

July 9, 2024

VIA FEDEX

Christine Joy, Chairman  
Board of Selectmen  
Town of Plympton  
5 Palmer Road  
Plympton, MA 02367

Re: Request for Enforcement of Earth Removal Bylaw  
0 Spring Street, Plympton (parcel 19-2-4)

Dear Chairman Joy,

I am writing on behalf of my client, Community Land & Water Coalition, for itself and on behalf of its members including residents of Plympton. This letter is a formal request that you investigate and ultimately enforce against unauthorized earth removal that is occurring on the Property, in accordance with the Plympton Earth Removal Bylaw § 45-11.A.

On May 15, 2024, my office sent a letter to the Inspector of Buildings requesting that he initiate enforcement, as contemplated in the Plympton Earth Removal Bylaw § 45-11.B, against the ongoing unauthorized earth removal activities at the property at Plympton Assessor's Map 19, Block 2, Parcel 4 (the Property) with a street address of 0 Spring Street (the "Property"). That letter describes in detail the ongoing earth removal activities, is attached hereto at **Tab 1**, and fully incorporated herein. The Inspector of Buildings never responded to my client's May 15, 2024 letter, and to my knowledge, never investigated the matter nor took any enforcement actions.

The Board of Selectmen also have enforcement authority per the Plympton Earth Removal Bylaw § 45-11.A, as follows:

§ 145-11 **Enforcement; violations and penalties.**

- A.** The Board may modify, suspend or revoke any permit issued pursuant to this bylaw for any violation of this bylaw or regulations adopted pursuant thereto or any conditions imposed by the Board, or if it is determined commercial mining is occurring. Such modification, revocation or suspension may take place after a hearing held by the Board, of which the permit holder is given seven days' written notice. Such notice shall be deemed given upon mailing same, certified mail,

return receipt requested, to the address listed on the permit application.

As such, my client respectfully requests that the Board of Selectmen consider this enforcement request and take the following actions:

1. Investigate the earth removal activities by visiting the site to document the existing conditions, pursuant to your right of entry under Section 145-9,
2. Engage the services of an independent engineer to ascertain how much earth material has been removed from the Property, at the expense of SLT under Section 145-9,
3. Ascertain whether the Earth Removal Bylaw has been violated and if so, impose the maximum fine for each day of violation and for each unit of removal on which a violation exists, under Section 145-11(B) and (C) and/or pursue an indictment or complaint in District Court, and
4. Enjoin violations of the Bylaw through any lawful process under Section 145-11E.

Thank you for your attention to and consideration of this request. Please do not hesitate to contact this Office if you have questions or require additional information.

Sincerely,



Anthony J. Riley

cc: Community Land & Water Coalition,  
a project of Save the Pine Barrens, Inc.

Plympton Conservation Commission

# Tab 1

May 15, 2024

By FedEx Overnight

Thomas Millias  
Inspector of Buildings  
Town of Plympton  
5 Palmer Road  
Plympton, MA 02367-0239

Re: Request for Enforcement of Earth Removal Bylaw  
0 Spring Street, Plympton (parcel 19-2-4)

Dear Mr. Millias,

I hope this letter finds you well. I'm writing to you about the property at Plympton Assessor's Map 19, Block 2, Parcel 4 (the Property) with a street address of 0 Spring Street (the "Property"). I am writing on behalf of my client, Community Land & Water Coalition, for itself and on behalf of its members including residents of Plympton. This letter is a formal request that you investigate and ultimately enforce against unauthorized earth removal that is occurring on the Property, in accordance with Plympton Earth Removal Bylaw § 45-11.B, as more specifically described below. Investigation and enforcement are urgently needed to avoid continuing harm to the environment and the surrounding community.

The Property is owned by RPBP, LLC and operated by SLT Construction Corporation (together, "SLT"). It is approximately 23 acres in size and part of SLT's 42-acre sand and gravel mining and subdivision project<sup>1</sup> that is located partially in Plympton and partially in Carver. The Property's access point is via 0 Spring Street in Carver through the Ricketts Pond Business Park subdivision road.

The evidence that SLT is engaged in large-scale earth removal on the Plympton-side of the Property is indisputable. Below, I provide an explanation of that evidence.

<sup>1</sup> Carver Conservation Commission Order of Conditions DEP SE #126-582, Special Conditions for Peter Opachinski/RPBP, LLC, Condition 2, dated May 29, 2019. This Office is separately seeking judicial enforcement of the Carver Wetlands Bylaw with regard to wetlands violations on Carver portion of the 42-acre parcel and the RPBP earth removal and subdivision development.

## **March 22, 2024 Drone Video Footage Shows Earth Removal on the Plympton Side of the Property**

To begin with, my client possesses drone imagery that shows that SLT is

currently engaged in extensive earth removal on the Property. That video footage is accessible to you at the following link:

<https://www.youtube.com/watch?v=MWA3kIe4sVI>.

Below is a labeled excerpt of an image from that video. The image below, and the video at the link above, each make clear that SLT is using the entirety of this Property – including land located in Plympton – for the earth removal operations that are occurring at the Property.



**Before and After Imagery in 2018 and 2023 Shows that the Property Has Been Altered by Earth Removal Operations**

Next, before and after imagery in 2018 and 2023 that is accessible from Google Earth Pro shows that this Property has been extensively altered by earth removal operations since 2018. Notably, RPBP, LLC purchased the Property on or about October 24, 2018.<sup>2</sup>

<sup>2</sup> Plymouth County Registry of Deeds, book 50438, page 270.

**Below:** October 2018 at the time RPBP, LLC/SLT purchased the Property



As you can see, the Property at this time – previously owned by the Massachusetts Department of Transportation – included natural ground cover over its entirety, including on the Plympton side.

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**After:** July 2023 after RPBP, LLC/SLT purchased the Property.



As you can see in this newer picture, the SLT has radically altered the Property from its October 2018 state. Both on the Carver and Plympton sides of the Property, the majority of the natural ground cover has been stripped away. And it is apparent that SLT has extensively excavated, moved, and removed earth from both sides of the Property. In short, this image – in conjunction This March 22, 2024 video and image reaffirms what Google Earth and Mass Mapper GIS chronology shows: extensive earth removal is occurring on the Property.

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As you know, the Town’s Bylaws prohibit anyone from conducting earth removal operations without a permit, unless they qualify for an exemption. See General Bylaws, Chapter 145. Here, the excavation is within the definition of an “earth removal operation” under the Bylaw. The Bylaw defines Earth Removal Operation to include:

The processing or removal, or both, from a site, by

hand or by machinery, of any earth material, including but not limited to loam, sand, gravel, clay, peat, hard pan, or rock, from the surface or subsurface without the aid of drilling and/or blasting, **together with all activities associated with the removal**, including, but not limited to, the stripping of vegetation, loam, topsoil, or sod, the digging, stockpiling, processing, moving, depositing, or transportation of earth products in any form, natural, altered or otherwise. "Earth removal operation" includes **the moving of equipment required for the operation to, from, or within the site, and all land affected by the operation** (e.g., fill, or storage piles, access ways, or structures). Earth removal operations shall include **all land impacted by the operation** (e.g., pits, fill or storage piles, access ways and structures).

(Section 145-2, Definitions (emphasis added).) The video footage and imagery above show these very types of activities and impacts. Yet, to the best of my client's knowledge, SLT did not apply for or obtain the earth removal permit required for this operation.<sup>3</sup> To the contrary, SLT has said (falsely) that it does not need a permit. For example, on April 24, 2024, Mr. Opachinski stated in a public meeting before the Carver Earth Removal Committee to the effect that he is "moving earth around" on the Plympton land moving it from Plympton to Carver.<sup>4</sup> But that statement, even if true, still recognizes activities that fall within the definition above and that require a permit.

It readily follows that these earth removal activities are an unlawful and unpermitted earth removal operation and one the Town must stop through enforcement. By operating without a permit, SLT's earth removal is contrary the Bylaw's purpose to "support the maintenance of the Town of Plympton's rural character, including its natural, scenic, historic and agricultural qualities and to protect its water resources." (Section 145-1, Purpose.) It also endangers the Town's water supply. The Bylaw states that "the lowest excavated point shall be no less

<sup>3</sup>There was also never notice and a hearing on any such permit. Also, there is no apparent reason under the Bylaw for why this activity is exempt from permitting.

<sup>4</sup>You Tube Video available on Area 58.

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than 10 feet above the existing groundwater table" except for instances not relevant here. (Section 145-6A(12).) The March 22, 2024 drone video shows areas of open water at least the following segments: 2:24; 2:50; 3:06. It is possible, if not likely, that this earth removal operation has pierced the groundwater table, jeopardizing the water resources of the Town of Plympton.

The Bylaw additionally requires compliance with "applicable federal, state and local laws, including but not limited to the requirements of the Conservation Commission." Bylaw Section 145-6A(8). SLT's operations do not appear to comply with or permitted under the Federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) program for Construction Management

Permits<sup>5</sup> or the Town's own Stormwater Management Standards under its Wetlands Bylaw Regulations (revised February 22, 2023).

**And this is just what can be observed by drone footage. Investigation would likely reveal additional concerns beyond just those observations.**

Finally, I think it is important to emphasize another reason why enforcement is important for this Property and these activities. SLT has a lengthy history of attempting to legally remove earth from the Property, all to no avail. Indeed, this Office previously requested enforcement by you for this same unlawful earth removal activity in a letter dated September 19, 2022. That request resulted in a cease and desist order dated September 28, 2022. Following that, SLT applied to the Massachusetts Department of Environmental Protection's ("MassDEP") Bureau of Waste Prevention – Solid Waste Management for a permit for recycling, composting or conversion operation. That plan showed the removal of about 110,000 cubic yards of material. SLT/RPBP was ultimately unsuccessful in that effort on the state level, then it attempted to seek zoning approval as a different use. That use of the lot in that manner was prohibited under the Town's zoning bylaw and the ZBA denied approval in early 2024.

With its prior other attempts to use the Property now stymied, SLT is apparently unlawfully removing earth from the Property.

**Given SLT's past and current actions and demonstrated a disregard for the Town's bylaws and investigation and enforcement is imperative.**

This is to request that you undertake the following actions:

1. Investigate the earth removal activities by visiting the site to document the existing conditions, pursuant to your right of entry under Section 145-9,

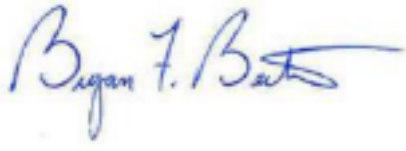
<sup>5</sup> A search of the NPDES data base shows no permit for SLT's earth disturbing activities at this location in Plympton. <https://permitsearch.epa.gov/epermit-search/ui/search>

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2. Engage the services of an independent engineer to ascertain how much earth material has been removed from the Property, at the expense of SLT under Section 145-9,
3. Ascertain whether the Bylaw has been violated and if so, impose the maximum fine for each day of violation and for each unit of removal on which a violation exists, under Section 145-11(B) and (C) and/or pursue an indictment or complaint in District Court, and
4. Enjoin violations of the Bylaw through any lawful process under Section 145-11E.

Thank you for your attention to and consideration of this request. Please do not hesitate to contact this Office if you have questions or require additional information.



A handwritten signature in blue ink that reads "Bryan F. Bertram". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Respectfully,

Bryan Bertram  
Anthony Riley

cc: Community Land & Water Coalition,  
a project of Save the Pine Barrens, Inc.