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September 28, 2022

Robert J. Ieronimo, Chair
Earth Removal Committee
Town of Carver
Municipal Building
108 Main Street
Carver, MA 02330

Via email to
earthremoval@carverma.gov

and

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Townsend, Chair
Board of Selectmen
Via Mark.townsend@carverma.gov

Re: Demand for Enforcement of the Carver Earth Removal Bylaw against:

Slocum-Gibbs Cranberry Co.
John Garretson, III, President
Rear Tremont Street, Map 97, Lot 2
103 to 107 Wareham Street, Map 128, Lot 2

Triple J. Screening & Trucking Co.
John Shurtleff, President

Dear Mr. Ieronimo,

This is a formal and final demand (“Demand”) to the Earth Removal Committee of the Town of Carver (“ERC”) to perform a clear-cut duty it owes the public, namely enforcement of the Earth Removal Bylaw, Chapter 9.1 of the Town of Carver (the “Bylaw”)

This is a demand that the ERC fully enforce the Bylaw against Slocum Gibbs Cranberry Co. (“Slocum-Gibbs”) and Triple J. Screening and Trucking Co. (“Triple J”) to obtain an accurate accounting of the volume of earth Slocum Gibbs has removed from Carver since 2004, require a forensic audit to verify the earth removal fees due under Bylaw, order Slocum Gibbs to cease and desist all earth removal and related activities in Carver, and take any other enforcement action that the ERC deems appropriate at its next special or regular meeting. The ERC’s duty to enforce the Bylaw is contained in Bylaw Section 9.1.9a and 9.1.9f.

This Demand is made by Community Land & Water Coalition (“CLWC”), a project of Save the Pine Barrens, Inc., whose members who live work and reside in Carver. CLWC and its members are persons who are also aggrieved by these violations of the Bylaw and the ERC’s failure to enforce the Bylaw. Before filing a complaint for Mandamus in Court and pursuing other legal remedies, CLWC on behalf of itself and its members, makes this final demand upon the ERC to perform its mandatory, non-discretionary duty to enforce the Bylaw.

The subject of this Demand is earth removal on land owned by Slocum-Gibbs located at:

1. Map 92, Lot 2, Rear Tremont Street: 27-acres of earth removal, estimated at 450,000 cubic yards
2. Map 128, Lot 2-0-R, 103 to 107 Wareham Street: about 10 acres of earth removal, estimated at least 250,000 cubic yards

Slocum Gibbs had been conducting unpermitted Commercial Mining¹ at these two locations (the “Sites”) since about 2004. Triple J is involved in the earth removal with Slocum Gibbs including removing earth materials from one or both of the sites.

Slocum-Gibbs is owned and operated by John H. Garretson, III, its President, Treasurer, and a Director. See, MA Secretary of State, ID # 04210114.² Mr. Garretson was a member of the ERC and served as its Chair from at least 2004 to Spring 2021 during which time his company Slocum-Gibbs was conducting earth removal in Carver at the sites.

John Shurtleff acted as a member of the ERC for decades until Spring 2021. State records show Shurtleff is President, Treasurer, Secretary, Director and Vice President of Triple J. Screening & Trucking, Inc. Secretary of State ID # 043455167.

¹ Bylaw Section 9.1.8 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.” Slocum-Gibbs earth removal is not and could not be exempt under Section 9.1.8.

²Garretson is also a director of Garretson Cranberry Co., Inc., manager of Red Gold Realty LLC and trustee of Sand and G Real Estate Trust. Related entities that may be involved in the earth removal activities identified in this letter.

**Purpose of the Bylaw is to Ensure that Earth Removal
Will Cause Minimal Detriment**

The stated 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.” Bylaw Section 9.1.1.

To achieve these purposes the Bylaw states that “Except as provided otherwise in this By-law (see Section 9.1.8) no earth shall be removed from any lot in the Town of Carver without the issuance of a permit from the E.R.C.” Bylaw Section 9.1.4a.

Permits require Site Plans, Conditions, fees, monitoring and reporting, including site plans that show groundwater elevations before and after, surface water flows and restoration to protect groundwater. Bylaw Sections 9.1.4, 9.1.5, 9.1.7.

Removing sand and gravel from Carver permanently eliminates filtration and protection of the Plymouth Carver Sole Source Aquifer, federally designated by the U.S. Environmental Protection Agency as the sole drinking water for the region, over 200,000 people.

The Bylaw Section 9.1.9a provides that if the ERC believes there is a violation of plans, specifications, or conditions or if the ERC believes the actual conditions or operations constitute a public nuisance or public danger, the ERC shall order a cease and desist, pending a public meeting within 7 days. Thus, the ERC has a non-discretionary duty to take action to enforce the bylaw when it believes there is a violation. It has a duty to investigate unlawful earth removal when presented with credible information.

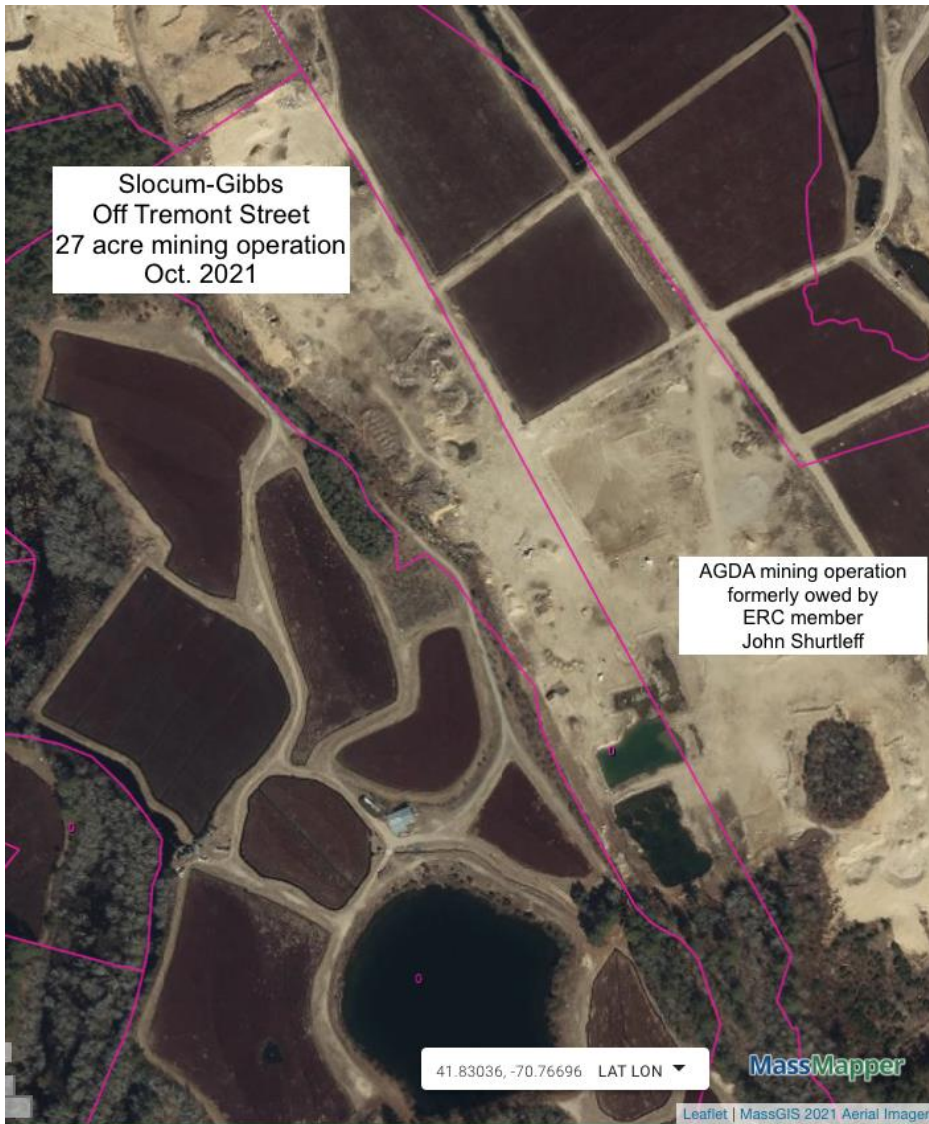
Evidence of Earth Removal at the Sites

SITE 1, Tremont Street

Site 1 is located at Rear Tremont Street Site, Map 97, Lot 2-0R. It is owned by Slocum-Gibbs. This is the same location referenced in a 2004 earth removal permit application from Slocum-Gibbs to remove 450,000 cubic yards of earth material. No permit was ever granted, according to Town records. Satellite images show Slocum-Gibbs in fact conducted the site anyway.

Satellite images from 2006 to present show the progression of land clearing, tree cutting and removal, aggregate mining and processing, and sand washing on the site. Images show excavation into the groundwater Aquifer, removal of sand from the Aquifer, and the creation of ponds. Over time, the ponds were filled with debris and covered.

As of 2022, most of the 27-acre site has been completely leveled, denuded and stripped as shown on the image from October 2021 below. An unknown quantity of earth material, at least 450,000 cubic yards, has been transported off site.



SITE 2, Wareham Street

Site 2 is located at 103 to 107 Wareham Street, Map 128, Lot 2-0R, a 237-acre parcel. It is owned by Slocum-Gibbs.

Satellite images from about 2004 to present show the progression of land clearing, tree cutting and removal, aggregate mining and processing, and sand washing on the site.

As of 2022, the about 10 acres have been completely leveled, denuded and stripped as shown on the image from October 2021 below. An unknown volume of earth has been removed from the site, believed to be at least 250,000 cubic yards.



Failure to Require Slocum-Gibbs to Comply with the Bylaw

Slocum-Gibbs conducted earth removal in Carver without obtaining earth removal permits. Town records show no earth removal permits exist for Slocum-Gibbs. There is no record to show Slocum-Gibbs is exempt from the requirement for an earth removal permit. See, Bylaw Section 9.1.8, “Earth Removal Conditional Exemptions”.

On August 8 and 17, 2022, CLWC submitted Public Records Requests to the Town for all records for Slocum-Gibbs’ earth removal, including Earth Removal Permits, if any, fee payments, plans, quarterly truck logs, inspection reports, and correspondence. **The Town produced no records showing Slocum-Gibbs complied with the Bylaw or obtained an earth removal permit.**

The Town produced only two documents relating to Slocum-Gibbs’ earth removal in Carver. On September 22, 2022, Elaine Weston, on behalf of the ERC provided:

1. A 2-page form, “Carver Earth Removal Special Permit Application” dated September 14, 2004 from Slocum Gibbs to remove 450,000 cubic yards over 5 years at Map 97, Lot 1 off Tremont Street.

2. A document entitled “License” between Triple J Corporation and Griffith’s Cranberry Co. Inc. to swap sand for use of an access road over Griffith’s property “for the sole purpose of earth and material removal from property of Slocum Gibbs Cranberry Co ...over Lot 1 on Assessor’s Sheet 97....” The license is signed by John Shurtleff, for Triple J Corporation.

Slocum-Gibbs Earth Removal Is Not “Agricultural Excavation”

Slocum-Gibbs earth removal of at least a total of 700,000 cubic yards from the 2 sites is not “Agricultural Excavation” under the Bylaw. See, Bylaw Section 9.1.2. The value of the earth removed is millions of dollars, as much as \$5 million. The excavation was not “necessary and incidental to prepare a site for a specific agricultural use.” Rather, it is and has been, for over 18 years, **the primary use of the Sites.** *Old Colony Council-Boy Scouts of Am. v Zoning Board of Appeals of Plymouth*, 31 Mass. App. Ct. 46 (1991) (where “net effect” of the proposed earth removal activity to create a cranberry bog was so great that it could not be said to be incidental to the cranberry bog); *Coggin v. City of Westfield*, Land Court (9/24/2009). As of 2022, there are no agricultural projects built on the sites so the earth removal was not for the purpose of building an agricultural project. Further the land is zoned “residential-agricultural.” Commercial mining on the land is not the “correct land use” under the Bylaw, Section 9.17a. Therefore, the commercial mining did not qualify for an earth removal permit.

(In a related matter, Slocum-Gibbs is attempting to develop Site 2 without fully disclosing the environmental impacts of the 10-acre earth removal operation. In May, 2022, Slocum-Gibbs submitted an “abbreviated notice of resource delineation” to the Carver Conservation Commission for Site 2, including the 10-acre earth removal area. In September, 2022, Slocum-Gibbs presented subdivision plans to the Carver Planning Board for Site 2. Slocum-Gibbs failed to disclose to the Conservation Commission and Planning Board the nature and extent of the 10-acre earth removal operation and the impacts on topography and groundwater. This was a material misrepresentation. See, April 1, 2022, *Beal+Thomas Application for Preliminary Subdivision, Gibbs Street Subdivision* to the Carver Planning Board.)

By allowing Slocum-Gibbs to evade the Bylaw and to conduct unlawful commercial mining, the ERC has allowed Slocum-Gibbs to avoid the cost and expense of following the Bylaw. This includes evading earth removal fees, permit application requirements and conditions that protect the health, safety and general welfare of residents, ensure that permanent changes in the surface contours of the land leave the land in a safe and convenient condition, do not damage public and private property, and are conducted in a safe manner and with minimal detrimental effect. See, Section 9.1.1.

By evading the Bylaw, Slocum-Gibbs is conducting earth removal in a manner that is negatively impacting the environment including the federally designated Plymouth Carver Sole Source Aquifer. Bylaw, Section 9.1.1.

Garretson and Shurtleff Conflicts of Interest

During the time that he was ERC Chair Garretson and Shurtleff was a purported ERC member, they had a duty to enforce the Bylaw and prevent unpermitted earth removal in Carver. They were precluded from participating in any matters involving oversight of Slocum-Gibbs or Triple J's compliance with the Bylaw. By ignoring the Bylaw requirements and conducting earth removal without permits, Garretson and Shurtleff engaged in self-dealing. Garretson gained financially from the excavation and sale of sand and gravel from the Sites. Shurtleff gained financially from hauling sand and gravel for Slocum-Gibbs.

The current ERC Chair, ERC members and Selectboard members knew or should have known that Slocum-Gibbs and Shurtleff were engaged in earth removal without complying with the Bylaw.

DEMAND

CLWC hereby demands that the ERC:

- Order John H. Garretson, III, Slocum-Gibbs, its affiliates, subsidiaries, officers, directors, contractors, agents and employees to cease and desist **all** Removal³ of Earth⁴ in Carver,
- Require a forensic audit by an independent third party expert approved by CLWC of the volume of earth Slocum-Gibbs has removed from Carver and the amount of earth removal fees owed to the Town of Carver,
- Order Slocum-Gibbs to pay all Town Counsel and expert costs incurred in connection with investigating and addressing Slocum-Gibbs' violations,
- Seek criminal penalties against Slocum-Gibbs, its affiliates, officers and directors, including Garretson and those acting in concert with him, including Triple J and Shurtleff, for violations of the Bylaw of up to \$100.00 each day or part thereof that such violation has occurred since 2004, under Section 9.1.9d,
- Order restoration of the Sites as per Bylaw, Sections 9.1.5c and 9.1.9,
- Order Slocum-Gibbs to post a bond or other performance guarantee under 9.17e based on the estimated cost of restoration of the Sites,

³ Bylaw Section 9.1.2 defines Removal as "stripping, excavating, commercial mining, agricultural excavation, excavation due to construction or blasting earth and rearranging it on the same lot or carrying it away from that lot."

⁴Bylaw Section 9.1.2 defines Earth, as "all forms of soil, including but not limited to clay, gravel, hard pan, loam, peat, rock or sand.

- Order Triple J. Screening, Inc., John Shurtleff, Jr. and any persons acting in concert with them, including affiliates, subsidiaries, officers, directors, contractors, agents and employees, to cease and desist from engaging in the excavation, processing, or transportation of earth materials in the Town of Carver, and
- Take any other enforcement action that the ERC deems appropriate at its next or special meeting, pursuant to 9.1.9a.

You are requested to respond to this Demand within 14 days. If the ERC continues to fail to enforce the Earth Removal Bylaw, CLWC, on behalf of itself and its members including residents of Carver whose health, safety and welfare is harmed by the ERC's ongoing failure to enforce the Bylaw, will pursue legal action.

Very truly yours,

Margaret E. Sheehan, Esq.
158 Center Hill Road
Plymouth MA
ecolawdefenders@protonmail.com
508-259-9154 cell

Carver Town Administrator, Robert.Fennessy@carverma.gov
Carver Planning Board
Carver Conservation Commission