

Town and County of Nantucket  
Select Board • County Commissioners

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C. Elizabeth Gibson  
Town & County Manager

October 5, 2022

Ashley Erisman, Chair  
Nantucket Conservation Commission  
Nantucket, MA 02554

Dear Ms. Erisman:

This joint letter on behalf of the Town of Nantucket and Siasconset Beach Preservation Fund Inc. ("SBPF") requests that the Conservation Commission schedule a hearing to reopen the pending Enforcement Order pertaining to the erosion protection geotube project at 87-105 Baxter Road, and that the Commission suspend the pending removal order for the three reasons described below.

The first reason to suspend implementing the removal order is that SBPF and the Town have prepared a Compliance Plan. As you are aware, the order to remove the project was based primarily on failures of compliance, not technical or environmental failures. Therefore, we propose that the Commission suspend its order to remove the project until the Commission makes a determination on this proposal that would bring the project into compliance. A compliance plan was previously submitted but the Commission declined to review it on its merits during the litigation, which is now settled. The Town and SBPF now ask the Commission to modify the Enforcement Order to reflect the terms of this compliance proposal, or such similar terms as the Commission may deem appropriate.

In simple terms, this proposal has two key terms. The Compliance Plan proposes to supply 100% of the accumulated sand deficiency, in addition to the sand otherwise required under the permit, all within the four-year time period suggested by experts for SBPF, the Town, and the Nantucket Land Council. One concern with providing the make-up sand faster is the potential adverse impacts on the nearby ecology, specifically the fishing grounds, if too much sand is provided too quickly. The proposal also requests a one-time 60-day extension of the standard sand (20,834 CY) and make-up sand (11,866 CY) for the current sand year only, to be extended from March 30 to May 30, 2023. This extension is to allow for the passage of time since the February proposal and the resulting logistical challenges of delivering that much sand in this sand year. As a sign of good faith, SBPF is preparing to deliver 50% of the proposed make-up sand early (5,933 CY by January 2023), with the remaining 26,767 CY of standard and make-up sand for this year to follow. It is noteworthy that the extra 60 days should have no

impact on sand contribution to the littoral drift system because this sand is going on the reserve template, which has more than a year of sand available already. The Compliance Plan will be forwarded shortly under separate cover.

The second reason to suspend implementing the removal order is that the Town and SBPF as co-applicants are finalizing a new Notice of Intent to apply to the Commission for approval to alter the project, which is intended to be filed in the coming weeks. Despite prior noncompliance, the property owners and the Town have rights under the state and local wetland protection rules, and it is our desire to see the Commission approve a revised project under those rules. The Town and SBPF look forward to working with the Commission to ensure that the proposed project will comply with the law, will provide appropriate environmentally sensitive protections to the bluff, to the beach, to the ecosystem, and to other interested parties, and will include robust mitigation and compliance conditions imposed by the Commission. In short, the project should be changed to incorporate what has been learned over the past years and to become sustainable going forward.

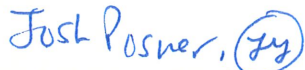
The third reason to suspend the removal order is that, to the extent the Commission decides not to adopt the compliance plan and decides not to approve of the forthcoming NOI, or may not be willing to suspend its removal order in order to review these items, SBPF and the Town note that removing the geotube system will require significant planning to prepare for the imminent bluff collapse, the environmental impact of such, the loss of homes and infrastructure, and the road closure that is expected to occur quickly upon removal. The removal order does not contain terms or a process needed to avoid creating an emergency or a disaster due to hasty removal. Any removal of the existing project should be done in a safe manner that avoids unnecessary harmful impacts.

As the Commission has judicially confirmed authority to order removal of the project, there is no risk of its authority to suspend this order in consideration of alternative compliance, project alteration, and reasonable prudence and safety measures. Please inform us when the Commission schedules a hearing on this matter.

Sincerely,



Libby Gibson, Town Manager



Josh Posner, President, Siasconset Beach Preservation Fund

Cc: Select Board