



A project of Save the Pine Barrens, Inc.  
[www.savethepinebarrens.org](http://www.savethepinebarrens.org)

September 26, 2022

Michael King, Chair  
Planning Board  
Town of Wareham  
Town Hall  
54 Marion Road  
Wareham MA 02571

Via email to:

Kenneth Buckland, Director of Planning and Community Development  
Sonia Raposo, Assistant to the Planning Department

Re: Agenda Item, September 26, 2022 Planning Board Meeting

**Extension Request from New Leaf/Borrego Solar/AD Makepeace,  
Special Permit and Site Plan Review  
150 Tihonet Road**

Case No. 9-20, Assessors Map 111, Lot 1000-C filed December 29, 2020

Dear Chair King and Board Members,

Community Land & Water Coalition (CLWC) urges the Planning Board to deny the request by New Leaf Energy for an extension of Special Permit/Site Plan Review Case No. 7-20 for the reasons below. CLWC is a project of Save the Pine Barrens, Inc., whose members include persons who live work and reside in Wareham and will be aggrieved by a decision of the Planning Board to extend the Site Plan Review/Special Permit (SPR/SP) in Case No. 9-20.

New Leaf Energy submitted a letter dated September 21, 2022 asking the Board for an extension of the Borrego Solar Systems, Inc. (Borrego) approval that expires on December 28,

2022. Case 9-20 is a 67+ acre ground mounted solar installation<sup>1</sup> that will clear-cut forested lands on the eastern shores of Tihonet Pond (the Wankinko River) in an R-60 District. The project will have about 38,000 solar panels, inverters, transformers and battery storage.

The land is owned by AD Makepeace Co. The project is part of the AD Makepeace/Borrego Solar/New Leaf solar and battery project complex of about 200 acres along the Wankinko River in Wareham extending from 160 Tihonet Road (included sand and gravel removal) to about 50 acres at 150 Tihonet Road, 50 acres at 140 Tihonet Road (about 1 million cubic yards of sand and gravel removal proposed), and 44 acres at 27 Charge Pond Road. All of this land is or will be clear-cut of forests and some of it strip mined for industrial earth removal.

**1. Borrego’s alleged transfer of the SPR/SP to New Leaf is invalid: it had no right to unilaterally transfer the SPR/SP to New Leaf without notifying the Board and obtaining its approval.**

According to New Leaf, “All Borrego’s rights and obligations under this Special Permit and Site Plan Approval have been transferred to New Leaf.” Borrego cannot unilaterally transfer the permit to a different legal entity – just like one cannot transfer their driver’s license to another person: the Planning Board that granted the SPR/SP must approve the transfer, following notice and hearing.

New Leaf admits it is a separate and distinct entity from Borrego. The Press Release referred to in New Leaf’s September 21, 2022 letter states Borrego “completed the spin off and sale of its development business to ECP. The new company will be named New Leaf Energy and will be operated as **an independent business** by ECP.” It states that **New Leaf Energy is a “stand alone business...formed out of Borrego’s former development business management team.”** ECP was “founded in 2005, [and] is a “leading investor across energy transition, electrification and decarbonization assets.” (Emphasis supplied)

**2. The SPR/SP should not be extended because it was unlawfully granted before the Conservation Commission issued its Order of Conditions**

In 2020, Borrego violated the Bylaw, Site Plan Review Section 1551 by not submitting an Order of Conditions from the Conservation Commission with its application.

See, Section 1551, “Relation to Conservation Commission Approvals.”

**The Bylaw Section 1551 forbids closing the hearing and granting SPR/SP prior to the Conservation Commission Order of Conditions.** The Commission’s Order was issued January 28, 2021 a month after the Planning Board closed the hearing and voted. See, Conservation Commission Case SE76-26113.

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<sup>1</sup> Information cited here is obtained from the Beals+Thomas Application for Site Plan Review to the Planning Board, June 8, 2020.

The Planning Board should not extend a SPR/SP that was unlawfully issued in the first place.

### **3. The COVID permit extension law does not apply.**

New Leaf asks the Board to apply the COVID permit extension law and to extend the permit to June 15, 2023. The COVID law does not apply to Case 9-20. The law applies only to permits “in effect or existence as of March 10, 2020” which New Leaf’s permit was not. It was issued on December 29, 2020 – **nine months after March 10, 2020**. New Leaf urges the Board to “take a position” that its permit is covered by the COVID permit extension law. The Board should refuse – it cannot lawfully apply the COVID permit extension law to Case 9-20.

(The law extending local permits during the COVID 19 state of emergency was enacted by legislation, not Executive Order as New Leaf asserts. See, Section 17 of Chapter 53, Acts 2020, modified in parts by Sections 33-38 of Chapter 201, Acts 2020. A copy of the relevant law is attached.)

### **4. An extension would be unreasonable and arbitrary and capricious under the circumstances.**

Even if New Leaf’s extension request is considered timely, it should be denied. It would be unreasonable for the Board to allow an extension without a new permit application and public hearing because the facts and circumstances have changed.

An extension would be inconsistent with the purpose of Site Plan Review includes ensuring that a project does not “result in a detriment to the neighborhood or environment.” Site Plan Review must give “due consideration” to protection against detrimental or offensive uses, providing adequate surface water drainage, buffers, “protection of environmental features on the site and adjacent area”, coordinating and improving systems of water supply, wetlands, water courses, and other features that support the neighborhood. Bylaw Section 1510. The purpose of the Zoning Bylaw as a whole is much the same, and includes conserving the value of land and buildings, including “the conservation of natural resources and the prevention of blight and pollution of the environment.” Bylaw Section 130, Purpose.

In the approximately 2.5 years since Borrego submitted the solar application, the facts, circumstances, and community priorities have changed dramatically.<sup>2</sup> New research has emerged on the negative impacts of this type of ground mounted industrial solar and battery storage in a residential neighborhood that was not previously considered by the Planning Board. This includes impacts on the Plymouth Carver Sole Source Aquifer, wetlands, water bodies such as the Parker Mills Pond adjacent to the site, leaching of “forever chemicals” PFAS from solar

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<sup>2</sup> The Board has carefully considered this new information in other hearings on applications for industrial ground-mounted solar projects. Some information is provided in Attachment B. CLWC would be pleased to present more information to the Board.

panels, and the dangers and risks of lithium-ion energy storage batteries. Wareham Town Meeting voted on a solar moratorium and then passed a new solar Bylaw. Keeping pace with this new information and responding to community concerns and priorities is what the zoning process is intended to do.

### **A. Wetlands and Water Issues**

Issuing the SPR/SP without the Order of Conditions not only violated the Bylaw, Section 1551, but deprived the Planning Board of the benefit of the Conservation Commission's Findings and Conditions under the state Wetlands Protection Act and Town Wetlands Bylaw. This limited the Planning Board's ability to address Article 15 SPR/SP factors on wetlands, waterways, wildlife and other values that the Wetlands Order of Conditions protects.

The Site borders on Tihonet Pond and abuts 140 Tihonet Road, another approximately 50 acre ground mounted solar project proposed by AD Makepeace and Borrego/New Leaf. That project will flatten a hill one of the highest hills in Wareham by removing about 1 million cubic yards of sand and gravel. This will entirely change and alter the topography, stormwater runoff papers, groundwater recharge rates, and possibly groundwater flow direction of the Sole Source Aquifer. AD Makepeace and Borrego/New Leaf have unlawfully segmented their four solar projects on Tihonet Road and downstream on Parker Mills Pond, in violation of every fundamental zoning principle.

Downstream, the Parker Mills Dam on Parker Mills Pond is being removed, which will likely change the water hydrology of what is the Wankinko River that flows from the most northerly solar sites at 160 and 150 Tihonet Road, past 140 Tihonet Road, over the Parker Mills Dam into the site of 27 Charge Pond Road, the related solar site. All of this new information mandates the Board's reconsideration of the Evaluation Standards, Natural Features, Section 1541 of the Bylaw and the Conservation Commission Order of Conditions.

### **B. Battery Storage Issues**

The size, location, safety hazards and emergency response protocols for the on-site battery storage system was barely, if at all, addressed in the 2020 Site Plan Review and public hearing. New research and community concerns about industrial battery storage systems such as this, located adjacent to homes, should be revisited based on new information.

The Board should require a new permit application that fully discloses the scope, scale and risks of battery storage at this location. The Board should revisit amount of "mutually agreed upon funding to fire department to provide training on emergency response to solar arrays and energy storage facilities," Decision, Condition 10.

### **C. Decommissioning Issues**

Current economic factors and the glut of solar panels that will require recycling in 20 years when the project is decommissioned require that the Board revisit the Decommissioning Proposal, Conditions 6, 7.

**D. Inadequate “mitigation”**

The Board should revisit the “mitigation payment” of \$22,225.00 to be made to the town “to offset the economic benefit associated with the timber harvest”, Decision, Condition 9. This is inadequate under current circumstances and based on new knowledge about the negative impacts to the community and the environment of ground mounted solar at this location. It is miniscule compared to New Leaf’s profits from the project.

**E. New Leaf has not shown good cause for an extension**

After urging the Board to misinterpret the COVID law and unlawfully apply it to the company’s permit, New Leaf urges the Board to alternatively grant a two-year extension to 12/29/2024 based on its unsupported claim of “good cause.” New Leaf has not shown good cause. It makes vague and generalized claims about its ability to connect to the electric grid. There is no documentation to support this claim -- it is mere hearsay. The real reason could be any number of issues – inadequate financing, issues with state regulators, etc.

When balanced against new information about battery storage, the negative impacts of clearing forests for over 30,000 ground mounted solar panels and battery storage systems, the public’s concerns and the purposes of the Bylaw New Leaf’s vague claims are insufficient.

**CONCLUSION**

Board should deny New Leaf’s request. If New Leaf and AD Makepeace want to site a ground-mounted solar project at 150 Tihonet Road they are required to submit a new permit application which requires a public hearing and a new vote.

Very truly yours,

*Margaret Sheehan*

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Cc: Wareham Conservation Commissio

## Attachment A

### COVID PERMIT EXTENSION LAW

Modified in parts by Secs. 33-38 of [Chapter 201, Acts 2020](#). The relevant portion of Chapter 53 of the Acts of 2020 states,

SECTION 17. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Permit”, a permit, variance, special permit, license, amendment, extension, or other approval issued by a permit granting authority pursuant to a statute, ordinance, bylaw, rule or regulation, whether ministerial or discretionary.

“Permit granting authority”, a local, district, county or regional official or a local, district, county or regional multi-member body that is authorized to issue a permit.

(b) Notwithstanding any general or special law, rule, regulation, charter, ordinance or by-law to the contrary, during the governor’s March 10, 2020 declaration of a state of emergency.. **(iii) a permit in effect or existence as of March 10, 2020, including any deadlines or conditions of the permit, shall not lapse or otherwise expire and the expiration date of the permit, or time period for meeting a deadline or for performance of a condition of the permit, shall toll during the state of emergency;**

## **Attachment B**

Fact Sheets:

Battery Storage

Wareham Solar Projects

Wareham Solar Moratorium