



Save the Pine Barrens, Inc.
www.savethepinebarrens.org
Plymouth MA 02360
environmentwatchesoutheasternma@gmail.com

Mr. Nicholas Mayo
Director of Inspectional Services
Building Department
Town of Plymouth
26 Court Street
Plymouth MA 02360

Re: Demand for Enforcement of the Town of Plymouth Zoning Bylaw
Owner and Operator: T.L. Edwards, Inc.
Location: Assessor's Map 102, Lots 000-011B, 000-027, 000-100B, 000-100C,
000-26A and Map 95-000-005
36 Cherry Street, Plymouth MA

Dear Mr. Mayo,

This is to request enforcement of the Plymouth Zoning Bylaw (Bylaw) against T.L. Edwards, Inc., its subsidiaries, affiliates, agents, contractors ("Edwards") for operating an open pit mine, quarry, asphalt batching facility and other industrial activities at 360 Cherry Street, Plymouth MA (the "Site") in violation of the Bylaw and special permits purportedly issued thereunder.

This request is made to you as the Building Commissioner/officer charged with interpretation and enforcement of the Bylaw under G.L. c. 40A, Section 7. This request is filed by Community Land and Water Coalition (CLWC), a project of Save the Pine Barrens, Inc. whose mission is to protect land and water resources, including the Plymouth Carver Sole Source

Aquifer, in Plymouth and surrounding towns. Members of CLWC live, work and recreate in Plymouth and are parties aggrieved by your failure to enforce the Bylaw and the violations thereof.

Under the Bylaw, Section 202-12 you are asked to employ all available remedies to enforce the Bylaw, including making application to the Plymouth County Superior Court for an injunction to restrain the zoning violation. Bylaw, Section 202-12©. You are also asked to seek penalties for each day of violation of at least \$300.00 per day. Bylaw, Section 202-13.

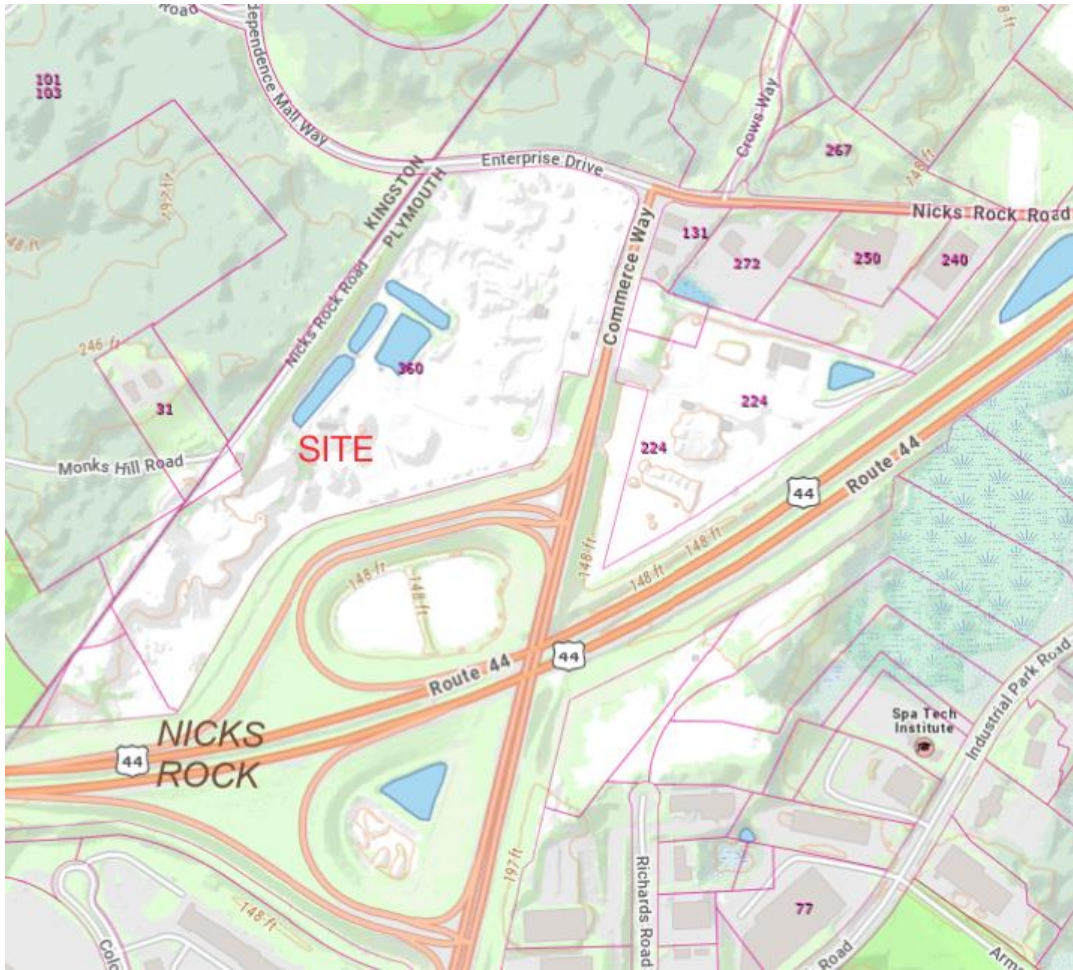
If you determine there is no violation, you are asked to provide a complete and thorough legal and factual description of the reasons for your determination. If there are Public Records you claim support any denial of this Request, you are asked to provide them immediately and explain why they were not provided in response to CLWC's Public Records request.

If you determine there is a violation, you are asked to conduct a complete and thorough investigation report containing findings and to make the report available to the public.

You are reminded there is no statute of limitations for a use that is not permitted. *Moreis v. Oak Bluffs Bd. of Appeals*, 62 Mass. App. Ct. 53, 58 (2004). See also, *Cape Resort Hotels, Inc. v. Alcoholic Licensing Bd.*, 385 Mass. 205 (1982), modified and aff'd in part, 446 N.E. 1070(1983).

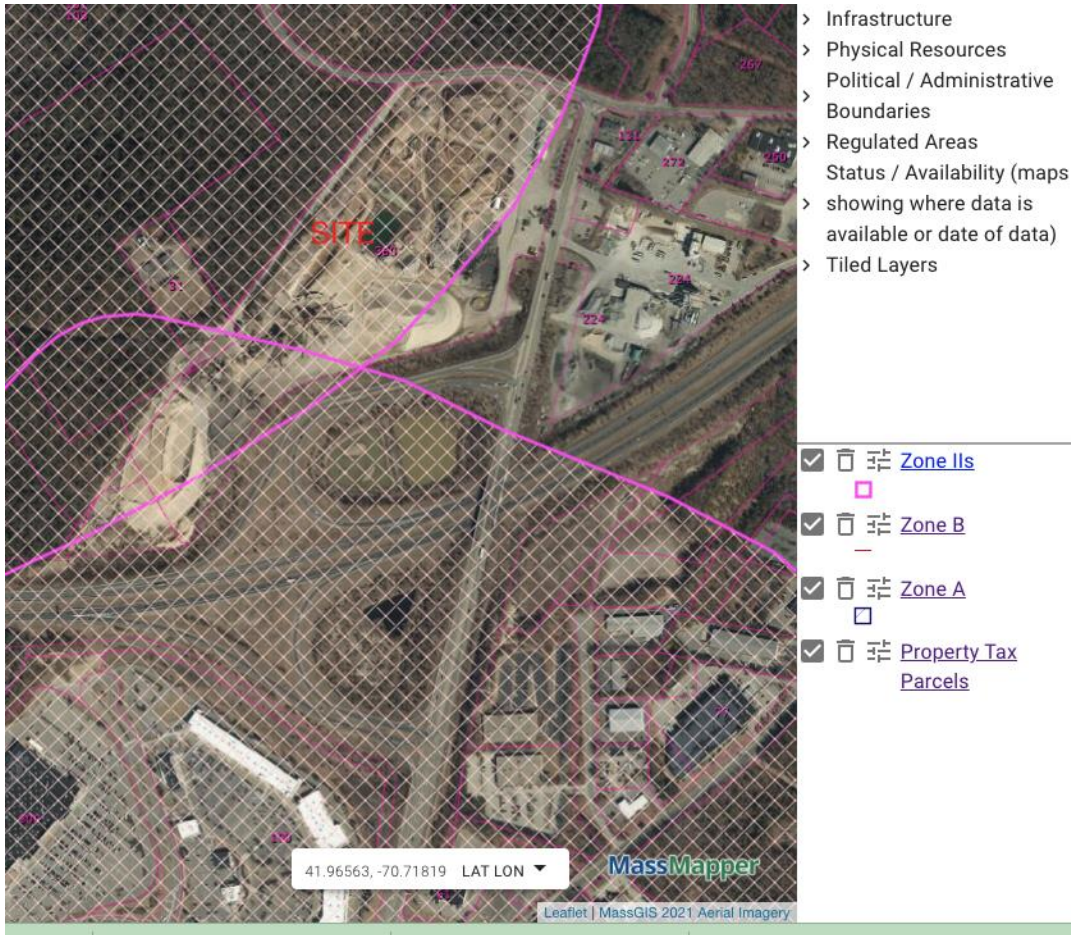
SITE DESCRIPTION

The Site is approximately 110 acres on Cherry Street in Plymouth off Route 44 on the Kingston border. See **Figure 1** below.



The Site is located in overlapping Zone II areas of protection for Plymouth and Kingston public drinking water supply wells.

Figure 2, Zone IIs of Plymouth and Kingston drinking water wells.



Since 1995, the Site has been extensively excavated. **Figure 3** below is a Google Earth Pro satellite image of the Site in March, 1995. The locations of ponds that have been excavated since that time by the removal of sand and gravel are marked with pins.



The Google Earth Pro satellite image below in **Figure 4** shows the Site on October 2021. Sand and gravel mining has resulted in changes in topography, leveling of hills, and mining in the Sole Source Aquifer.



VIOLATIONS

- 1. The Use is not grandfathered, there is no record of earth removal permits, and the scope and scale of the operation exceed any prior approvals.**

A review of Public Records provided by the Town for this Site shows that Site is not now and never was permitted for the scope, scale and duration of this activity. It does not qualify as a preexisting nonconforming use under the Bylaw, Section 203-9. *Building Inspector v. Vlahos*, 10 Mass. App. Ct. 890 (Mass. App. Ct 1980). (Use of premises by excavator to maintain and service his vehicles and those of others was a substantially difference use as car dealership and repair shop and constituted an impermissible extension of a nonconforming use. The “nature, purpose, quality, character and degree of the defendants’ use of the property are substantially different from the prevailing use in 1963 and [the] present use is different in its effect on the neighborhood.”)

In 1989 and 1994 the Zoning Board of Appeals (ZBA) purported to issue special permits issued for uses on this Site. See, ZBA Case No. 2594 (1994 Permit) and Case No. 2355 (1989

Permit). The permits purported to issue a height variance for equipment to build and operate a concrete mixing/batching plant on the Site. Those permits do not permit or authorize the current activities and they never permitted earth removal and excavation into the Sole Source Aquifer. In addition, the permits were issued to a different owner and operator, P.A. Landers. The Town has produced no records to show the permit was properly transferred to the current owner. Some 56 years ago, on June 30, 1967, the Selectmen issued a permit “to conduct the removal of sand and gravel from land known as Lot 8 of the Town of Plymouth Assessors Plan # 102, also known as Lot 27 of the Industrial Park, Site #1.” That was issue to yet another owner, Albert Malaguti, to relocate his business to this location once it was sold to Mayflower Sand & Gravel, Inc.

The operator admits that they are operating an open pit mining and conducting industrial quarrying at the Site. These admissions are included in Edwards’ registration with the Mine Safety and Health Administration as a mining operation for “Construction Sand and Gravel.” <https://www.msha.gov/data-and-reports/mine-data-retrieval-system>

This is not now and never was a permitted mining site and it is not grandfathered or entitled to operate as a preexisting nonconforming use. As described below, there appears to be no record that the Site is in compliance for air emissions or water quality under state and federal law.

2. Violations of the Bylaw: Aquifer Protection District

The Site is in the Zone II (Area 2) of several drinking water wells. Under Plymouth Zoning Bylaw, Aquifer Protection District (AA) Use Table, Section 206-1. Edwards is conducting the following activities in violation of the Use Table, Section 206-1:

Line 5(b): The mining of land

Line 46: Industrial and commercial uses which discharge process wastewater or which discharge process liquids on site.

Line 53: The disposal of liquid or leachable wastes

The use is prohibited by the Bylaw, Section 206-1.

3. Violations of ZBA Special Permit Conditions

A review of Public Records produced by the Town show the following violations of the ZBA special permits.

Drainage, Utilities and Landscaping:

The 1994 Permit states: “As with the previous application, drainage is to be addressed through a fully engineered closed system, involving oil and grit separation and on-site leaching pits.”

1994 Permit Condition b: “Drainage plans are to be approved by the Town Engineer.”

1994 Permit Condition g: “A detailed landscaping plan must be submitted for review by the Design Review Board with the final approval of this Board.”

The Town has produced no records of compliance with Conditions b and g. There are no records of compliance regarding the two ponds on the Site or any details regarding on-site leaching pits. No records of as built plans for “fully engineered closed system” for drainage, with oil and grit separation and on-site leaching pits” and no records of inspections or compliance with the U.S. EPA NDPEs regulations for applicable to mining operations or industrial operations, 40 Code of Federal Regulations Part 436. Edwards operations at the Site include sand and gravel mining falls within SIC code 1442 (“Construction Sand and Gravel”) and/or 1446 (“Industrial Sand”).

No record of permits for emissions of dust or other particulate matter

The 1994 Permit states, “The emissions of dust or other particulate matter is of concern and requires an Air Quality permit from D.E.P. According to the applicant, the plant is the latest technology and will be the cleanest in the Commonwealth.”

1994 Permit, Condition f: “During the months of operation, monitoring of air quality must be in place and tested every three (3) months. All results of this monitoring must be submitted to the Building Commissioner within five (5) days of its completion. If at any time, these results are unacceptable, then this Board will require an immediate remedy and re-test with those new results to be submitted within 48 hours. If at any time the Building Commissioner or this Board feel that the results are still unacceptable, than the asphalt plant may be shut down by the Town until the Board is satisfied with the air quality results.”

Dust emissions are regularly observed at the Site. At times, the fugitive dust is so extensive it is reported dust clouds over the Site are visible from Cape Cod Bay. There is no record of an air quality permit from the state in the DEP permit files and no record of air quality tests submitted to the Town as required by Condition f.

No record of \$5,000.00 “contribution” to the Town required by the 1994 permit

No record of compliance with state, federal and local permits

1994 Permit, Condition h: “All State, Federal and local permits must be in place prior to the issuance of any occupancy permit.”

As you know, federal regulations at 40 CFR 122.26(b)(14)(i)-(xi) require stormwater discharges associated with specific categories of industrial activity to be covered under NPDES permits (unless otherwise excluded). Mater handling and storage, equipment maintenance and cleaning, and other activities at industrial facilities such as Edwards’ Site are exposed to the weather. Runoff from rainfall or snowmelt that comes in contact with Edwards activities picks up pollutants, and can transport them directly to a the groundwaer or indirectly to Cape Cod Bay via a storm sewer. This degrades ground and surface water quality. <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>

The Town has produced no records that the Site is permitted under or in compliance with the federal Clean Water Act or the Town’s Multisector General Permit SIC Code 1442/1446 for discharges to the municipal sewer. There is no record of compliance with *Best Management Practices for Sand and Gravel Pits under the Massachusetts Erosion and Sediment Control Guidelines, Urban and Suburban Areas, Erosion and Sediment Control Best Management Practices for Sand and Gravel Pits*, page 322. Massachusetts law prohibits the removal of soil, loam, sand, gravel or other mineral substance within 4 feet of the historical high groundwater elevation table. 310 CMR 22.21(2)(b)(6). The satellite images in **Figure 4** are uncontroverted evidence that Edwards has violated this law.

STPB HAS LEGAL STANDING

STPB and its members are aggrieved by violations of the Bylaw and the Building Commissioner’s failure to enforce the Bylaw. They have suffered and/or will suffer harm to interests protected by the Bylaw. Members of STPB obtain their drinking water from the Sole Source Aquifer. STPB’s mission includes protecting the drinking water of its members. “An organization has standing to represent its members if the members have standing, the interests

the organization seeks to represent are germane to the organization's purpose, and neither the claim nor the relief sought requires the individual participation of its members.” *Fathers & Families, Inc. v. Mulligan*, 26 Mass. L. Rep. 165 (2009) (citing *Associated Subcontractors of Mass., Inc. v. University of Mass. Building Auth.*, 442 Mass. 159, 164, 810); *Modified Motorcycle Assoc. of Mass., Inc. v. Commonwealth*, 60 Mass. App. Ct. 83, 85 n.6 (2003)).

Please direct your response via email to environmentwatchesoutheasternma@gmail.com and Community Land and Water Coalition, c/o 158 Center Hill Road, Plymouth MA 02260.

Very truly yours,

Margaret Sheehan

Margaret E. Sheehan
Community Land & Water Coalition
Plymouth MA
environmentwatchesoutheasternma@gmail.com
508-259-9154

Town of Kingston
Selectboard
Conservation Commission
Conservation Agent

Lee Hartman
Director of Planning and Development, Town of Plymouth

MassDEP, Millie Garcia Serrano, Regional Director