



For a thriving New England

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August 5, 2020

*Via Registered Mail—Return Receipt Requested*

David Southworth  
President & Director  
Southworth Manager Inc.  
Southworth Willowbend LLC  
120 Wells Avenue  
Newton, MA 02459

Phyllis Fireman  
President & Director  
Willowbend County Club Inc.  
130 Willowbend Drive  
Mashpee, MA 02649

Patricia Kilgallon  
Property Manager  
Southworth Willowbend LLC  
Willowbend Community Trust  
130 Willowbend Drive  
Mashpee, MA 02649

Joseph Deitch  
Chairman  
Southworth Development LLC  
120 Wells Avenue  
Newton, MA 02459

Alexander L. Jackson, IV  
Trustee & Chairman of the Board of  
Trustees  
Willowbend Community Trust  
130 Willowbend Drive  
Mashpee, MA 02649

Alexander L. Jackson, IV, Trustee  
Barbara Brandt-Saret, Trustee  
Joyce T. Hosford, Trustee  
Cotuit Bay Condominium Trust  
418 Quinaquisset Ave  
Mashpee, MA 02649

**RE: Notice of Intent to File Suit for Violations of the Clean Water Act at the Willowbend Community Complex**

Dear Sirs and Madams:

I write on behalf of the Conservation Law Foundation and its members (“CLF”).<sup>1</sup> Willowbend Country Club Inc. (formerly known as Willowbend Development Corporation), Southworth Willowbend LLC, Willowbend Community Trust, Willowbend Golf and Country Club, and Cotuit Bay Condominium Trust (collectively “the Willowbend Entities”) own and/or operate the Willowbend Community Complex located at 130 Willowbend Drive in Mashpee, Massachusetts (“the Willowbend Property” or “the Property”). Based on available information, CLF understands that the Willowbend Entities have violated, are violating, and will continue to violate the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.* by discharging and adding

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<sup>1</sup> CLF is a 501(c)(3) nonprofit, member-supported organization dedicated to the conservation and protection of New England’s environment.

pollutants from the Willowbend wastewater system, a point source, into the Popponeset Bay system, a water of the United States. This letter puts the Willowbend Entities on notice of CLF's intent to file suit to halt and remedy harms caused by these past and ongoing violations of federal law.

### **The Willowbend Facility**

The Willowbend Entities own and/or operate an 805-bedroom community with function rooms, a tennis club, clubhouses and office space in Mashpee ("the Property"). Sewage from the Property is conveyed to the Willowbend Facility ("the Facility"), a wastewater system. Wastewater operations firm White Water manages the Facility on behalf of the Willowbend Entities. The Facility is designed to accommodate an influent flow of 132,500 gallons per day; a state groundwater discharge permit currently limits flow to 113,000 gallons per day. After raw sewage passes through a rotating biological contactor process (partially reducing nitrogen levels from raw sewage), the Willowbend Entities discharge partially treated effluent from the Facility to the soil via "three disposal beds utilizing chambers providing 82,950 [square feet] of infiltration area."

The Willowbend Facility is located within the drainage of the Quaker Run River (roughly 200 feet away from the Facility), the Santuit River and Shoestring Bay (roughly half a mile from the Facility)—all within the Popponeset Bay watershed. Effluent leaving the Facility pours through the sandy soil below and around the Facility's disposal beds to reach groundwaters. These groundwaters transport the effluent into surface waters of the Popponeset Bay system. The vast majority of nitrogen within the Facility's effluent reaches these surface waters. It does so without chemical changes.

Nitrogen pollution from the Facility threatens Popponeset Bay's ecological integrity and the continued use of these waters by individuals, including CLF members. In coastal waters, nitrogen is a limiting nutrient for algal populations. This means that algal populations increase in direct proportion to increases in available supplies of nitrogen. In a process known as "eutrophication," when levels of nitrogen increase, algae and aquatic plant concentrations can reach densities that overwhelm the natural ecosystem. In waters experiencing eutrophication, plants and algae can generate "blooms," meaning they experience explosive population growth. Eutrophic blooms can have severe crowding-out effects on the native aquatic ecosystem, and estuary systems are particularly sensitive to such effects. Blooms result in large quantities of rotting organic matter in the waterbody. The resulting processes of decay exhaust available supplies of dissolved oxygen in the water and render the water so turbid that sunlight cannot reach the seafloor. Fish and shellfish can die from the deprivation of dissolved oxygen. Eutrophic waterbodies, with algal blooms and red tides, are aesthetically unappealing. Water clarity is reduced in such waterbodies. Algae appear on the surface of the water as a green, green-blue, brown or red film. Algal growth and decay also lead to unpleasant odors.

The Popponeset Bay is impaired due to nitrogen pollution. According to MassDEP, Popponeset Bay is eutrophic and "at risk of further eutrophication from high nutrient loads in the groundwater and runoff from [its] watershed[]." MassDEP reports algal blooms, depleted oxygen, elimination of eelgrass meadows, crashes in biodiversity due to nitrogen pollution within the drainage. Nitrogen pollution—including from the Willowbend Facility—has caused "degraded

water quality, adverse impacts to ecosystems, and limits on the use of water resources” in Popponeset Bay. MassDEP’s analysis incorporated the data and analysis of 2004 technical report on the Popponeset Bay by the Massachusetts Estuaries Project (MEP), which concludes that that Willowbend Facility is contributing nitrogen to Popponeset Bay. In Popponesett Bay, nitrogen pollution from the Facility has contributed to such algal blooms followed by extreme decreases in dissolved oxygen concentrations that threaten aquatic life and reduced species diversity. Nitrogen pollution from the Facility has contributed to widespread losses in eelgrass. In Popponesett Bay nitrogen pollution has eliminated eelgrass meadows. The Facility’s nitrogen pollution has contributed to the near loss of the benthic community. The Facility’s nitrogen pollution has contributed to unpleasant odors and scums from blooms in the Popponeset Bay system.

### **Clean Water Act Violations**

The Clean Water Act prohibits persons from discharging pollutants from a point source to navigable waters without authorization under a National Pollutant Discharge Elimination Scheme (NPDES) permit. 33 U.S.C. § 1342.

The Willowbend Entities are persons under the meaning of the Act. The Willowbend Facility is a “point source” as defined in the Act. 33 U.S.C. §1362(14); *see also Conservation Law Found., Inc. v. Longwood Venues & Destinations, Inc.*, 422 F. Supp. 3d 435, 445 (D. Mass. 2019). The Willowbend Entities add nitrogen and septic wastewater from the Facility to the surface waters of the Popponeset Bay system, which are navigable waters. Septic wastewater and nitrogen are pollutants. The Willowbend Entities’ discharges reach the waters of Popponeset Bay via groundwater transfer in a manner functionally equivalent to a direct discharge. Upon information and belief, the Willowbend Entities release effluent containing septic waste and nitrogen pollutants from the Facility to groundwater less than 200 feet from the surface waters of the Quaker Run River (which feed Shoestring Bay) around half a mile from the waters of Shoestring Bay. Upon information and belief, pollutants transfer from the Facility to these surface waters within a matter of days. The Facility’s pollutant discharges to the bays are continuous and ongoing. Neither the Willowbend Entities nor anyone else is authorized under a NPDES permit to discharge pollutants from the Facility to navigable waters.

The Willowbend Entities have discharged pollutants to Popponeset Bay from a point source—the Facility—without authorization under an NPDES permit on each day of the five years preceding the date of this notice; they will continue to do so each day in the future. Each of these unauthorized discharges constitutes a violation of the Clean Water Act.

### **Conclusion**

Additional information, including information in the parties’ possession, may reveal further details about the Clean Water Act violations described above. This letter covers all such violations. This letter is being provided pursuant to Section 505(b) of the Clean Water Act. 33 U.S.C. § 1365(b). CLF would welcome the opportunity to discuss this matter with you. If you are interested in discussing the matter, or if you believe any of the above information is incorrect, if you take steps to permanently correct the Clean Water Act violations, if you believe you are currently in compliance with the Clean Water Act, or if you have any questions concerning this notice, please

contact me as soon as possible at (617) 850-1739 or at the address listed below. If you would like to meet in person to discuss this matter, I am available to meet at a mutually agreeable time and place.

Sincerely,

CONSERVATION LAW FOUNDATION INC.

*By their attorney*

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Conservation Law Foundation  
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cc: By certified mail – return receipt requested

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