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VIA E-MAIL & Overnight Mail:

Town of Cairo Planning Board
Joseph Hasenkopf, Planning Board Chair
Edward Forrester, Member
Allen Veverka, Member
Beth Hansen, Member
Stacey Poulsen, Member
Raymond Pacifico, Alternate
P. O. Box 728
Cairo, NY 12413

**Re: Blackhead Mountain Lodge
64 Crows Nest Road
Site Plan/Special Use Permit Application (2022-1101P)**

Dear Chairman Hasenkopf and Planning Board Members:

As you are aware, this law office has been retained by Friends of Round Top, Inc. ("Friends of Round Top") and the Sierra Club Atlantic Chapter ("Sierra Club") in relation to the site plan and special use application filed by RCBG JV Manager LLC (the "Applicant") for the Blackhead Mountain Lodge (the "Project"). We submit these comments as part of the public hearing on the Project application for site plan and special use permit.

While the Town of Cairo ("Town") Planning Board ("Planning Board") issued a negative declaration of significance under the State Environmental Quality Review Act ("SEQRA")¹, the Planning Board must still take steps to address and mitigate the impacts of the Project. To do so, the Planning Board should make changes to the site plan and include conditions on any approval of the project.

¹ As the Planning Board is aware, Friends of Round Top, Sierra Club, and Theodore Gordon Flyfishers filed an Article 78 challenge to the Planning Board's negative declaration. We maintain that the Project presents significant environmental impacts that require further review. The submission of these comments does not waive the arguments and position taken in that proceeding.

The Application is Incomplete and Should not be Approved.

First, Friends of Round Top, together with other petitioners, has initiated an Article 78 special proceeding challenging the negative declaration for the Project. The Planning Board should postpone voting on the Application itself while this proceeding goes forward. If Friends of Round Top and the other petitioners prevail, any further proceedings and approvals would also be invalidated. For efficiency and clarity purposes, the Planning Board should postpone further review.

Second, the Application is incomplete as the Applicant has assumed a less intensive review but has failed to support the Planning Board granting such request. The Applicant has requested a less intensive review excluding a full review of the “Location, design, type of construction and exterior dimension of all proposed buildings and structures” and the “Elevation and façade treatment plans of all proposed structure”. The Applicant asserts that such less intensive review is warranted by the existing topography and vegetative screening from adjoining properties. It relies on just eleven (11) cross-sections. These cross-sections, however, unduly rely upon proposed buffer plantings without any actual visual representations to show that such plantings will in fact block views. More significantly, the limited cross-sections fail to address the views of the portions of the Project on the higher elevations of the property or from other vantage points downhill and from the escarpment trail within the Catskill Park. The Planning Board should require additional visual representations before granting the applicant’s request.²

In its most recent submission to the Planning Board, the Applicant’s engineer asserted “no new information has been requested.” This assertion is demonstrably false. It ignores and disregards the Planning Board’s reasonable request for 3D modeling to evaluate the visual impacts of the project. An alternative to 3D modeling could include a balloon fly study. It is the Applicant’s burden to support a less intensive review by demonstrating that the topography of the site blocks views of the project. The submitted materials are insufficient. Therefore, it has failed to meet its burden for a less intensive review and such waiver request must be denied. Moreover, the application remains incomplete and cannot be granted in its current form.

Third, the Planning Board has previously indicated that the Applicant will be required to provide a Bond to address potential impacts to private water wells as a result of the Project. The Applicant’s engineer noted “The Applicant will coordinate with the Town of Cairo Planning Board on the development of the Agreements which will be the basis of the Bonds and will ultimately be reviewed and in a form acceptable to the Town of Cairo Town Board.” The Planning Board should resolve and complete this “coordination” before approving the Project in order to include the terms of such Bonding as a condition of any approval.³

² It has been suggested that the Planning Board has already approved the waiver request. Respectfully, Article D, § 7 of the Site Plan Review Law requires the planning board state the grounds for granting such request in writing and upon a majority vote of the planning board. However, the meeting minutes at which the Project was listed on the Planning Board’s agenda do not reflect a vote on the waiver request.

³ Similarly, a Bond was discussed to address impacts to local roads to be negotiated between the Town attorney and Highway department. The terms of this Bond should also be formalized prior to approval and included as a condition thereof.

Moreover, as the purpose of the Bond is purportedly to protect residents whose wells are impacted, those residents should be involved in this “coordination” process. The Planning Board should analyze and delineate the area of potential impact around the Project eligible for coverage under the Bond. Those individuals should be notified and included, not excluded, as the Applicant proposes and premature approval would produce, in the Bond discussions.

The Site Plan Requires Modification

Article D, Section 9(d) of the Site Plan Review Law proves that the “planning board’s statement may include recommendations of desirable modifications to be incorporated in the final site plan, of which conformance with said modifications shall be considered a condition for a recommendation of approval.” Furthermore, § 9(d)(2) provides that the “planning board may approve the site plan and require that specific modifications or conditions be made.” Pursuant to this authority, the Planning Board should require changes to the Site Plan to mitigate impacts.

First and foremost, the Site Plan should be modified to create a fifty (50) foot buffer along the northern, eastern, and southern boundary lines adjoining private property and along Crows Nest Road and Bald Hills Road North.

Similarly, a vegetative buffer should be planted on the northern and northeastern side of the shared pond to block light and noise crossing the lake.

Third, the site plan shows material stockpiles located close to property boundary lines, which brings the associated construction noise unnecessarily close to the boundaries. Such stockpiles should be moved further into the interior of the property at least 100 feet from the nearest private property boundary line.

Fourth, driveways or roadways throughout the development should transition to shoulders and grass at grade to accommodate amphibian and turtle migration. If curbs are to be installed, they should meet the pavement at least 45° angles and provide frequent, at-grade crossings or breaks.

Conditions of Approval

Town Law § 274(a)(4) authorizes the Planning Board to “impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan.” Case law further provides that “[i]t is uncontroverted that a town planning board can impose reasonable conditions on the approval of a site plan to further the health, safety and general welfare of the community.” *Castle Properties Co. v. Ackerson*, 163 A.D.2d 785, 786 (3d Dept. 1990) (citations omitted). In fact, “[i]n conducting . . . site plan review, the Planning Board is required to set appropriate conditions and safeguards which are in harmony with the general purpose and intent of the Town’s zoning code, and which give particular regard to, inter alia, achieving conformance of the final site development’ with any town development plan.” *Matter of Valentine v. McLaughlin*, 87 A.D.3d 1155, 1157 (2d Dept. 2011) (quoting *Matter of Commerce Bank N.A. v. Planning Bd. of Town of Bedford*, 47 A.D.3d 810 (2d Dept. 2008)).

Consistent with the foregoing, the Town of Cairo Zoning Code Section XI (D)(3) provides that “[i]n making its determination as to whether to issue a special use permit, the planning board shall take into account the public health, safety and welfare and shall impose appropriate conditions and safeguards” to address fourteen (14) objectives, including:

- (a) Ensure the proposed use is compatible with adjoining properties and with the natural environment in the area;
- (f) Protect neighboring properties from excessive dust, noise, odors, glare, release of harmful substances, and any other nuisances;
- (g) Minimize traffic impacts by properly evaluating vehicular access and circulation, roadway widths and placement. Traffic controls should be adequate to serve the special use and not excessively impact the overall traffic conditions present in the existing neighborhood;
- (i) Ensure the project design, including all principal and accessory structures, are compatible and harmonize with the existing neighborhood;
- (j) Use landscaping when necessary to act as a noise or visual buffer between the use and adjoining properties; and
- (l) Ensure water, sanitary waste and sewage facilities are adequate for the proposed use.

We provide for the Planning Board’s consideration, the following proposed conditions to attach to any approval issued for the Project with the intent of addressing impacts of the Project and accomplishing the objectives of the Special Use Permit review process.

General Conditions

The Blackhead Mountain Lodge Tourist Resort/Spa is limited to 127 keys/units in a maximum of 80 lodging buildings. Amendment of the special use permit shall be required for additional keys/units or lodging buildings.

Construction shall comply with the approved site plan. Changes to the site plan including, but not limited to, road layout, building locations, additional impervious surfaces, or new amenities, shall require amendment of the site plan and special use permit.

The Applicant shall comply with all applicable laws and regulations and obtain, maintain, and comply with all applicable permits, including all permit conditions for the Tourist Resort/Spa that have been imposed by any local, state, or federal agency.

No building permit shall be issued for construction of any new structure approved as part of this Special Use Permit until the Applicant provides documentary evidence that the DEC has accepted and approved the decommissioning of the existing septic system subject to the expired SPDES permit (DEC ID 4-1924-00058/00001; SPDES #NY0241857) assigned to Blackhead Mountain Lodge LLC.

No building permit shall be issued for construction of any new structure approved as part of this Special Use Permit until the Applicant provides documentary evidence that

the DEC has terminated the existing Water Withdrawal permit (DEC ID 4-1924-00058/00003; WWA #12,031), assigned to Blackhead Mountain Lodge LLC.

All structures to be constructed shall comply with the Town of Cairo Building Codes at the time of construction and shall comply with NYS and International Fire and Building Code.

The Tourist Resort/Spa shall not be occupied or operated until such time as the Town Building and Code Enforcement office has inspected and granted a certificate of occupancy. There will be no Certificate of Compliance or Occupancy until all site improvements have been completed, inspected, and approved by the Town Building and Code Enforcement office.

If any term or condition of this site plan approval is annulled by a court of law, then the Planning Board shall retain the right to reconsider whether the special use permit and site plan approval meets the requirements for granting such permit and approval in accordance with the standards of the Town of Cairo Code.

All plantings proposed and approved on the site plan (trees, shrubbery, planters, etc.) shall be maintained in perpetuity by the Applicant, operator, or property owner unless changed through legal instrumentation with the Town of Cairo Planning Board. Any dead or unhealthy trees, plantings, etc., shall be replaced promptly, within the effective, optimum growing season.

Construction Impact Conditions

No blasting is permitted or authorized on-site.

Construction activities shall be staged in such a manner as to not exceed the level of service for area roadways immediate to the project site. A damage deposit prior to construction shall be presented to the Town of Cairo in a form and amount acceptable to the Town Engineer and Attorney for the Town and determined by the Town Board, and shall be held in escrow until completion of ALL proposed development.

Any construction debris, mud and/or sediment infused stormwater that leaves the project site shall be promptly managed and removed so as to not interfere with existing drainage systems and/or onsite wetlands.

Construction activities shall be limited to between 8am and 5pm Monday through Friday. Construction activities shall be prohibited on weekends and any state or federally recognized holidays.

Any dirt or dust tracked onto the public highways, including, but not limited to, Blackhead Mountain Rd., Crows Nest Rd and Bald Hills Rd. N, shall be promptly cleaned up and removed.

There shall be no offsite parking along Blackhead Mountain Rd., Crows Nest Rd, or Bald Hills Rd N associated with the construction or operation of the Project.

Impacts on Groundwater, Surface Water, and Stormwater

If it is determined that new water withdrawal wells are necessary to support the Project, the Applicant shall be required to seek an amended special use permit prior to installation of any such well.

All onsite water and wastewater treatment and disposal systems shall comply with all Local, NYS and Federal statutes at time of issuing building permits for construction of residential and Common Use areas.

All onsite stormwater management systems shall comply with applicable NYS and Federal (USACOE) regulations and design guidelines at time of construction and/or implementation.

In the event that any private well located within 6,000 feet⁴ of Well-4 or Well-5 is reported to have run dry, experienced increased turbidity, lost water pressure, or tested positive for any regulated or emerging contaminant, within eighteen months of the proposed project becoming fully operational, Applicant shall within thirty (30) days of such report provide a report by a licensed hydrogeological engineer to the Town of Cairo Building and Code Enforcement Office regarding an evaluation of whether the impacts are related to the project approved under this special use permit. If the report cannot exclude that the cause of such impact is the project approved under this special use permit, then the report shall identify further testing necessary to make such a determination to be performed within a reasonable time following approval by the Town of Cairo Building and Code Enforcement Office. If the report or any report issued following additional testing concludes that the cause of such impacts is the project approved under this special use permit, then Applicant shall cease operation until a plan to address and resolve such impacts has been submitted and approved by the Planning Board and private well owner.

Prior to the start of construction activity, water testing will be conducted on the unnamed tributary and Shingle Kill Creek to establish a baseline of chemical compounds or original water quality index (WQI model) to protect the trout habitat during construction and when the wastewater treatment facility is tested and operational at full build out. The WQI of the unnamed tributary and Shingle Kill Creek will be submitted to DEC Department of Freshwater Fisheries Management and Research.

Impacts from Noise and Lights.

⁴ Dr. Katherine J. Beinkafner, Ph.D., provided a depiction of the approximate cone of depression for Well 5 extended 5,460 feet. Wells within this distance and area should be included in any Bond and review of impacts.

There shall be no public address system shall be permitted outside of the buildings on-site when the facility is operational.

Amplified music shall not be allowed outside of the buildings on-site except within 25 feet of the main lodge, any building including a restaurant, and the multi-use building. Amplified music is prohibited outside of the buildings on-site after 10 p.m. on Sunday through Thursday and after 11 p.m. on Friday and Saturday.

Trucks entering or exiting the property shall be prohibited from parking or idling on Crows Nest Rd or Bald Hills Rd N.

Any outdoor lighting within the project, including lights mounted on buildings, shall be designed to provide a low level of lighting. High Intensity Discharge (HID) lights shall not be used. Lights shall be directed downward and the tops of any fixtures higher than eight feet above ground shall be shielded so that the light bulb is not visible above a horizontal plane. No outside light shall be mounted higher than twenty-five feet above the ground. All exterior lighting must be dark sky compliant with luminaires emitting 1000 lumens or less. No light shall exceed one (1) footcandle measured at ground level at any side or rear property line of any lot.

Lights on any exterior footpath, roads, and parking lots shall be motion activated and timed to turn off within one (1) minute of activation.

Exterior fire pits and grills shall be prohibited. Fireworks shall be prohibited on-site.

No existing trees greater than five (5) inches diameter measured at breast height may be removed from the 50' buffer on the northern, eastern, and southern property lines.

Traffic Impacts

The Applicant shall cause a traffic study of actual traffic impacts to be performed at least six (6) months but not more than twelve (12) months following full built-out to examine if additional safety measures such as traffic lights or stop signs are needed, particularly at the intersection of Blackhead Mountain Road and Greene County Road 31.

It is recommended that the Town Board/Highway Superintendent examine and install warning signs related to pedestrian and cycling activities on Blackhead Mtn Rd and Bald Hill Rd N.

The Applicant will install and maintain signage clearly marking the service entrance to the Blackhead Mountain Lodge.

It is recommended that the Town Board/Highway Superintendent examine and install a sign immediately south of the service entrance to the Blackhead Mountain Lodge on Crows Nest Rd. indicating "Local Traffic Only".

The Applicant, sub-contractor, or third-party operator is prohibited from removing or disturbing the existing vegetative buffer along Crows Nest Road and Bald Hills Road North, although tree saplings or understory plantings may be added to fill in existing gaps in that vegetative buffer.

Site maps provided to guests and residents shall designate privately owned adjoining properties as "Private Property."

The property owner or Project operator shall install at its own expense either a fence or "Private Property / No Trespassing" signs along shared property boundary lines of the Project property adjoining a private property. Such fence or signage shall be maintained by the Applicant in perpetuity.⁵

No reflective flashing, skylights, windows, or other architectural elements that produce glare from sunlight or impair views from the escarpment trail or other scenic vantage points will be permitted.

The Applicant shall prepare and submit to the Town of Cairo Building and Code Enforcement Office prior to occupancy an evacuation and egress plan in case of wildfire or other catastrophic event that takes into consideration evacuation of residential properties located in close proximity to the project points of ingress and egress.

I want to thank the Town of Cairo Planning Board for its openness to and consideration of these comments on behalf of Friends of Round Top as part of its review of the Project. I request that this letter be added to the record of the Project.

Yours truly,



John L. Barone, Esq.

Cc: Friends of Round Top, Inc.
Sierra Club Atlantic Chapter
Tal Rappleyea, Esq.

⁵ The Applicant's engineer's April 22, 2025, letter states that since one adjoining property "already has 'private property' signage, no other signage is proposed." This exemplifies the Applicant's disregard of the impacts it is imposing on its neighbors. As the party seeking to bring visitors and guests to within 50' of the property line, including walking trails, it should be required to take steps to prevent those visitors and guests from trespassing on adjoining properties. It is unjust to impose such obligations and burdens on the Project's neighbors.