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Subject: Court's Order Denying the Preliminary Injunction
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Below is a cut and paste version of the Land Court Order denying the Preliminary Injunction sought by Doug Liman and David Stork. This may be more user friendly than the Docket I sent you earlier.....

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The following event: Motion scheduled for 02/23/2018 02:30 PM has been resulted as follows:
Result: Case Management Conference held. Early Intervention held. Hearing held on plaintiffs' Application for Preliminary Injunction. Attorneys Larkosh, Rappaport, Batchelder, and Yanofsky appeared.

Following hearing, the court DENIED plaintiffs' application for preliminary injunction. For substantially the reasons supplied in the opposing papers and for the reasons laid upon the record from the bench and summarized below, the court, applying the analysis of the factors required when a preliminary injunction is sought under Mass. R. Civ. P. 65, see, e.g., *General Accident Ins. Co. of America v. Bank of New England-West, N.A.*, 403 Mass. 473, 475 (1988), concludes that the plaintiffs' application does not demonstrate irreparable harm or a likelihood of success on the merits and that the balance of the harms does not fall appreciably in plaintiffs' favor. First, the court primarily denies the application for preliminary injunction because the court finds the plaintiffs do not demonstrate they are likely to succeed on the merits. These plaintiffs to prevail in this latest case need to show how they are not barred by prior litigation, including the judgment previously entered against them in this court, and now on appeal in the Appeals Court. For the plaintiffs to prevail ultimately on the merits, plaintiffs must, as a threshold matter, demonstrate that "the project [is] constructed in a manner materially different from that contemplated by the town meeting votes." *Liman v. Chilmark Zoning Board of Appeals and Squibnocket Farm, Inc.*, 16 MISC 000695 (final judgment otherwise dismissing plaintiffs' claims with prejudice). Here, plaintiffs do not convince the court that they will be able to establish that the causeway/bridge project as currently being built (and almost completed) materially deviates from the project that was under consideration and successfully the subject of votes taken at town meeting in February 2015 and April 2017. The court acknowledges that this project does not come to court with formal detailed plans which would have been required as part of site plan or special permit review, but that was the consequence of the town meeting's zoning amendment vote. In any event, the court finds that there is an abundance of evidence to demonstrate that what the town meeting made the subject of its amendments does not materially deviate from what the project looks like today, as it nears completion. Plaintiffs' own public statements at (and leading up to) the most recent town meeting further show that they understood

the project considered by the meeting to be largely consistent with the construction now being wrapped up. The court also is not persuaded by plaintiffs' contention that the 2017 zoning bylaw amendments require both the Martha Vineyard Commission and Chilmark Conservation Commission to review yet again and formally thereafter re-approve the project; plaintiffs' claims which rest on this illogical reading of town meeting votes thus are likely to fail on the merits. The court also is unconvinced that either plaintiff will be able to survive a challenge based on lack of aggrievement. Second, plaintiffs do not adequately show they will be harmed irreparably by allowing the project's use. The causeway/bridge project is essentially complete. An injunction would only prevent its use- and would accomplish nothing tangible. Plaintiffs argue that once the project is open to the public, the causeway defendants currently use for access will be removed, and the remainder of the project, including the beach restoration and accompanying public parking lot construction, will commence, thus rendering the project so far along that any success at trial by the plaintiffs-resulting in removal of the projects will result in waste. The court assigns little weight to this contention, because any such harm to the plaintiffs is outweighed by the overwhelming benefit to the public in the form of natural resource restoration including beach and wetland, much-needed managed coastal protection, and increased municipal and public recreational improvements and amenities. Delay caused by injunction also would jeopardize grant funding for this long-planned and deferred public/private project. As such, the balance of harm is squarely in favor of the municipal and private defendants. After evaluating these factors, the court concludes plaintiffs are not entitled to a preliminary injunction. The court notes that, because this ruling is made on a preliminary injunction record, early in the pendency of this case, despite this ruling denying injunctive relief, both the municipal and private defendants forge ahead with the rest of the project bearing the risk that (despite the court's current assessment that they will not) the plaintiffs may ultimately prevail. Notice to issue for hearing on defendants' Motions to Dismiss, to be held March 28, 2018, 2:30 p.m. Defendants' reply brief due to the court no later than 10:00 a.m. on March 26, 2018. Case management conference not held in light of the pending motions to dismiss Court to defer adjustments to the Land Court's standard tracking order until parties reconvene for hearing. (Piper, J.)