill Lauzon, 23 Shaw Street, Carver MA, Herring Pond Wampanoag Tribal Member; Jeannine Hunt, 50 Old Indian Trail, Marion, MA, Herring Pond Wampanoag Tribal Member; Taylor Reis-Statis, 174 Lowell Road, Mashpee MA, Herring Pond Wampanoag

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This is a notification of intent to sue pursuant to M.G.L c. 214, sec. 7A (the “Citizen Suit Law”) to prevent ongoing irreparable harm to the environment stemming from A.D. Makepeace Company’s (“ADM”) violation of a bylaw or regulation, the major purpose of which is prevent or minimize damage to the environment.

Mass. G.L. c. 214, sec. 7A defines “damage to the environment” as any destruction, damage, or impairment, actual or probable, to any of the natural resources of the Commonwealth.

The statute provides that damage to the environment shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic districts or sites.

The statute further provides that ten persons domiciled in the Commonwealth can bring an action for equitable or declaratory relief to restrain action causing damage to the environment in violation of a statute, ordinance, bylaw, or regulation, the major purpose of which is to prevent or minimize damage to the environment. The Ten Residents Group intends to bring such an action.

The salutary purpose of this notice under the Citizen Suit Law, besides being a prerequisite to suit, is to give the violator an opportunity to cure and to give enforcement agencies opportunity to take enforcement action. This notice supersedes and replaces the August 9, 2021 notice sent by a Ten Residents group regarding ADM’s commercial mining in Carver.

ADM is conducting commercial mining in the Town of Carver in violation of the Town of Carver Earth Removal Bylaw (ER Bylaw) and permits allegedly issued under the Bylaw, and in violation of the Carver Zoning Bylaw.

ADM is the largest aggregate producer east of the Mississippi River. The website of ADM’s subsidiary, Read Custom Soils, boasts:

“We operate from a state-of-the-art blending facility in Carver, Massachusetts (located in the heart of our enormous reserves of USGA quality sand).”

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Tribal Member; David Weeden, 53 Main Street, Mashpee, MA, Mashpee Wampanoag Tribal Member; John Peters, Jr., 315 Monomoscoy Road, Mashpee, MA; Gertrude Miller, 49 Orchard Road, Mashpee, MA; Bettina Washington, 136 North Avenue, Brockton, MA Aquinnah Wampanoag Tribal Member; Camille Madison, 33 Winslow Drive, Mashpee, MA, Wampanoag Tribe of Gay Head Tribal Member; Linda Coombs, Mashpee, MA Aquinnah Wampanoag Tribal Member; Wendy O’Brien, 3 Red Pine Lane, Wareham, MA; Kathy Pappalardo, 87 Fearing Hill Road, Wareham, MA; Glenn Ayers, 245 Davis Street, Greenfield, MA; Craig Simpson, 425 Gallivan Boulevard, Dorchester, MA; Linden Jenkins, 150 Erie Street, Cambridge, MA; Joseph Graveline, Northfield, MA; Jeff Landry, 77 Birch Street, Plymouth, MA; Rebecca Lipton, 30 Prospect Road, Plympton, MA; Karen Riberio, Plymouth, MA; Dorothy Pollitt, 158 High Street, Carver, MA; Pine DuBois, 83 Elm Street, Kingston, MA; Jimmy Powell, 83 Elm Street, Kingston, MA.

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Read's headquarters in Carver are on Federal Road adjacent to and connected to one of the sites that is the subject of this Notice.

Read's website 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 Carver Zoning Bylaw's prohibition against unauthorized use.

The Earth Removal Bylaw and the Earth Removal Permits issued by the Earth Removal Committee contain conditions relating to, inter alia, the reporting of volumes of earth removed each day of operation, the identity of the trucking company hauling the earth from the site, the number of truck loads hauled from the site, and quarterly payment of fees to the Town of Carver per cubic yard of earth removed. The purpose of these conditions is to enable the Town to achieve the purposes of the Bylaw, 9.1.1, including that the permanent changes in the land will leave it in a safe condition, that earth removal is conducted in a safe manner and with minimal detrimental effect upon the district in which the activities are located.

ADM's commercial mining has destroyed and continues to destroy areas of cultural, spiritual and physical significance to the Indigenous people of the region and areas of historic significance.

ADM's commercial mining has resulted and continues to result in the destruction of natural areas, likely damage to the federally-designated Plymouth Sole Source Aquifer, damage to water ways, and the complete deforestation and obliteration of vast areas of the globally rare Atlantic Coastal Pine Barrens ecosystem, including rare and endangered plant and animal species. The Atlantic Coastal Pine Barrens are one of only three Pine Barrens on earth, including Pitch Pine and Scrub Oak Forest, with soils that have built up over 30,000 years. ADM's commercial mining has removed and continues to remove forests, vegetation and soils that filter and protect the Aquifer, threatening to pollute the groundwater and causing short- and long-term impacts to drinking water, groundwater quality and quantity. The Aquifer provides the drinking water for almost all residents of Carver. ADM's commercial mining and earth removal has irreversibly altered and continues to alter the topography of Carver, causing and contributing to changes in drainage patterns, stormwater runoff and water flow.

ADM's commercial earth mining requires an Earth Removal Permit ("ER Permit") under the Carver Bylaw from the Carver Earth Removal Committee ("ERC"). ADM is conducting commercial mining under permits that have expired and/or were issued improperly and has failed to obtain ER Permits for at least three commercial mining sites in Carver. ADM has violated and is continuing to violate the conditions of the Earth Removal Permits issued by the ERC. ADM is conducting commercial mining in violation of the Carver Zoning Bylaw.

ADM and its consultants have presented half-truths and misinformation about ADM's commercial mining to the Town of Carver in an effort to circumvent the jurisdiction of town boards

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and committees and/or evade enforcement. The ERC has been complicit in allowing ADM to evade the requirements of the Earth Removal Bylaw and other applicable laws.

Members of the Ten Residents Group include Native Americans who consider the land and waters that are the subject of this Notice their ancestral homelands and unceded sovereign territory. They have an interest in the protection and preservation of lands and natural resources that contain the physical and cultural history of their people. Members of the Wampanoag Nation continue to practice their ancestral traditions in the Carver area including hunting, fishing, trapping, and gathering. Carver contains significant Native American historic sites. The sites where ADM has mined and continues to mine were and continue to be significant to the cultural history and survival of the Wampanoag people.

Members of the Ten Residents Group live, work, and recreate in and around the Massachusetts Pine Barrens forests, Coastal Plain Ponds, and waterways, including in areas adjacent to the six sites that are the subject of this action. They have a lifelong interest in the cultural and historic heritage of the Pine Barrens and study recent colonial history as well as the ancient history of the Native American use and occupation of the Pine Barrens and the areas that are the subject of this Notice.

The purpose of the Carver Zoning Bylaw, Article 1, includes the protection of the cultural, historic, and agricultural heritage of the community, which includes Native American history. The area that is the subject of the Notice and the adjacent, contiguous and connected lands, waters, and ecosystems, contain thousands of years of the cultural, spiritual, and physical history of the Wampanoag people. This includes innumerable cultural and archeological sites, including homesites, workshops, and burial sites. Over the decades, ADM's commercial mining and earth removal has destroyed Wampanoag lands, cultural sites, history, and possibly burial sites. These lands continue to be destroyed and threatened by ADM's commercial mining and earth removal operations in Carver, Wareham, and Plymouth. The interests of the Ten Residents Group have been harmed and continue to be harmed by ADM's commercial mining, earth removal, and industrial development on the locations that are the subject of this Notice.

### **A. Unlawful Commercial Mining under the Ruse of Agriculture on Land Zoned RA in Violation of the Carver Zoning Bylaw, the Earth Removal Bylaw, and Earth Removal Permits**

The Carver Zoning 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 in Carver only with the approval of the Carver Earth Removal Committee under the Earth Removal Bylaw.

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The purpose of the Carver Earth Removal Bylaw is to “promote the health, safety, and general welfare of the residents of the Town of Carver, and to ensure that permanent changes in the surface contours of land resulting from the removal and regrading of earth materials will leave the land in a safe and convenient condition for appropriate reuse without requiring excessive and unreasonable maintenance...as well as to provide that earth removal activities shall be conducted in a safe manner and with minimal detrimental effect.”

“Earth Removal” is defined under Article VI of the Carver General Bylaws 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 unless conditionally exempted under Section 9.1.8.” ADM’s commercial mining in Carver at the sites that are the subject of this Notice have not been conditionally exempted under Section 9.1.8.

The Carver Earth Removal Bylaw requires all plans for Earth Removal Permits to include specific information including but not limited to intermediate and final ground levels with those of adjacent property, natural surface water flows and drainage ditches, if any, groundwater elevations before and after removal, a fully complete restoration plan that meets the Bylaw specifications, 10- and 100-year storm effects and may include drainage computations and sediment control plans. The Earth Removal Committee has failed and continues to fail to require ADM to base its earth removal operations on plans that comply with the Bylaw. Section 9.1.5c. ADM has failed to submit plans with its permit applications that comply with the Bylaw. ADM and the Carver Earth Removal Committee consistently and repeatedly ignore the mandates of the Bylaw threatening groundwater quantity and quality and exposing the Aquifer to threats of pollution.

Since at least 2008, the ERC granted applications to ADM to conduct commercial mining on land zoned RA. The ERC unlawfully extended the permits, failed to renew the permits, and ignored enforcement of the permit conditions. The ERC issued the permits without requiring compliance with terms of the Bylaw, including but not limited to the protection of groundwater, site restoration plans, and the posting of a bond. During the years that the ERC issued the permits and allegedly oversaw their administration and enforcement, the ERC was improperly constituted in violation of 9.1.3 and all or most of its members had conflicts of interest that prohibited them from deliberating on the permits. This included the former long-time chairman and other members of the Committee who had ongoing business dealings with ADM. The current chairman continues

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to conduct business with ADM and has a financial interest that prohibits him from deliberating on the implementation and enforcement of the permits under the State Ethics Law, G.L. c. 268, Section 19.

To obtain earth removal permits for its commercial mining since 2008, ADM made false representations that the land zoned RA would be used for agricultural purposes following the earth removal. It submitted plans through its engineer, GAF Engineering, to the ERC showing cranberry bog infrastructure. Over a decade since the earth removal permits were issued, almost none of the cranberry bogs, ponds, and reservoirs have been built.

ADM currently is conducting or has conducted earth removal from the locations listed below from at least 2008 through the present under the false representation that the land would be used for agricultural purposes following the commercial mining activity. That was and is a pretext to obtain permits and conduct its commercial mining operations at various sites in Carver.

ADM has conducted and/or continues to conduct commercial mining at the following sites under the false pretense of “agricultural purposes” with invalid, improperly issued and/or expired Earth Removal Permits from the Carver Earth Removal Committee. Commercial mining is not an allowed use in the RA District and these operations at these sites also violate the Zoning By-Law.

**SITE 1** Map 131: Lot 2-1C: “59 Federal Road.” ADM has been conducting commercial mining on this 100-acre site since mid-2020 under a permit from the ERC that was improperly issued. Plans produced by GAF Engineering and submitted to the ERC on behalf of ADM purport to show that commercial mining of 4,045,500 million cubic yards is necessary for the construction of 18 acres of cranberry bogs and a reservoir. These are not credible plans. The current, ongoing commercial mining at this 100-acre site is causing deforestation of Prime Forested land and other natural resources. ADM’s claim that this extensive commercial mining operation is necessary to build 18 acres of cranberry bogs and a reservoir is not credible and the commercial mining is not an allowed use in this RA district. The ERC permit was improperly issued without proper public notice and hearing, it has expired, and lacks mandatory conditions required by the Bylaw.

**SITE 2** Map 131: Lot 2-4: ADM has been conducting commercial mining on this 538-acre site zoned RA since about 2008. The ERC issued at least three Earth Removal Permits to ADM under the pretense that ADM’s commercial mining was for the purpose of building cranberry bogs and a tailwater recovery system. The bogs and tailwater recovery systems depicted on ADM’s plans from 2012 and 2017 produced and submitted by GAF Engineering in order to obtain ERC permits have not been built. These are not and were never credible plans for an agricultural operation. ADM’s subsidiary, Read Custom Soils, uses a portion of this site for its industrial sand and gravel sales and distribution system, including mining materials and using access roads. These are not credible plans. ADM’s commercial mining is not an allowed use in this RA district. The ERC permits were improperly issued, have expired, and/or lack mandatory conditions required by the Bylaw.

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**SITE 3** Map 131: Lot 1-4: ADM has been conducting commercial mining at this location, Hammond Street at the intersection of Federal Road, since at least 2019. Plans produced by GAF Engineering and submitted to the ERC on behalf of ADM to obtain the commercial mining permits purport to show that the mining is necessary to construct an agricultural pond. These are not and were never credible plans for an agricultural operation. ADM is mining in the Aquifer and groundwater has been exposed at the site.

### **B. Commercial Mining Unlawfully Conducted on Land Zoned RA in Carver Without Earth Removal Permits**

Since approximately 2014, ADM has been conducting commercial mining on land zoned RA without Earth Removal Permits under the false pretense that this earth removal was “site preparation” for industrial solar energy generating stations and storage facilities. The sites are as follows.

**SITE 4 (Without a Permit)** Carver Assessor’s Map 131, Lots 1-1, 1-2, 1-3, and 5.0: known as “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. 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.

**SITE 5 (Without a Permit)** Carver Assessor’s Map 131, Lots 2-1, 2-2, 2-3: known as Federal (or Tihonet West) Solar. Prior to construction of the Borrego Solar industrial energy generating station at this approximately 83-acre site, ADM used the site from about 2014 to 2020 for commercial mining removing an unknown quantity of earth. The commercial mining was and is not for agricultural purposes nor was it or is it necessary and incidental to ADM’s agricultural operations or an industrial use. The total volume of earth was never reported to or accounted for by the Earth Removal Committee.

**Site 6 (Without a Permit)** Carver Assessor’s 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.

## **II. Intent to File Suit**



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On June 14, 2021, the undersigned, representing Save the Pine Barrens, Inc., a non-profit corporation, served a written demand for enforcement upon the Carver Earth Removal Committee. On June 29, 2021, he served a written demand for zoning enforcement upon the Carver Building Inspector. There was no response to either demand.

Save the Pine Barrens, Inc. has made multiple oral and written requests and demands upon the Carver Earth Removal Committee, the Carver Building Inspector/Zoning Enforcement Officer and the Carver Zoning Board of Appeals to enforce their respective Earth Removal Bylaw and Zoning Bylaw. These requests and demands have been totally ignored. Meanwhile, ADM is continuing its commercial mining and causing irreversible damage to the environment within the meaning of the Citizen Suit Law.

The Ten Residents Group requests the government addressees of this letter to immediately take enforcement action against ADM. Pursuant to G.L. c. 214, Sec. 7A, the Ten Residents Group may file suit in Superior Court for declaratory and injunctive relief twenty-one days after this Notice. They intend to do so.

Thank you.

Yours very truly,



Michael J. O'Neill