

Narrative to Accompany Request for Determination of Applicability
Plymouth Wetlands Protection Bylaw and Rules and Regulations, Section 9(B)(2) and
Wetlands Protection Act, G.L. c. 131, Section 40
Landowner: Claremont Plymouth LLC
Applicant: Community Land and Water Coalition/Save the Pine Barrens (STPB)

This is a Request for Determination of Applicability (RDA) under the Wetlands Protection Act (WPA), G.L. c. 131, Section 40 and regulations at 310 CMR 10.00 and Town of Plymouth Wetlands Protection Bylaw, Chapter 196, Section 196-8(J) and the Rules and Regulations for Plymouth Wetlands Protection Bylaw (Bylaw), Section 6, for Activity Subject to Regulation under G.L. c. 131, Section 40 proposed by Claremont Plymouth LLC (Claremont) in Resource Areas.

Under the state Wetlands Regulations, 310 CMR 10.05(3)(a)(1), Requests for Determinations of Applicability, states “Any person who desires a determination as to whether M.G.L. c. 131, § 40 applies to the land, or to work that may affect an Area Subject to Protection under M.G.L. c. 131, § 40, may submit to the conservation commission by certified mail or hand delivery a Request for Determination of Applicability, Form 1.” See also Plymouth Wetlands Protective Bylaw, Rules and Regulations, Section 6.

Save the Pine Barrens (STPB) requests a Positive Determination of Applicability that the plan of Claremont Plymouth LLC, Attachment 1, contains Areas Subject to Protection under G.L. c. 141, Section 40 and the Regulations and Bylaw. See Part II.

Claremont proposes to undertake Activities on the Site that will remove, fill, dredge or alter an Area Subject to Protection.

The Activity (defined by 310 CMR 10.04) consists of altering the Areas Subject to Protection that includes an existing stormwater management system. Claremont has not met its burden under 310 CMR 10.02(5) to prove that the proposed work involves a stormwater management system designed, constructed, installed, operated, maintained and/or improved as defined by 310 CMR 10.04 and does not require an NOI. Therefore the Commission should issue a Positive RDA and require an Notice of Intent

I. Overview: Site Description

The Site is or was known on the Town of Plymouth Tax Assessor as Map 104 Lot 26-41. The Site is or has been also known as “Lot 5” and may have been subdivided into Lots 5A, 5B and 5C shown on the Exhibit 1. The Site is a total of 12.79 acres, with Lot 5B at 5.78 and Lot 5C at 7.01 acres. The Site also receives run-off from the adjacent Lot 5A parcel at 6.89 acres (Plymouth Tax Assessor’s Map 104 Lot 26-40), as well as an additional approximately 60 acres in the Plymouth Colony Place complex.

The Site is bound to the north by land owned by the Town of Kingston, to the south by a residential area, Mariner’s Way, and to the west by the West Wood Village residential area. The

Site has been altered by a commercial sand and gravel mining operation that started in about 2004.

Prior to 2004, the parcel had varying topography with hills up to about 150 to 200 feet across the area. It was forested, covered by a pitch-pine/scrub oak forest typical of the Pine Barrens region. Beginning in 2004 and continuing through 2006, a commercial sand and gravel mining operation was conducted on the Site and surrounding areas. The mining operation was permitted by the Plymouth Zoning Board of Appeals (ZBA) for 2.5 million cubic yards. An unknown volume of sand and gravel was mined from the Site by the operators, Gary Darmin and P. A. Landers Trucking. There is no record that the Site was restored or revegetated according to the ZBA special permit or the Zoning Bylaw requirements. The mining operation excavated into the Sole Source Aquifer on the Site which violated the state Drinking Water Regulations. When Saxon Properties proposed Colony Place development, it sited the stormwater drainage basin in the southwest corner of the parcel, using the pond created by the commercial mining operation.

The jurisdictional swamp is currently located in an area that was excavated by the commercial mining operation. During permitting for Colony Place, this was proposed during 2004-2006 as a water quality wet pond to treat stormwater runoff from a portion of the Colony Place development, with a runoff area approximately 60 acres of primarily impervious surface. Part of the area is vegetated, consisting of an upland area comprised of various grasses, shrubs such as sumac, and mature trees such as pitch pine.

The entirety of the Site lies within a Zone II wellhead protection area for a public water supply well for the Town of Plymouth.

II. Claremont's Site Development Plans

In March 2023, the Plymouth Zoning Board of Appeals (ZBA) issued Amended Decision Case No 4063 purporting to issue a Special Permit (ZBA Permit) under the Town Zoning Bylaw for construction on the Site. The ZBA Permit contains no conditions requiring compliance with the Wetlands Protection Act or Town Bylaw.

On August 1, 2023, the Planning Board voted to grant Claremont Plymouth II LLC a Minor Modification "of the subdivision control regulations to allow for the Stormwater Management Area located on the non-buildable lot (a portion of Lot 26-41 on that certain plan titled "Approval Not Required Plan, 800 Colony Place, Lots 26-38 & 26-39 Plymouth MA". The Planning Board did not require proof of compliance with the Wetlands Protection Act or Town Bylaw for construction on the Site.

Claremont plans to construct up to 348 units on the Site. In order to do so it plans to reconfigure an existing stormwater system on the Site that serves about 60 acres in Colony Place. This includes Work that will dredge, fill and alter Resource areas. The volume of water of the new stormwater management system will increase and the work on the system will alter or affect the

stormwater system and increase the total or peak volume and/or increase the volume of land exposed to higher potential pollutant loads. 310 CMR 10.02(4).

Neither Town nor Claremont have provided evidence that the Work is exempt from the Wetlands Protection Act or Bylaw. The Conservation Commission has not responded to a request for the reason why the Activity does not require a Notice of Intent filing. Neither the Town nor Claremont have made available to the public records to show that the construction of the stormwater management system in about 2004 on the Site had an Order of Conditions, Order of Resource Area Delineation or Determination of Applicability for the project or a Certificate of Compliance. 310 CMR 10.02(5)

III. Areas Subject to Protection, 310 CMR 10.02(1) and Bylaw, Section 196-4

The RDA seeks a Positive Determination that the Site has Areas Subject to Protection under the Act and the Bylaw including:

- Bordering Vegetated Wetland
- Land Under Water Bodies
- Bank
- Vegetated Wetland
- Isolated Vegetated Wetland
- Surface Water Body
- Freshwater wetland
- Swamp
- Land subject to flooding or inundation by groundwater or surface water

Additional areas subject to protection under the Bylaw include areas within 100 feet of these resources. Bylaw, Section 194-6.

The Site has an approximately 1.55-acre jurisdictional swamp as defined by the Town of Plymouth Wetlands Protection Bylaw Chapter 196 Section (10)(II)(B)(2)(c) which is located in the southwest portion of the Site and is an Area Subject to Protection. Included within its boundary is an 0.3-acre area depicted on Exhibit 2, described as "Open Water" by the MassDEP which is an Area Subject to Protection. Also depicted on Exhibit 3 is a 1.06-acre area described by the U.S. Fish and Wildlife Service as a Freshwater Pond.

Under the Rules and Regulations for Plymouth Wetlands Protective Bylaw (Chapter 196 of the Town of Plymouth Bylaws) Section 10, Part II(B)(2)(c), *the term "swamps" as used in this section shall mean areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface...*

The Resource Area on the Site, as depicted in Exhibits 2, 3, and 4 performs the natural functions of a swamp as defined under the Plymouth Bylaw and contains areas of bordering vegetated wetland, land under water bodies, bank, vegetated wetland, isolated vegetated

wetland, surface water body, freshwater wetland, and land subject to flooding and inundation by groundwater or surface water.

Additionally, according to Chapter 196, Plymouth Wetlands Protection Bylaw, Section 2, Purpose, two of the protected functions of a wetland are the protection of wildlife habitat and aesthetics. Wildlife habitat is present on the Site according to observations of residents and information provided to the Plymouth Planning Board on July 26, 2023 on Claremont's project.

Witnesses have given testimony and comments to the ZBA and Planning Board about the hydrogeological function, wetland values, natural resource values, wildlife habitat values and aesthetic values of the Resource Areas on the Site.

IV. Claremont has not met its burden under 310 CMR 10.02(5) to show the Activity that will impact the Areas Subject to Protection is exempt under 310 CMR 10.02(c) or 10.02(4)

The existing stormwater management system on the Site constitutes Areas Subject to Protection as described above and in the Exhibits.

A. No evidence the 2006 stormwater system was built in accordance with regulations or had an Order of Conditions

In order to be exempt from an NOI Claremont must prove that the system has been designed, constructed, installed, operated, maintained and/or improved in accordance with the *Stormwater Management Standards* as provided in the *Stormwater Management Policy (1996)* or 310 CMR 10.05(6)(k) through (q), and that it meets 310 CMR 10.02(c)(1) and (2). Claremont has not met its burden. 310 CMR 10.02(5).

STPB made a public records request to the Town for the relevant records and asked the Conservation Commission for an explanation of why Claremont is not required to obtain an Order of Conditions to alter the existing stormwater system. No records have been provided to show that Claremont met its burden under 310 CMR 10.02(5). The Commission has not responded.

Neither the Town nor Claremont have provided **as built plans** for the existing stormwater system on the Site to show the system was built in accordance with the stormwater rules and policy under 310 CMR 10.02(2)(c)(1) and 10.02(4). There is no **Notice of Intent from 2006** and no **Certificate of Compliance**.

Even if Claremont can establish that the Areas Subject to Protection alleged in this RDA were constructed according to the 1996 Standards and had an Order of Conditions, in order for the areas to be exempt from the Act and Regulations, Claremont must show that the alleged stormwater system has been operated and maintained according to the 1996 Standards and subsequent revisions and the Town Stormwater Regulations. 310 CMR 10.02(2)(c). This requires a Stormwater Pollution Prevention Plan (SWPPP) and a record of annual monitoring.

Neither the Town nor Claremont have provided an Operations and Maintenance Plan or SWPPP for the existing stormwater system from 2006.

Even if there was an O&M Plan and SWPPP, the Town and Claremont have provided **no records of the annual O&M** performed as required by the 1996 Standards and current state and local standards. 310 CMR 10.02(2)(c).

The Commission should find the Activity requires an NOI or require Claremont to meet its burden under 10.02(5) to establish by the best available evidence under 310 CMR 10.02(5) that no NOI is required.

V. Description of the Activity and impact on interests protected under the Act and Bylaw

The Activity proposed by Claremont consists of draining, dredging and filling in of a protected wetland resource area including freshwater pond, open water, land under water, bordering vegetated wetland and wildlife habitat. The Activity consists of altering an established wetland, which performs the functions of filtering, cleaning, and regulating the flow and discharge of surface water, in a Zone II wellhead protection area.

The Activity will impact wetlands functions and values and impair the ability of the Areas Subject to Protection to contribute to the following interests under 310 CMR 10.01(2):

- protection of public and private water supply
- protection of groundwater supply [Plymouth Carver Sole Source Aquifer]
- flood control
- storm damage prevention
- prevention of pollution
- protection of wildlife habitat

The Activity will have a significant and/or cumulative impact upon the wetland functions and values above and the additional functions and values under the Bylaw, Section 196-1, including but not limited to:

- to maintain and preserve water resources
- aesthetic and recreational values
- ensuring a stable quality of life
- Bylaw Section 196-1(A)-(D).

VI. Forms

See accompanying WPA Form 1: *Request for Determination of Applicability*.

VII. Field Requirements

STPB does not have access to the Site for purposes of a wetlands delineation. We respectfully request that the Plymouth Conservation Commission provide a wetlands delineation and NOI, following which the Plymouth Conservation Commission should perform a Site visit to confirm the boundaries of the wetland as required by the Bylaw.

VIII. List of Exhibits

1. Exhibit 1A: Locus Map, courtesy of Highpoint Engineering, Inc.
2. Exhibit 1B: Lot Area Exhibit dated 06-17-22, courtesy of Beals and Thomas
3. Exhibit 1C: Claremont Development Areas on the Site. Lots 5B and 5C are the subject of this RDA where there are Areas Subject to Protection under 310 CMR 10.02(1)
4. Exhibit 2: Google Earth Image Depicting Approximate Boundary of Areas Subject to Protection under 310 CMR 10.02(1)

Image created using Google Earth based on observations from public roadway.

5. Exhibit 3: MassDEP Mapped Resource Area

Jurisdictional area of Open Water as mapped by the MassDEP.

6. Exhibit 4: U.S. Fish and Wildlife Mapped Resource area

Jurisdictional area of Freshwater Pond as mapped by U.S. Fish and Wildlife service.

7. Exhibits 5 through 9: Google Earth Images of Site, 2003 to 2023

Exhibits show the natural revegetation of the Site and formation of wetland resource areas after cessation of maintenance on the property.

8. Exhibit 10: Plymouth Public Water Supply Zone II Map

Map depicting the hydrogeological function of the Site, its natural resource areas, and its vegetation in relation to the protection of Plymouth's public water supply.

Exhibit 1A: Locus Map, courtesy of Highpoint Engineering, Inc.



Exhibit 1B: Lot Area Exhibit dated 06-17-22, courtesy of Beals and Thomas

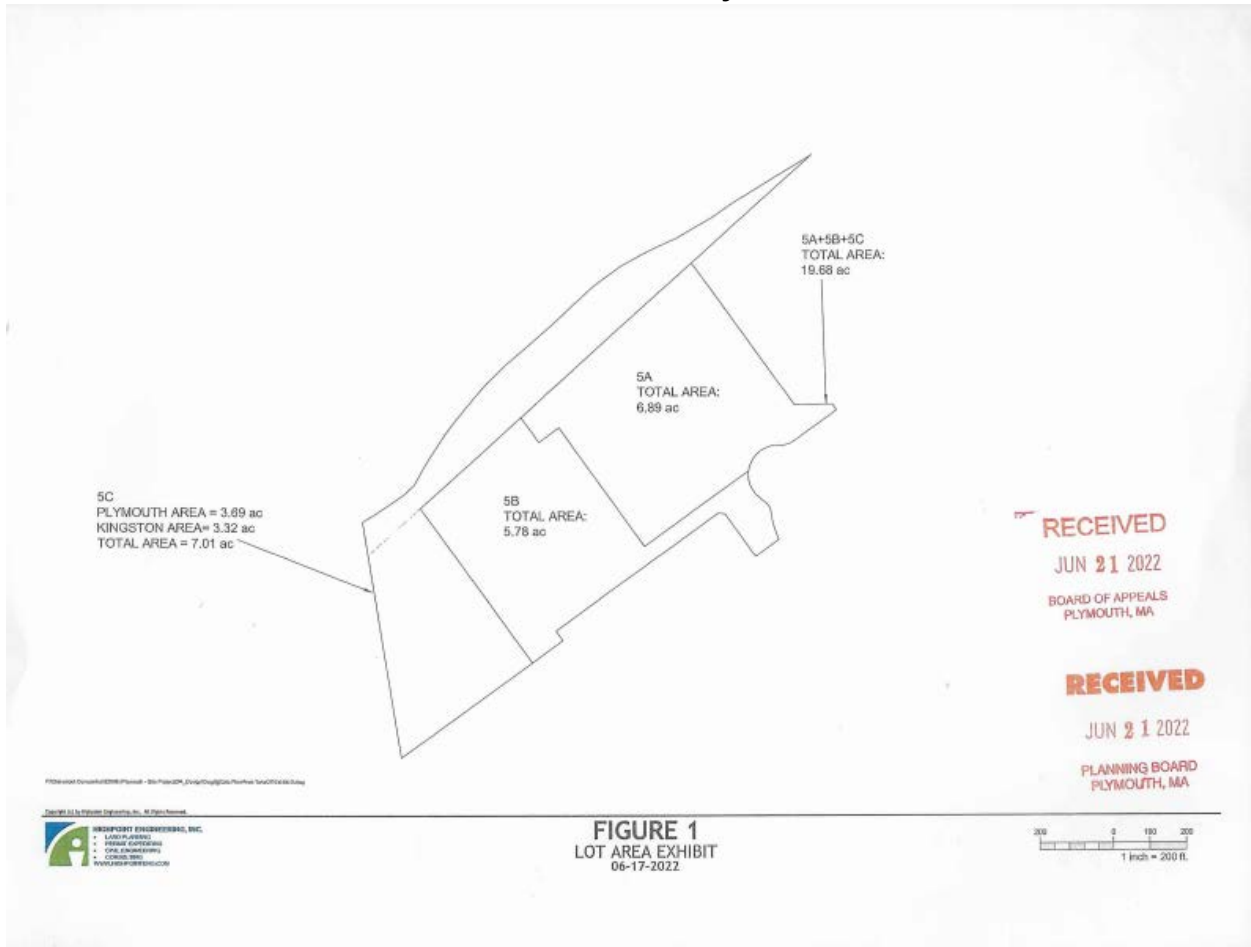


Exhibit 1C: Claremont Development Areas on the Site. Lots 5B and 5C are the subject of this RDA where there are Areas Subject to Protection under 310 CMR 10.02(1)



Exhibit 2: Google Earth Image Depicting Approximate Boundary of Areas Subject to Protection under 310 CMR 10.02(1)



Exhibit 3: MassDEP Mapped Resource Area

DEP Wetlands



- Barrier Beach System
- Barrier Beach-Deep Marsh
- Barrier Beach-Wooded Swamp Mixed Trees
- Barrier Beach-Coastal Beach
- Barrier Beach-Coastal Dune
- Barrier Beach-Marsh
- Barrier Beach-Salt Marsh
- Barrier Beach-Shrub Swamp
- Barrier Beach-Wooded Swamp Coniferous
- Barrier Beach-Wooded Swamp Deciduous
- Bog
- Coastal Bank Bluff or Sea Cliff
- Coastal Beach
- Coastal Dune
- Cranberry Bog
- Deep Marsh
- Barrier Beach-Open Water
- Open Water
- Rocky Intertidal Shore
- Salt Marsh
- Shallow Marsh Meadow or Fen
- Shrub Swamp
- Tidal Flat
- Wooded Swamp Coniferous
- Wooded Swamp Deciduous
- Wooded Swamp Mixed Trees
- Property Tax Parcels

Exhibit 4: US. Fish and Wildlife Mapped Resource Area



Map 104 Lot 26-41



August 9, 2023

Wetlands

- | | | |
|--------------------------------|-----------------------------------|----------|
| Estuarine and Marine Deepwater | Freshwater Emergent Wetland | Lake |
| Estuarine and Marine Wetland | Freshwater Forested/Shrub Wetland | Other |
| | Freshwater Pond | Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

National Wetlands Inventory (NWI)
This page was produced by the NWI mapper

Exhibit 5: Google Earth Image of Site, 2003



Exhibit 6: Google Earth Image of Site, 2006



Exhibit 7: Google Earth Image of Site, 2012



Exhibit 8: Google Earth Image of Site, 2014



Exhibit 9: Google Earth Image of Site, 2023

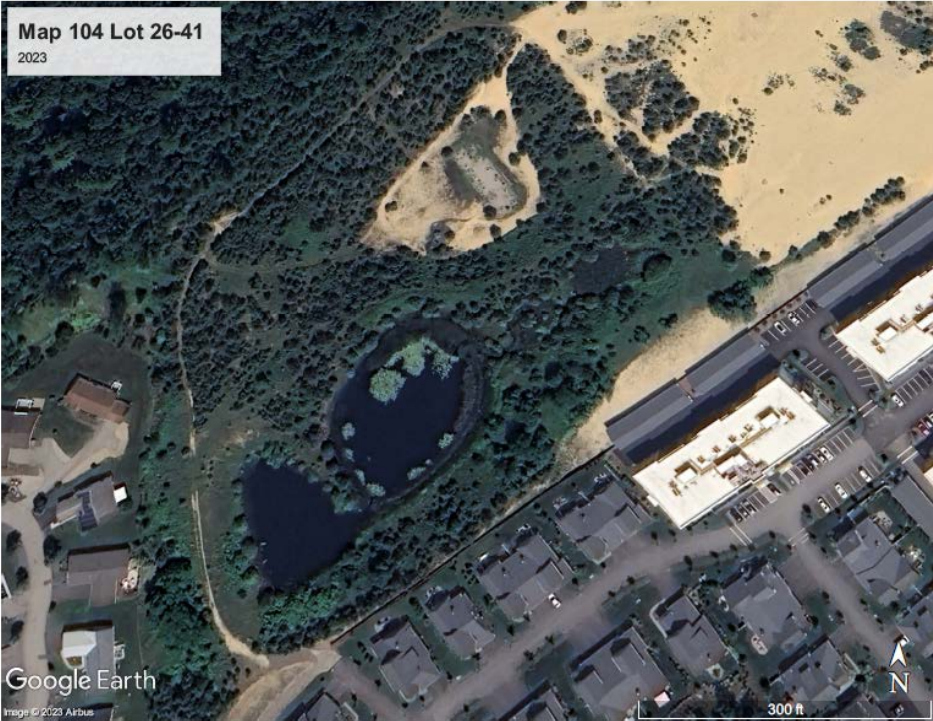
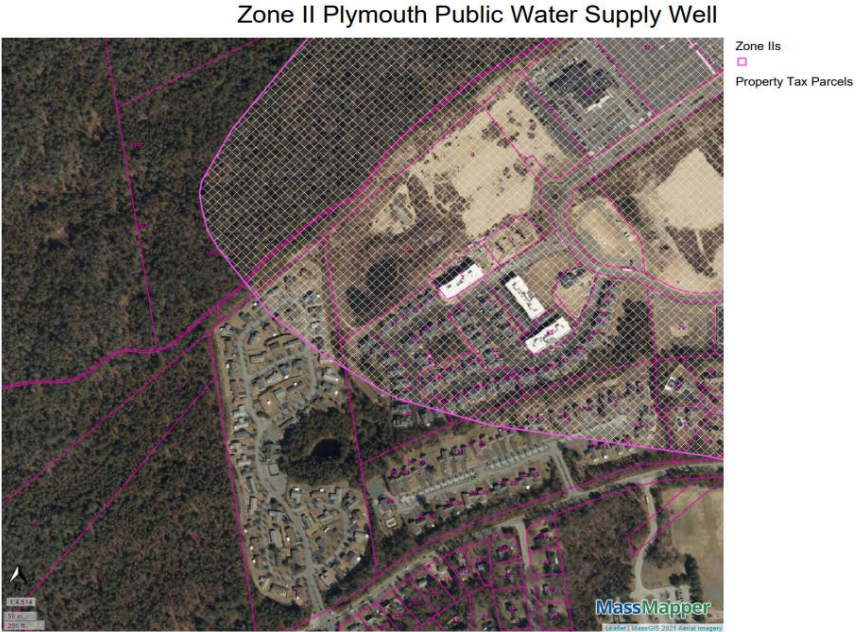


Exhibit 10: Plymouth Public Water Supply Zone II Map



Attachment 1: Proposed Stormwater Modification (plan set) Colony Place, Plymouth, Massachusetts, May 9, 2022, pgs 1 and 5