



www.chilmarkma.gov

TOWN OF CHILMARK CHILMARK, MASSACHUSETTS

TOWN OFFICES:
Beetlebung Corner
Post Office Box 119
Chilmark, MA 02535
508-645-2100
508-645-2110 Fax

June 23, 2017

VIA E-MAIL

(carlos.fragata@state.ma.us)

CARLOS FRAGATA
MassDEP - Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Re: Gangway and float owned by Brian Vanderhoop, located in the waters of Chilmark, Massachusetts

Dear Mr. Fragata:

I write to you on behalf of the Board of Selectmen of Chilmark, Massachusetts (the "Board"). The Board has met on several occasions to discuss this matter. As you are aware, in 2014, Brian Vanderhoop (also known as Chip Vanderhoop) obtained a license from the Department of Environmental Protection ("DEP") for a pier/dock, pilings, and boat house. A copy of the application and license is attached as Exhibit "A".¹ In contradiction with the above-mentioned license, Mr. Vanderhoop recently installed a gangway and float attached to the pier. A photograph showing the gangway and float is attached as Exhibit "B". We note the following:

By letter dated May 25, 2017, the Chilmark Harbormaster requested that Mr. Vanderhoop remove the gangway and float by July 1, 2017, due to the fact that the unlicensed gangway and

¹ We note that the Town of Chilmark never received notification of any DEP license granted to Mr. Vanderhoop for the construction of the dock and other structures, nor was the Town of Chilmark notified of Mr. Vanderhoop's 2014 application. Further, Mr. Vanderhoop has never requested a permit or license directly from the Town of Chilmark for the construction of the dock and other structures.

Carlos Fragata
June 23, 2017
Page 2 of 2

float interfere with safe navigation. A copy of that letter is attached hereto as Exhibit "C". We support the position taken by the Harbormaster. Mr. Vanderhoop's wife, Elaine Vanderhoop, directed a response to the Harbormaster's letter to the Selectmen by e-mail, explaining that the Vanderhoops hoped to keep the gangway and float. A copy of that e-mail is attached hereto as Exhibit "D". The new gangway and float extend into Chilmark waters and impact both navigation at the head of Menemsha Harbor and the rights of Chilmark riparian waterfront owners.

The Board respectfully requests the immediate removal of the gangway and float, both of which are unlicensed and unauthorized and adversely affect navigation and the rights of the riparian owners and abutters.

Please do not hesitate to call with any questions.

Sincerely,



Jim Malkin, Chilmark Selectman
617-416-2984
jimmalkin@gmail.com

Enclosures

cc: Chilmark Board of Selectmen (w/encl.)
Chilmark Harbormaster (w/encl.)
Ronald H. Rappaport, Town Counsel (w/encl.)

EXHIBIT A

The Commonwealth Of Massachusetts



No. 13770

SIMPLIFIED LICENSE
BRP WW06

Applicant must fill in pages 1 and 2 of this license.

Brian Vanderhoop
Applicant's name

of the Town/City of: Aquinnah in: Dukes
Town/City County

County and Commonwealth aforesaid, has applied to the Department of Environmental Protection for a Simplified License to:

Please check:

☒ maintain an existing (pre-1984):

Please check all that apply below:

- ☒ pier/dock
- ☐ boat ramp
- ☐ ramp
- ☐ float(s)
- ☒ pile(s)
- ☐ boat lift
- ☒ boat house
- ☐ retaining wall/seawall
- ☐ bulkhead
- ☐ rip rap/stone revetment
- ☐ groin(s)
- ☐ Nonwater-dependent (NWD) residence
- ☐ other _____

☐ construct a proposed or maintain an existing (post-1984):

Please check all that apply below:

- ☐ pier/dock Removable
- ☐ ramp
- ☐ float(s)
- ☐ pile(s)
- ☐ boat lift
- ☐ pile-supported boat house
- ☐ other _____

and has submitted plans of the same; and whereas due notice of said application has been given, as required by law, to the [Please check one:] ☒ Board of Selectmen ☐ Mayor and City Council, of the Town/City of:

Aquinnah

Town/City

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, subject to the approval of the Governor, authorizes and licenses said Licensee, subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to:

Please check all that apply:

☒ maintain existing structure(s) for:

- ☒ non commercial docking/access to navigable water
- ☐ shoreline stabilization
- ☐ residential, NWD building
- ☐ other Supersedes Interim Approval # 10877(2005)

Please check all that apply:

☐ construct and maintain structure(s) for:

- ☐ non commercial docking/access to navigable water
- ☐ other _____

in and over the waters of: Menemsha Basin in the Town/City of: Aquinnah
Waterway Town/City

and in accordance with the locations shown and details indicated on the accompanying License Sketch Plan No. 13770
(total number of Sheet(s): 1

License # ~~DELAUST-ONLY~~ 13770

Page 2

The total area of the combined structures, measured below mean/ordinary high water shall be no greater than a total of 600 square feet for proposed water-dependent structures, or for structures built or substantially altered after January 1, 1984 without any fill. For structures or fill constructed prior to January 1, 1984 and not substantially altered since that date: any structures and fill, either water-dependent or nonwater-dependent, total no more than 600 square feet. In both instances structure is not a marina (i.e. does not serve ten or more vessels). Dimensions of all structures are shown on the accompanying plan(s).

"I hereby make application for a License to authorize the activities I have described herein. Upon my signature, I agree to allow the duly authorized representative of the Massachusetts Department of Environmental Protection to enter upon the premises of the project site at reasonable times for the purpose of inspection. I hereby certify that the information submitted in this document is true and accurate to the best of my knowledge. And, upon my signature, that I have read the License and conditions and agree to the terms and conditions set forth herein."

BOX A:
Print Name Brian Vanderhoop
Mailing Address 10 old south road
City/Town (not village) Aquinnah
State Ma Zip Code 02535 County Dukes
(area code) telephone 508-645-9278 e-mail bvhoop@gmail.com

Notification: Your signature to the right certifies that you have notified the entities as checked off in the boxes below.

Notification of application has been provided to: (please check)

and has been sent by certified mail to: (please check)

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Local Conservation Commission | <input checked="" type="checkbox"/> Board of Selectman | <input type="checkbox"/> Mayor and City Council |
| <input checked="" type="checkbox"/> Zoning Authority | <input checked="" type="checkbox"/> Planning Board | |
| <input checked="" type="checkbox"/> Abutters | <input checked="" type="checkbox"/> Interested Parties | <input type="checkbox"/> Landowner (if not applicant) |

Signature of applicant Brian F Vanderhoop Date 5/28/14

BOX B:

If site address is different from mailing address:

Site Address of the structures Aquinnah Menemsha Shore Rd
City/Town Aquinnah
State Ma Zip Code 02535 County Dukes

BOX C:

If the applicant is different than the owner:

Owner SAME
Engineer/Agent Richard Barbini SB & H Engineering

NOTE: This License is not valid until such time as it has been numbered and signed by the appropriate State officials (see page 5) and recorded at the Registry of Deeds.

NOTE: This License is not valid until such time as it has been numbered and signed by the appropriate State officials (see page 5) and recorded at the Registry of Deeds.

USE: The structures authorized herein shall be for private non-commercial use of the licensee. The structures shall not be used for commercial purposes, leased, rented or otherwise let for compensation. Any change in use shall require an amendment to this license by the Department. The structures authorized herein shall be limited to the following uses: noncommercial docking and boating access to navigable waters.

TERM: This License will expire fifteen (15) years from the date of License issuance. By written request of the Licensee for an amendment, the Department may grant a renewal for the term of years not to exceed that authorized in the original license.

WATERWAYS CONDITIONS:

1. ACCESS: In accordance with any License condition, easement, or other public right of lateral passage that exists in the area of the subject property lying between the high and low water marks" or "below the ordinary high water mark", the Licensee shall allow the public in the exercise of such rights to pass freely over, under or around all structures within such (intertidal) area. Accordingly, the Licensee shall place and maintain, in good repair, a public access sign on the easterly/westerly or northerly/southerly sides of the pier/dock, authorized herein or at each property line, adjacent to the high water shoreline. Said signs shall comply with the Department's signage guidelines (see instructions) and shall be posted immediately upon license issuance or completion of construction. Nothing in this condition shall be construed as preventing the Licensee from excluding the public from portions of said structure(s) or property not intended for lateral passage.

In partial compensation for the private use of structures and/or fill on tidelands and/or private tidelands and/or Great Ponds which interferes with the rights of the public to use such lands, the Licensee shall allow the public to pass on foot, for any purpose and from dawn to dusk, within the area of the subject property lying seaward of the high water mark or, for Great Ponds within the public access way delineated on the License plan/or within 5 feet of the ordinary high water shoreline. This condition shall not be construed to prevent the Licensee from taking reasonable measures to discourage unlawful activity by users of the area intended for public passage, including but not limited to trespassing on adjacent private areas and deposit of refuse of any kind or nature in the water or on the shore. Further, the exercise by the public of free on-foot passage in accordance with this condition shall be considered a permitted use to which the limited liability provisions of M.G.L. c.21, s17c shall apply.

2. This License authorizes structure(s) and/or fill on:
FOR MassDEP USE ONLY:

<input checked="" type="checkbox"/> Private Tidelands	In accordance with the public easement that exists by law on private tidelands, the Licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, strolling and the natural derivatives thereof.
<input checked="" type="checkbox"/> Commonwealth Tidelands	The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. The Commonwealth holds said lands in trust for the benefit of the public.
<input type="checkbox"/> Great Pond	The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose.
<input type="checkbox"/> Navigable River or Stream	The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, in the waterway.

3. Unless otherwise expressly provided by this license, the Licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon. No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this license.

4. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.

5. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This License may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.

6. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein.

7. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner(s) thereof.

8. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to G.L. Chapter 131, s.40, the Wetlands Protection Act.

CONSTRUCTION:

9a. The project shall not significantly interfere with littoral or riparian property owners' rights to access and egress their property from the waterway. All structures shall be set back, at a minimum, at least twenty-five (25) feet from abutting property lines, where feasible.

9b. Structures shall not extend beyond the length of existing piers used for similar purposes; in no case shall the length extend more than $\frac{1}{4}$ of the way across a water body and shall conform to the square footage requirements as stated in Construction Condition 9a.

9c. Within areas of salt marsh, structures shall be constructed with a minimum height of 4 feet above ground level measured from the bottom of the stringer, and maximum width of 4 feet, or at a 1:1 ratio so as not to have an adverse impact on the salt marsh or aquatic vegetation. Whereas, the width of the pier maybe equal to but not greater than the height. Any ladders shall be constructed of durable materials, shall be fixed to the pier in such a manner so as not to rest on the marsh, shall have a minimum width of 2.0 feet, and shall have adequate railings extending above the pier/dock decking in order to facilitate safe passage.

9d. When removed, all seasonal structures shall be stored landward of the mean or ordinary high water shoreline, vegetated wetlands, dunes and all wetland resource areas. Said storage shall be in conformance with any applicable local, state or federal requirements.

9e. The float(s) shall be constructed with an appropriate number of piles/pipes, legs or stop blocks attached to the float structural elements in order to maintain at least 24 inches of clearance off the bottom at extreme low tides.

9f. All work authorized herein shall be completed within five (5) years of the date of License issuance. Said construction period may be extended by the Department for one or more one year periods without public notice, provided that the Applicant submits to the Department, thirty (30) days prior to the expiration of said construction period, a written request to extend the period and provides an adequate justification for said extension.

DOCKING OF VESSELS:

10a. Motorized vessels shall be moored stern seaward of the float and shall have a draft no greater than that which provides a minimum of one foot clearance from the bottom at extreme low water. Where eelgrass is present, vessels shall not have any adverse affects on eelgrass in the area.

10b. Vessels shall be moored such that they do not become grounded at any tide.

10c. No dredging (including, but not limited to effects of prop wash) is permitted herein.

10d. No boat moored at any dock may block or unduly impede navigation within the waterway or the use of any adjacent dock.

COMPLIANCE

The Licensee, within sixty (60) days of completion of the licensed project, shall submit a written statement to the Department that the project has been completed in substantial conformance with the conditions and plans of said license, or a copy of the Certificate of Compliance for this project issued pursuant to the Wetlands Protection Act (if the project was previously issued an Order of Conditions or Superseding Order of Conditions under said Act).

This License shall be void unless the License and the accompanying plan(s) are recorded within 60 days from the date hereof, in the Registry of Deeds for the said County.

Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform with all terms and conditions stated herein. This License is granted upon the express condition that any and all other applicable authorizations required due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity of use authorized pursuant to this License.

FOR MassDEP USE ONLY:

THE COMMONWEALTH OF MASSACHUSETTS

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands on this
date 19th day of November in the year 2014
month year

Commissioner

for Program Chief

D. W. Ch
David E. Hill

Department of
Environmental
Protection

THE COMMONWEALTH OF MASSACHUSETTS

This License is approved in consideration of the payment into the treasury of the Commonwealth by said —
Brian Vanderhoop of the further sum of five hundred fifty- dollars and zero cents (\$ 555.00)
Applicant Amount

The amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

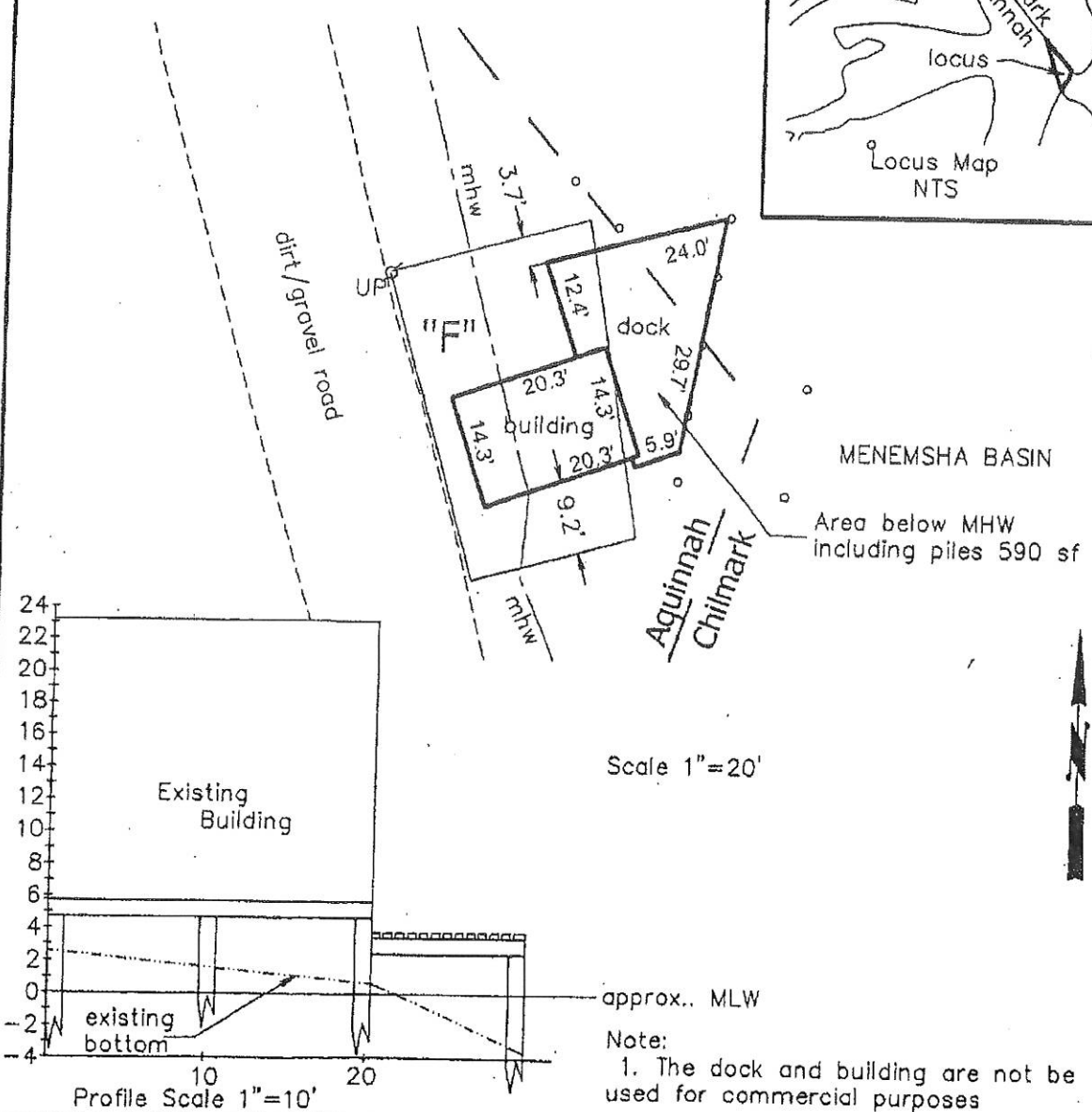
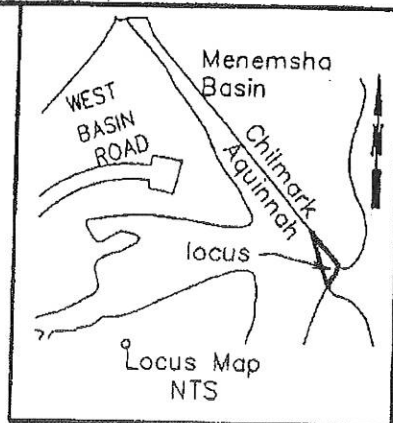
Approved by the Governor.

Boston

[Signature]
Governor

License No. 13770

Approved by Department of Environmental Protection
Date: NOV 19 2014



Propose: Simplified Licensing
Adjacent Property Owners
1. Frank Fenner
2. Town of Aquinnah

Plan Accompanying
petition of:
Brian Vanderhoop
10 Old South Road
Aquinnah, MA 02535

Project Description:
Licensing existing pier
and structure for private use
in Aquinnah, Ma at Menemsha
Basin, Dukes County.
By Applicant: Brian Vanderhoop
Date: 6/26/2014 Page 1 of 1

EXHIBIT B

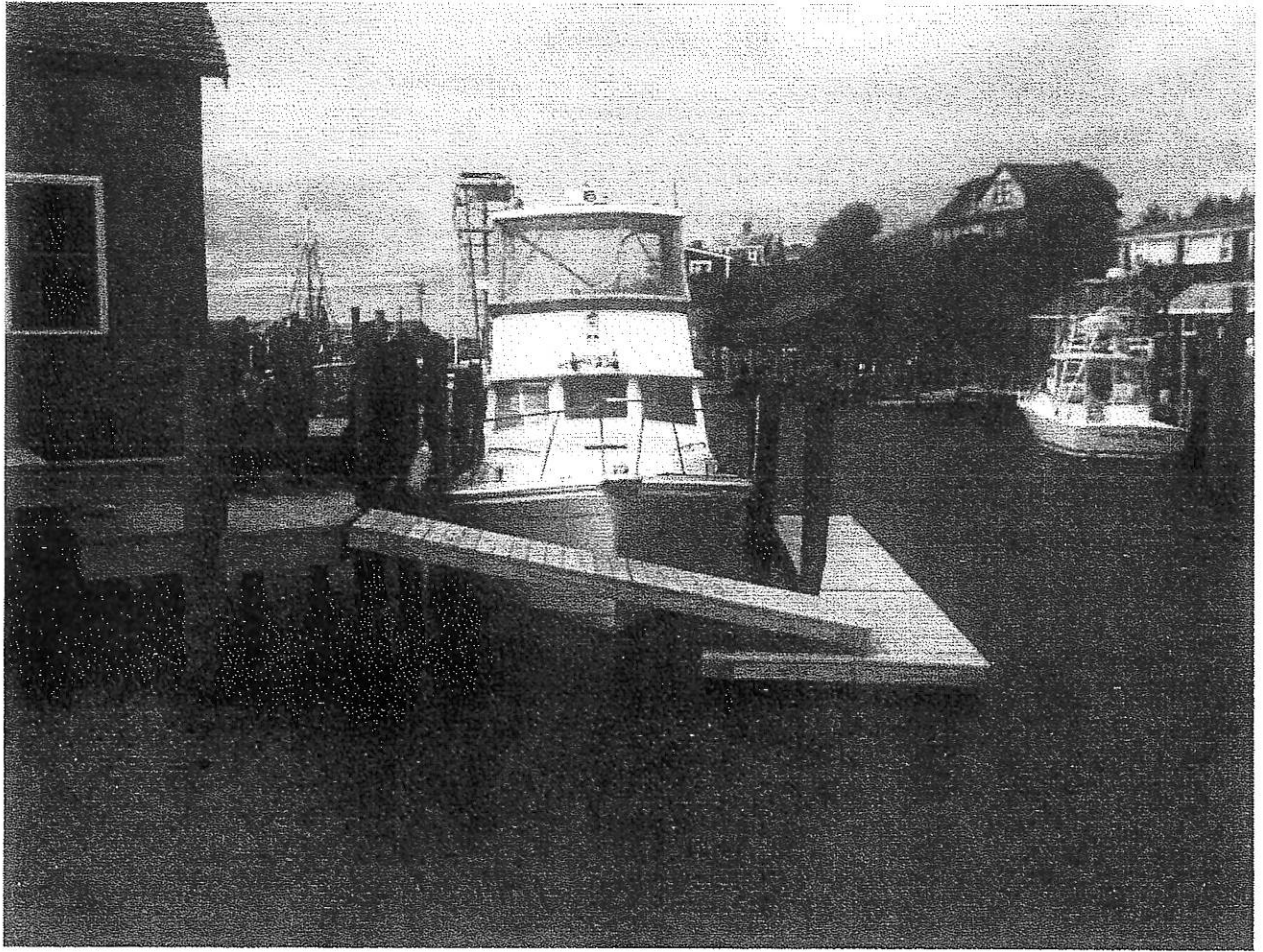


EXHIBIT C



TOWN OF CHILMARK
CHILMARK, MASSACHUSETTS

TOWN OFFICES:

Beetlebung Corner
Post Office Box 119
Chilmark, MA 02535
(508) 645-2110 Fax

Chip Vanderhoop
10 Old South Road
Aquinnah, Ma.
02535

Date: May 25, 2017

Dear Chip,

I am writing to you as Chilmark Harbormaster regarding the new floating dock from your lot that was recently installed in Chilmark waters without authorization from the Town of Chilmark.

According to the 2014 plan submitted to the Mass DEP for the Chapter 91 waterways license, the pilings that the dock is affixed to are in Chilmark waters; the new floating dock extends further into Chilmark waters.

The dock adversely impacts the riparian owners and abutters. Please remove the dock prior to July 1, 2017.

Sincerely

Dennis Jason
Harbormaster
Town of Chilmark.

cc: Aquinnah Board of Selectmen
955 State Rd Aquinnah Ma. 02535

EXHIBIT D

Dear Board of Selectmen of Chilmark,

As the owners of the shack at 1 Shore Rd in Menemsha, from July 1, 2014, we have worked very hard to clean up, remove debris and shore up the building and replace the dock, with permission from the DEP, and after installing a removable floating dock, thereby creating a safer access (the dock in front the shack is quite high from a boat deck, we are in receipt of a certified letter from the harbormaster, dated 5/25/17 to remove by July 1, 2017 a floating dock (2.5 ft wide approximate). We felt that we weren't going any further out than was previously there under prior ownership, but much narrower.

If as Harbormaster Jason suggests, this adversely affects other riparian owners or abutters, please let us know in what way that impacts those abutters, as we have gotten very positive feedback.

Our sole objective was for safe access to and from the vessels. Our immediate abutter endorsed this as well. We won't be tying our larger boat on the floating dock, and would be open to having the occasional incoming boat tie up to our dock, especially during storms for safe harbor. We would also be willing to shorten the floating dock by one section and move the outermost piling closer in, creating an even wider navigational berth for others than exists right now, even without the floating dock. We have always hoped to be in harmony with our abutting shack owners, and to that end, we hope to be allowed to keep the shorter floating dock for the sake of safety and improved use of our dock.

Respectfully,
Elaine and Brian Vanderhoop

