

SAVE THE PINE BARRENS  
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February 24, 2022

Via Certified Mail: #7109 0700 0001 7987 3283  
Return Receipt Requested  
And Via Email: Mass DEP SERO [Daniel.Gilmore@mass.gov](mailto:Daniel.Gilmore@mass.gov)

Dan Gilmore  
Wetlands Program Chief  
MassDEP Southeast Regional Office  
20 Riverside Drive  
Lakeville, MA 02357

Re: Request for Superseding Determination of Applicability under 301 CMR 10.05(c)  
Location: 0 Ward Street; Map 120, Lot 5-R  
**No DEP File Number assigned by Carver Conservation Commission**

Dear Mr. Gilmore,

This is an appeal by Save the Pine Barrens, Inc. ("STPB") on behalf of at least Ten Residents of Carver<sup>1</sup> ("Ten Residents") of the Carver Conservation Commission's failure to act on a Request for Determination regarding a commercial mining project on land subject to jurisdiction under the Wetlands Protection Act ("the Act"). STPB seeks to enforce the Act and regulations in light of the Commission's failure to do so.

On October 15, 2021 Cedar Meadow Cranberry, Inc. ("Cedar Meadow") obtained an Earth Removal Permit (# 101) from the Carver Earth Removal Committee purporting to authorize Cedar Meadow to excavate 10 acres of undisturbed forested wetlands to remove 149,353 cubic yards of earth material. The excavation area is on Map 120, Lot 5, Carver Assessor's Map ("the Project Site"). **Exhibit 1** attached hereto is a portion of Carver Assessor's Map 120 showing the location.

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<sup>1</sup> Mary Dormer, 162 Plymouth Street, Carver; Wendy Lock, 72 Plymouth Street, Carver; Nancy Ryan, 3 President's Way, Carver; Betty Sullivan, 38 Roosevelt Ridge, Carver; Wes Swain, 6 Lakeham Driver, Carver; Jennifer McNamee, 1 Captain Perkins Driver, Carver; Dottie Pollitt, 158 High Street, Carver; Thomas Pollitt, 158 High Street, Carver; Deb Rooney, 160 High Street, Carver; James Rooney, 160 High Street, Carver; Cynthia Beard, 168 High Street, Carver; Bill Beard, 168 High Street, Carver; Josh Beard, 168 High Street, Carver.

The Earth Removal Permit #101 is attached hereto as **Exhibit 2** (“the Permit”).

The alleged purpose of the earth removal work is “reservoir expansion.”

It is undisputed that the Project Site is jurisdictional wetlands under 310 CMR 10.02. MassMapper’s DEP GIS shows that the 10 acre parcel is wetland Stream, Wooded Swamp Deciduous, Shrub Swamp, Shrub Swamp, Biomap 2 Critical Natural Landscape. Estimated Habitat of Rare Species and Core Habitat are nearby or adjacent to the Project Site.

Cedar Meadow Cranberry has not filed and RDA or notice of intent under the Act and has not established eligibility for an agricultural exemption under 310 CMR 10.04.

In an effort to enforce the Wetlands Protection Act with regard to this commercial mining project, on December 15, 2021, STPB sent a Request for Determination of Applicability (“RDA”) to the Commission by Certified Mail. A copy of the RDA is attached as **Exhibit 3** with four exhibits. Attached to STPB’s RDA are two MassMapper GIS maps showing wetlands on the Project site.

#### **Carver Conservation Commission Public Hearing on STPB’s RDA**

The Commission held a public hearing on STPB’s RDA on February 16, 2022. A copy of the Commission’s February 16, 2021 Agenda containing the public hearing announcement is attached as **Exhibit 4**. The hearing can be viewed on the Area 58 official starting at Minute 39:51 <https://www.youtube.com/watch?v=sUMku1RvAvA>

At the February 16, 2022 public hearing, the Commission acknowledged that the Project Site is subject to jurisdiction under the Act. But, it claimed that the Project is exempt under 301 CMR 10.04(c)(1)(g) as *Normal Improvement of Land in Agricultural Use*. The Project would not need an exemption if the land was not an area subject to jurisdiction under 310 CMR 10.02 and the Act. The Commission confirmed that it never received filing under the Act from Cedar Meadow for the commercial mining described in the Earth Removal Permit and stated, “we don’t have to give you plans” to show that the work is exempt. Meeting recording at about minute 46.

The Commission and Town Counsel made repeated admissions that that the land is jurisdictional wetlands claiming the work was exempt:

Meeting recording at 40:00:

Chair: “...this application I believe is not properly before us because the work is exempt [as normal improvement of land in agricultural use] and I would say this application is moot, moved and seconded [that this work is exempt] due to work that is exempt on cranberry bogs....”

Meeting recording at 52:46:

Chair: The earth removal work is exempt as normal improvement of land in agricultural use, “that’s what we determined”

Meeting recording at 53:

Chair: The RDA application is “rendered moot, as work is exempt” as agricultural work on cranberry bogs.

At the February 16, 2022 public hearing the Commission failed to act on the RDA, and the Commission declared STPB’s RDA “moot” because the Commission had previously **at some point determined the Project was exempt from the Act** even though it has no records of this. Chair Savery Moore stated the Commission will not issue a Form 2 decision on STPB’s RDA, thereby violating 310 CMR 10.05(3)(b)(1) which states that “within 21 days after the receipt of the Request for Determination of Applicability, the conservation commission **shall issue** a Determination of Applicability, Form 2.”

This request for a Superseding Request for Determination seeks to require Cedar Meadow to establish by credible evidence that the commercial mining operation is *Normal Improvement of Land in Agricultural Use* under 310 CMR 10.04. This includes showing the Project falls within 10.04©(1)(a)-(h) and will not cause a “net loss of flood storage capacity” and that there is a certified farm Conservation Plan (CP) which relates to work to be conducted in a Bordering Vegetated Wetland, as required by 310 CMR 10.04©(1)(g)(2).

The earth removal will occur on land not currently in agricultural use. The area to be excavated is 10 acres. Under 310 CMR 10.04©(1)(g) the maximum size for an agricultural pond that is eligible to seek an agricultural exemption is 10,000 square feet. Cedar Meadow’s pond shown on the earth removal plans (the only publicly available plans) is 435,600 square feet, far exceeding the eligible size for the agricultural exemption.

Cedar Meadow does not have an approved forest cutting plan under G.L. c. 132, Sections 40-46 and the regulations, 302 CMR 16.00. This is required for logging on private property.

Twenty-one days have passed and the Commission has failed to issue an RDA, Form 2 as required by 310 CMR 10.05(3)(b)(1).

This request is filed in a timely manner, within ten business days after the Commission failed to act to issue an RDA Form 2 at its February 16, 2022 public hearing on STPB’s RDA.

Attached as **Exhibit 5** is a copy of the filing fee and filing fee transmittal form which have been sent to the DEP Lockbox.

The Ten Residents have standing to make this Request pursuant to 310 CMR 10.05(7)(a)(5) as residents of the town where the land is located.

In sum, the Commission, Conservation Agent and Town Counsel **admit that the Project Site is subject to Wetlands Protection Act jurisdiction and claim the 10-acre commercial mining operation in a wetland is an exempt agricultural activity but cannot document the alleged decision they made.**

On behalf of the Ten Residents group, STPB hereby requests that MassDEP issue a positive Superseding Determination of Applicability for the foregoing reasons.

All work should be prohibited until Cedar Meadow complies with the Act and regulations and all appeal periods have expired.

Very truly yours,

*Margaret E. Sheehan*

Margaret E. Sheehan

Mail to via Certified Mail:

Cedar Meadow Cranberry, EJ Pontiff 9 R Bay Colony Driver, Plymouth MA 02360.  
Carver Conservation Commission, 108 Main Street, Carver MA

EXHIBIT LIST  
CEDAR MEADOW SUPERSEDING RDA

Exhibit 1- Assessors Map 120

Exhibit 2-Earth Removal Permit

Exhibit 3- SPTB's RDA to Carver, Dec. 15, 2021

Exhibit A-MassMapper showing wetland

Exhibit B-MassMapper showing wetland

Exhibit C-Cedar Meadow Earth removal plan from Earth Removal Permit

Exhibit 4-Google Earth Locus map

Exhibit 4-Carver Conservation Commission Public Hearing Notice, Feb. 16, 2022

Exhibit 5-Filing Fee Form

# EXHIBIT 1

# EXHIBIT 2

# EXHIBIT 3



# EXHIBIT 4

# EXHIBIT 5

