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24 Perry Avenue
Buzzards Bay, MA 02532

June 1, 2022

BY ELECTRONIC MAIL:

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Town of Bourne Conservation Commission
Bourne Town Hall
24 Perry Avenue - Room 201
Bourne, MA 02532

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Town of Bourne Board of Health
Bourne Town Hall
24 Perry Avenue
Bourne, MA 02532

Re: Notice of Intent, 176 Scraggy Neck Road, Bourne.

Dear Members of the Conservation Commission and the Board of Health:

On behalf of several neighbors and abutters¹ to the proposed residential construction project (the "Project") at 176 Scraggy Neck Road (the "Site"), I am writing to inform the Conservation Commission (the "Commission") and the Board of Health that the above-referenced Notice of Intent ("NOI") application filed on behalf of The Long Point Trust, Stephen and Marybeth Bisson (the "Applicants") was improperly filed under the Massachusetts Wetlands Protection Act, G.L. c. 131, §40, and it should be withdrawn or dismissed until such time as the Applicants apply for or obtain required permits for the proposed septic system from the Bourne Board of Health.

- 1. The Notice of Intent is premature under 310 CMR 10.05(4)(e), and should be withdrawn or dismissed without prejudice.**

The NOI was improperly filed, because the Applicants did not first apply for or obtain approval for the septic system from the Bourne Board of Health before submitting the proposal to the Conservation Commission. Under the Massachusetts Wetlands Protection Act, G.L. c. 131, §40, the Applicants are *required* to at least apply for septic system approval from the Board of Health before the Conservation Commission has legal authority to review the NOI. Pursuant to G.L. c. 131, §40: "No such notice [of intent] shall be sent [to the conservation commission] before all permits, variances, and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances, and approvals; provided, that such notice shall include any

¹ This firm represents: Maryfrances Galligan, 170 Scraggy Neck Road; Kevin and Kate McCarey, 168 Scraggy Neck Road; and Susan Malcom, 10 Winsor Road, all in the Cataumet area of Bourne, Mass.

from Title 5. Where the Bourne Regulations state that: “[i]n no case shall a septic system leaching facility be placed within 75 feet of a wetland or watercourse, except in cases of repair or extreme hardship,” it is dubious as to whether the Applicants will be able to obtain a variance for a system only 29 feet from the Coastal Bank, where they have made no showing that they can meet this strict criteria.

3. The Applicants should file an ANRAD with the Conservation Commission to confirm the location of wetland resource areas on the Site and their proximity to the proposed septic system.

Where it is unknown whether the Project will be able to meet the strict standards to qualify for both state and local septic system variances, it would be a violation of 310 CMR 10.05(4)(e) and also a waste of the Conservation Commission’s time to review the entire Project in a NOI now. Rather, the proper legal procedure is for the Applicants to first apply for an Abbreviated Notice of Resource Area Delineation (“ANRAD”) with the Commission under 310 CMR 10.05(3)(a) to confirm the boundaries of the Coastal Bank, so that the required setbacks to the proposed septic system can be definitively determined.

Finally, we have confirmed with the Bourne Planning Department that the Approval Not Required (“ANR”) plan that divided the Site from other land owned by the Applicants was never properly approved by the Town, such that it is unclear whether the Site is even a legal lot. This should also be addressed before the Conservation Commission reviews any NOI for the Site.

Based on all of the above, we request either that the Applicant voluntarily withdraw the NOI, or that the Commission dismiss it without prejudice, so that the Bourne Board of Health can determine whether the proposed septic system is even viable before the Commission reviews the matter.

Thank you in advance for your consideration of these comments.

Very truly yours,

/s/ Elizabeth M. Pyle

Elizabeth M. Pyle