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December 30, 2022

BY EMAIL

Sandy Shweder, Chair
c/o Kara Sheth, Conservation Agent
Chilmark Conservation Commission
Chilmark Town Hall
401 Middle Road
Chilmark, MA 02535

Re: Concerns re 18 Austin Pasture Notice of Intent

To Chairwoman Shweder and Members of the Conservation Commission:

This firm represents the owner of 21 Lake Road, Chilmark (Shari Levitan, as Trustee of the 21 Lake Road Nominee Trust) and 4 Austin Pasture, Chilmark (High Pasture Farm LLC).

On behalf of my clients, I write concerning the Notice of Intent for 18 Austin Pasture (Assessor Parcel 35-2), in which the owner is proposing to: construct and maintain an elevated walkway above an existing footpath within a bordering vegetated wetland; construct a boatshed within the buffer zone of Squibnocket Pond's coastal bank; and perform ongoing maintenance of the path, the elevated walkway, the boatshed, and the existing beach access stairs. The Notice of Intent is scheduled to be heard by the Commission on January 5, 2023.

As you deliberate on these proposals, we ask you to give careful consideration to the following issues and concerns.

1. What precedent will the Commission set if it approves the construction of the boatshed within the buffer zone of the Pond's coastal bank? Will an approval of the boatshed lead inevitably to Notices of Intent for structures within the buffer zone on many or most of the other properties along the Pond's northeast shoreline? What will be the cumulative harm to the sensitive resource areas from structures dotting the bank? In this context, it is vital to remember that the southern side of the Pond will be open to general public access, which will have its own set of impacts.

2. How will the Commission ensure that the acts of constructing and installing the elevated walkway and boatshed will not adversely impact the resource areas? Will the boardwalk construction cause harm through sedimentation? Will the boatshed be constructed on-site, with vehicles and equipment crossing the bordering vegetated wetland? Or, will the boatshed be constructed off-site, and transported to its proposed location for installation? If the latter, how will it be transported? Will it be driven across the bordering vegetated wetland? Or floated across the pond? Any construction work that might be authorized should be defined and limited by the need to maintain a healthy wetland ecology.

3. The elevated walkway would presumably replace the existing walkway that is on the ground within the bordering vegetated wetland. The Commission can expect to hear assertions that the elevated boardwalk will be an improvement over the existing circumstances – *i.e.*, that the walkway, located directly on the wetland itself, is more harmful than the proposed elevated walkway. But, should the elimination of an existing, unlawful and unpermitted boardwalk be grounds for approving a potential lesser evil that is still harmful to a protected resource area?

4. What adverse, cumulative impacts will likely result from the long-term, maintenance of the elevated walkway, and the boatshed, and the beach access stairs?

5. How will the Commission ensure that the boatshed is used solely as proposed (storing boats and fishing equipment), and not for other purposes (as an office or for sleeping or partying)? Will the boathouse have electricity? If so, how will the electricity be fed? Will the boathouse have lights? Will it have a bathroom? Will there be prohibitions on what may be stored in the boathouse? It is an open secret that on parcels abutting the Pond, structures approved for one use have ended up being put to other, impermissible uses. Unless and until the Commission and the Town strictly enforce the rules, you should assume that the conditions in any order of conditions will be ignored someday, whether by current or future owners. What permanent protections will be put in place to ensure that a gradual change in use does not occur? And, will those protections actually be enforced?

Thank you for your anticipated attention to these issues and concerns.

Sincerely,



Brian S. Kaplan