

204 Long Pond Road  
Plymouth MA 02360  
March 9, 2018

Paul McAuliffe  
Director of Inspectional Services  
Building Department  
Town of Plymouth  
26 Court Street  
Plymouth MA 02360

Re: Request for Enforcement and for a Stop Work Order with regard to Zoning Permit # Z20160009 (“Zoning Permit) and Special Permit Case No. 3751R (“Special Permit”) issued to Petitioner Kingstown Corporation for a sand and gravel mining project on land owned by Inhabitants of Plymouth County, Parcel Id. 088-000-054-000, Plymouth MA.

Dear Mr. McAuliffe,

This is a request pursuant to G.L. c. 40A, § 7 for enforcement of the Town of Plymouth Zoning Bylaw and for a stop work order with regard to the above-referenced property.

This request is made on behalf of a coalition of residents and organizations who will be aggrieved if the request and stop work order are not issued. The signatories are identified on the attached signature pages.

The grounds for this request are as follows:

- The Special Permit is based on the finding that the “proposed end use for the site is installation of a solar array facility.” Special Permit Case No. 3751R, Finding 5. The basis of this finding was a July 14, 2014 letter from Blue Wave Capital. *See* Special Permit Case No. 3751, at 4.<sup>1</sup>
- The Special Permit and Zoning Permit were based on findings by the Zoning Board of Appeals that the volume of sand and gravel to be removed is “incidental to and required to allow the solar facility to be constructed, Reason 2, Special Permit, and that the mining of 201,000 cubic yards of material is “the minimum necessary to construct the proposed solar facility.” Special Permit Case No. 3751R, Reason 4.

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<sup>1</sup> Mr. Main (voting no): “He did believe that ultimately the end use would have been a solar field; however, he expressed concern that there was no firm commitment, and Blue Wave did not respond to the RFP” *Id.* at 4. Mr. Peck (voting yes) “was inclined to support with a condition of procuring an end-use agreement.” *Id.* at 4. Mr. Conner (voting yes): “he believed Blue Wave was committed” *Id.* at 5.

- Since the Special Permit was issued, new information—in the form of testimony under oath before the Massachusetts Land Court—shows that the sand and gravel mining project is neither “incidental to” nor “required for” the installation of a solar facility, even if such a facility were not a prohibited use. Specifically, Aiden Foley, a representative of Blue Wave Capital, the company that was put forth by Kingstown as interested in developing an industrial solar installation on the site, testified at the Land Court trial that removing sand and gravel **is not “required for” installation of a solar facility** on the County Wood Lot. *See Trial Transcript Excerpt Attached Hereto* as Exhibit 1, 4/20/17 Tr. 70:16-24. (Q: (Mr. Cassidy) “...once the trees and shrubbery are cleared in the county wood lot there, how much sand and gravel would need to be extracted in order to put up a solar array? A (Mr. Foley): “Well, I would answer the way that we don’t necessarily need any.” Importantly, Mr. Foley was a witness for Kingstown Trucking at the trial.<sup>2</sup>
- The land where the sand and gravel removal and site preparation allowed under the Special Permit and Zoning Permit will be conducted is zoned Rural Residential, RR40 under the Plymouth Zoning Bylaw § 205-40.
- No permit has been issued for the construction of a solar facility on the site.
- Since the Special Permit was issued in October 2015, the Zoning Bylaw has been amended to add § 205-77 which governs Ground Mounted Solar Photovoltaic Systems (GMSPS). Under § 205-77, the solar facility that was proposed by Kingstown Corporation as the “end use” for the sand and gravel mining operation approved under the Special Permit is a prohibited use on the property. Therefore the Special Permit and Zoning Permit are based on an “end use” finding for a use that presently may not lawfully be conducted on the site.
- New information also shows the presence of at least one species listed under the Massachusetts Endangered Species Act on the County Woodlot requiring a filing with the Natural Heritage and Endangered Species Program. See Exhibit 2 hereto.
- The June 9, 2014 Environmental Impact Statement submitted in support of the Special Permit application is outdated and incomplete in part because it fails to take into account the habitat for species listed under the Natural Heritage and Endangered Species Program.

For the reasons stated above, the coalition requests that you:

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<sup>2</sup> Last week, the Land Court dismissed the appeal of Kingstown’s Special Permit on procedural grounds that the Plaintiffs in the case lacked standing. Therefore, the Court did not reach merits of the case, including addressing the clear and unopposed testimony by Kingstown’s witness that the sand and gravel removal project was neither incidental to nor required for the installation of a solar facility as required by the Bylaw.

- Immediately issue a stop work order prohibiting any and all work, including site preparation on the subject property;
- Immediately inform Kingstown Trucking and the Plymouth County Commissioners that any work on the site is prohibited; and
- Immediately suspend Zoning Permit # Z20160009 issued by your office on January 5, 2016.

Please feel free to contact me at 508-259-9154 if you wish to discuss this matter. Please direct your response to this request to me via email at [megsheehan07@gmail.com](mailto:megsheehan07@gmail.com) with a hard copy to me care of 204 Long Pond Road, Plymouth MA 02360.

Thank you.

A handwritten signature in blue ink that reads "Margaret E. Sheehan" followed by a horizontal flourish.

Margaret E. Sheehan, Esq.

Cc: Jeffrey Angley, Esq., Attorney for Kingstown Trucking Corp.  
Plymouth County Commissioners  
Zoning Board of Appeals, Town of Plymouth

SIGNATORIES TO MARCH 9, 2018  
LETTER TO TOWN OF PLYMOUTH BUILDING DEPARTMENT  
REQUESTING BYLAW ENFORCEMENT AND STOP WORK ORDER  
ON COUNTY WOODLOT

NAME: Sharl Heller

ADDRESS: 201 Center Hill Road, Plymouth, MA 02360

SIGNATURE: Sharl Heller

And Citizens of Plymouth, MA listed below:

Richard Barry  
Harvey LeSueur  
Gene LaFond  
Malcolm MacGregor  
Dale Bryan  
Ed Russell  
Paul Williams  
Linda Williams  
Denise Stowell