

Town and County of Nantucket  
Select Board • County Commissioners

Dawn E. Hill Holdgate, Chair  
Jason Bridges  
Matt Fee  
Kristie L. Ferrantella  
Rita Higgins



16 Broad Street  
Nantucket, Massachusetts 02554

Telephone (508) 228-7255  
Facsimile (508) 228-7272  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

C. Elizabeth Gibson  
Town & County Manager

*AGENDA FOR THE MEETING OF THE  
SELECT BOARD  
FEBRUARY 12, 2020 - 6:00 PM  
PUBLIC SAFETY FACILITY COMMUNITY ROOM  
4 FAIRGROUNDS ROAD  
NANTUCKET, MASSACHUSETTS*

- I. CALL TO ORDER*
- II. SELECT BOARD ACCEPTANCE OF AGENDA*
- III. ANNOUNCEMENTS*
  1. The Select Board Meeting is Being Audio/Video Recorded.
  2. NRTA: Seniors Ride the WAVE Free Every Wednesday in February.
  3. Town Offices will be Closed Monday, February 17, 2020 in Observance of Presidents' Day.
- IV. PUBLIC COMMENT\**
- V. NEW BUSINESS\**
- VI. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS*
  1. Approval of Minutes of September 18, 2019 at 6:00 PM.
  2. Approval of Payroll Warrants for Week of February 9, 2020.
  3. Approval of Treasury Warrants for February 12, 2020.
  4. Pending Contracts for February 12, 2020 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference (Continued from February 5, 2020).
- VII. SELECT BOARD'S REPORTS/COMMENT I*
  1. Joint Meeting with NRTA Advisory Board Regarding Potential for Seasonal Commuter Shuttle (Continued from January 29, 2020).

*VIII. CITIZEN/DEPARTMENTAL REQUESTS*

1. Sewer Department: Request for Waiver of Town Noise Bylaw for Sewer Replacement Projects on Bathing Beach Road, Walsh Street and Rays Court.
2. Nantucket Preservation Trust: Request for Approval and Execution of Preservation Restriction to be Held by Nantucket Preservation Trust, Inc. for the American Legion (aka Charles G. and Henry Coffin Warehouse) Located at 21 Washington Street.
3. Hawthorne Park LLC: Request for Preliminary Review and Agreement by Select Board to be the Holder of a Conservation Restriction for Hawthorne Park Open Space Located at 8C Hawthorne Lane, Pursuant to Planning Board Flex Development Special Permit, File No. 61-16.

*IX. PUBLIC HEARINGS*

1. Nantucket Sewer Commission: Public Hearing to Consider Amendments to the Nantucket Town and Siasconset Sewer Districts Pursuant to Section 10 of the Nantucket Sewer Act Regarding Articles 82, 83, 84, 85, 86, 87 and 88 of the 2020 Annual Town Meeting.

*X. TOWN MANAGER'S REPORT*

*XI. SELECT BOARD'S REPORTS/COMMENT II*

1. Discussion Regarding Strategic Plan Focus Area - Efficient Town Operations/Goal #1: Develop a Facilities Master Plan.
2. Committee Reports.

*XII. ADJOURNMENT*

*\*Identified on Agenda Protocol Sheet*

*Select Board Agenda Protocol:*

- **Roberts Rules:** *The Select Board follows Roberts Rules of Order to govern its meetings as per the Town Code and Charter.*
- **Public Comment:** *For bringing matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Select Board. At the Board's discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action. Except in emergencies, the Board will not normally take any other action on Public Comment. Any personal remarks or interrogation or any matter that appears on the regular agenda are not appropriate for Public Comment.*

*Public Comment is not to be used to present charges or complaints against any specifically named individual, public or private; instead, all such charges or complaints should be presented in writing to the Town Manager who can then give notice and an opportunity to be heard to the named individual as per MGL Ch. 39, s 23B.*

- **New Business:** *For topics not reasonably anticipated 48 hours in advance of the meeting.*
- **Public Participation:** *The Board welcomes valuable input from the public at appropriate times during the meeting with recognition by the Chair. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Board Members may have questions on the clarity of information presented. The Board will hear any staff input and then deliberate on a course of action.*
- **Select Board Report and Comment:** *Individual Board Members may have matters to bring to the attention of the Board. If the matter contemplates action by the Board, Board Members will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting. Otherwise, except in emergencies, the Board will not normally take action on Select Board Comment.*

**EXHIBIT 1**  
**AGREEMENTS TO BE EXECUTED BY TOWN MANAGER**  
**UNLESS RESOLUTION OF DISAPPROVAL BY SELECT BOARD**  
**February 12, 2020**  
**(Continued from February 5, 2020)**

Type of Agreement/Description	Department	With	Amount	Other Information	Source of Funding	Term
Amendment to Professional Service Agreement	PLUS	Vanasse Hangen Brustlin	Add \$5,500 to original contract amount of \$127,800 for new contract amount of \$133,300	Amend contract for engineering & design of Four Corners roundabout to include preparation of plan to subdivide the lot located at 10 Surfside Rd into two parcels	Article 10/2018 ATM	February 5, 2020 - December 31, 2020
Amendment to Professional Service Agreement	PLUS	Vanasse Hangen Brustlin	n/a	Amend contract for engineering & design of Old South Rd & Fairgrounds Rd roundabout to extend contract end date to allow for continued work	n/a	February 5, 2020 - December 31, 2020
Bid Award and Contract for Sale of Surplus Property	Marine	Siasconset Beach Preservation Fund, Inc.	(\$240,100)	Contract for sale of 9,500 cubic yards of dewatered sand from Polpis Harbor dredging project	n/a	February 5, 2020 - March 31, 2020



TO: MEMBERS OF THE SELECT BOARD, TOWN MANAGER  
FROM: NCC COORDINATING TEAM  
RE: SB MEETING FEB 5 AGENDA: SERVICE AGREEMENT TO SELL TOWN-OWNED SAND  
DATE: FEBRUARY 4, 2020

There are several questions regarding the proposed Professional Service Agreement between the Town and the Siasconset Beach Preservation Fund (SBPF) to sell 9,500 cubic yards<sup>1</sup> of “dewatered sand from [the] Polpis Harbor dredging project” that is on the agenda for the Select Board meeting this Wednesday, February 5. (See attachment, IV. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS, 3. Approval of Pending Contracts.) We respectfully request that the contract not be executed until these questions, and others, are answered fully, perhaps in a public hearing. Thank you.

#### POLICY ISSUES

We believe that as a follow-up to the Coastal Management Plan (for Town-owned properties), adopted by the Select Board in 2014, the intention of the Town was **to establish a sand bank** of dredged material from Polpis Harbor (and other locations) for municipal resiliency purposes. ①

In fact, the CMP contained specific recommendations for “nourishment” at a number of vulnerable sites around the island. At the time, the three priorities were: the end of Madaket Road; the end of Hummock Pond Road; and the public access area in Quaise. Coastal Zone Management (CZM) grants were obtained for resiliency projects at each of these three locations, and we recollect that dredged material was used in each of them. In fact, we recall a presentation by Mr. Fronzuto to the Select Board outlining aspects of this plan. [See attachment for his presentation dated February 8, 2017.] ②

Is the proposal to sell dredged material to private parties for private projects a departure from the established public policy of creating a sand bank? If yes, when was this policy change made and by whom? ③

How can any Town official state that there is no municipal need for dredged material for resiliency purposes when a storm could come at any time and create such a need? Wasn't the intent to be prepared for such a happening by having material available in a sand bank? What does the purchaser intend to do with the dredged material? Use it for mitigation purposes on the public beach below the bluff in Sconset? Has the Coastal Resiliency Advisory Committee reviewed this proposal? ④ ⑤ ⑥ ⑦

<sup>1</sup> 9500 cubic yards of material represents about **half of the minimum mitigation required annually** for the current 900-foot SBPF geotube project.

FINANCIAL ISSUES

What is the purchase price per cubic yard of the dredged material? What was the cost per cubic yard to the Town to permit, dredge, and store this material? How does this compare with the market rate, both on-and off-island? Was this sand put out to bid? If yes, what were the other bids, and who were the bidders? How did this transaction come about? Is the Town in the business of selling dredged material to private entities? Or was the Town approached by potential purchasers? Has any consideration been given to the appropriateness of selling dredged material to an entity that has current enforcement issues involving the use of unclean, and possibly contaminated, fill (in violation of a ConCom permit) on a Town-owned beach? Has any consideration been given to the appropriateness of doing business with an entity that may be in litigation with the Town over the ConCom's decision to deny permitting the very hard structure for which mitigation material might be intended?

AMOUNT AND QUALITY OF THE SAND

How long ago was this material dredged from Polpis Harbor? Was it done under the coordination of Mr. Fronzuto? Why is this material called "dewatered sand"? What does that mean? How was it "dewatered"? Has a sand analysis of the dredged material been conducted? If yes, what are the results? Has the material been found to be beach compatible? Does it meet the DEP Guidelines for Beach Nourishment? Does it meet the Conservation Commission and DEP definition of "clean fill"? Is it free from contaminants (both chemical and biological)? What is the total amount of material dredged from Polpis Harbor? Where is it stored? What percentage of the available "dewatered sand from the Polpis Harbor dredging project" does this purchase of 9,500 cubic yards represent? Is there any additional dredged material from other locations also being stored either at this site or at others?

OTHER USES FOR SAND

Does the Town presently have need for this material?<sup>2</sup> Will it need sand in the future? How is the Town's sand need determined?

ATTACHMENTS (2): SPREADSHEET (P 2) RE CONTRACTS FOR APPROVAL AT SB MEETING, FEBRUARY 5, 2020 AND PRESENTATION BY DAVE FRONZUTO, FEBRUARY 2017

<sup>2</sup> The Coastal Management Plan (CMP) lists a number of (Town-owned) sites around the island in need of "nourishment" in addition to the three referenced above (end of Madaket Road, end of Hummock Pond Road, Quaise). These sites include: Hither Creek, Millie's Bridge, and Smith Point; Sheep Pond Road; West Miacomet Road; East Miacomet Road; South Shore Road/Sewer Beds; Western Avenue/Surfside Road; Nonantum Road; Tom Nevers Road; Codfish Park Road; Hoicks Hollow Road; Sesachacha Road; Squam Road. Just this week we have received reports of severe erosion in Tom Nevers and Cisco.

			new contract total of \$124,842.80	engineering & design for improvements		
Amendment to Professional Service Agreement	PLUS	Vanasse Hangen Brustlin	Add \$5,500 to original contract amount of \$127,800 for new contract amount of \$133,300	Amend contract for engineering & design of Four Corners roundabout to include preparation of plan to subdivide the lot located at 10 Surfside Rd into two parcels	Article 10/2018 ATM	February 5, 2020 - December 31, 2020
Amendment to Professional Service Agreement	PLUS	Vanasse Hangen Brustlin	n/a	Amend contract for engineering & design of Old South Rd & Fairgrounds Rd roundabout to extend contract end date to allow for continued work	n/a	February 5, 2020 - December 31, 2020
Professional Service Agreement	Marine	Siasconset Beach Preservation Fund, Inc.	(\$240,100)	Contract for sale of 9,500 cubic yards of dewatered sand from Polpis Harbor dredging project	n/a	February 5, 2020 - March 31, 2020
Professional Service Agreement	Police/Fire	Core Engineered Solutions, Inc.	\$112,832.36	Contract for supply & delivery of fuel tank for Public Safety complex	Town Gas Budget, Article 10/2016 ATM & Article 11/2015 ATM	February 5, 2020 - February 5, 2023
Professional Service Agreement	Town Admin	Thomason & Associates	\$74,250	Contract for Coastal Community Resilience Planning efforts & development of guidelines for flooding adaptation & recommended building design details for historic properties & streetscapes	MVP Action Grant	February 5, 2020 - June 30, 2020



# MCZM Coastal Resiliency Grant

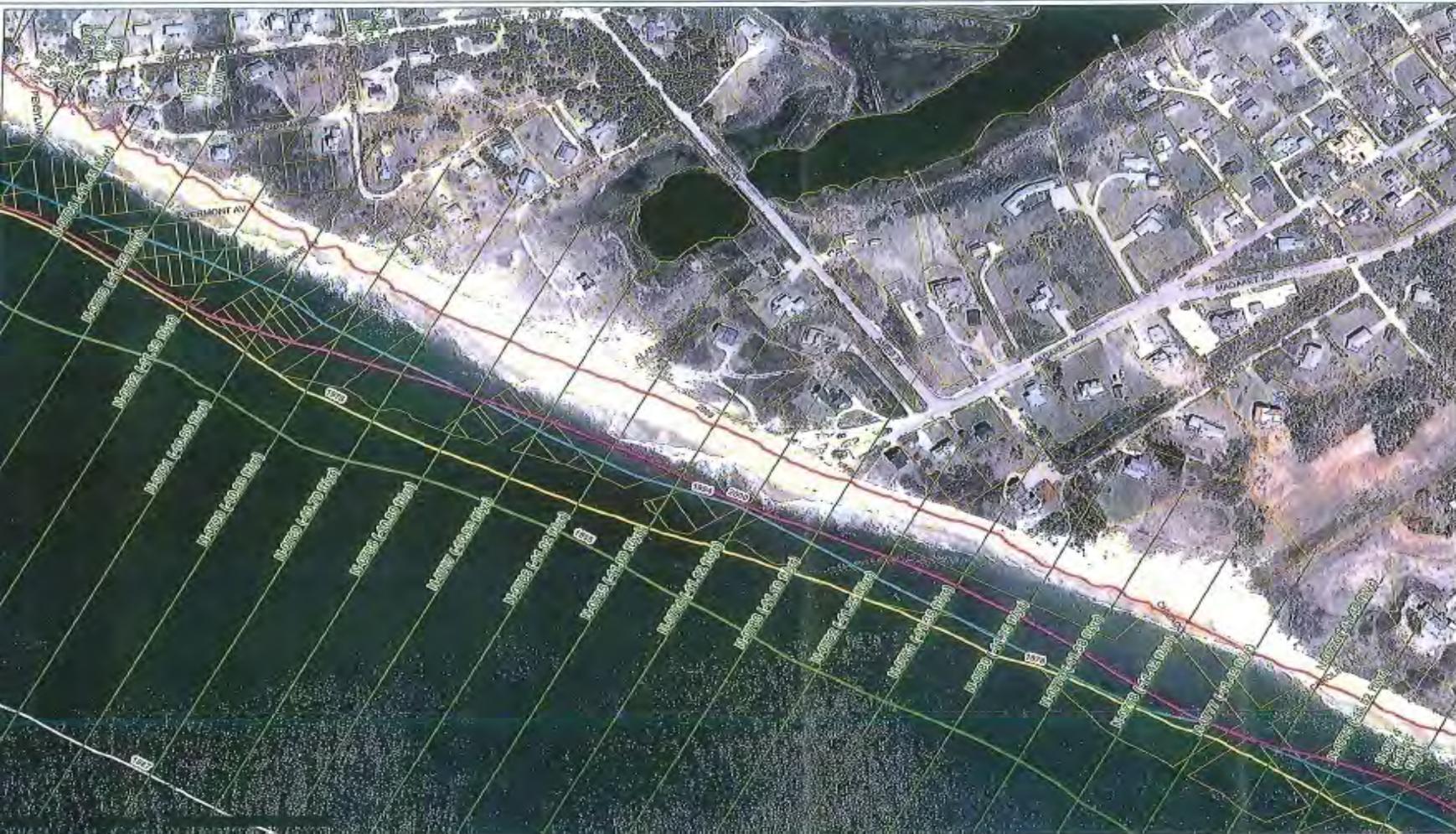
Madaket Road/Ames St

Provincetown, Center for Coastal Studies  
Storm tide pathways



MADAKET EROSION CONTROL PROJECT

# MCZM Shoreline Change Maps



**Legend**

- CZM Transects
- CZM Historic Shorelines
- YEAR
- 1846
- 1887
- 1955
- 1978
- 1994
- 2000
- 2009
- Parcels

Please send identification of any errors and corresponding coordinates to:  
 GIS Coordinator  
 Town of Nantucket  
 275 Nantucket St  
 Nantucket, MA 02554



This document represents the official data of the Town of Nantucket. It is the property of the Town of Nantucket and is not to be distributed, copied, or reproduced in any form without the express written permission of the Town of Nantucket. The accuracy of the information is not guaranteed for any purpose.

## Town of Nantucket - GIS Mapsheet

This document represents the official data of the Town of Nantucket. It is the property of the Town of Nantucket and is not to be distributed, copied, or reproduced in any form without the express written permission of the Town of Nantucket. The accuracy of the information is not guaranteed for any purpose.

Hither Creek  
 Ames Avenue

# Madaket Action Items Identified in the CMP

Asphalt removed

Beach nourishment permitted

Eroded bank filled

Sacrificial sand berm

Relocate Jersey barriers

Fencing/signage

Plantings

Monitoring

# BEFORE



MADAKET RD @ AMES STREET

# AFTER



MADAKET RD @ AMES STREET

# Madaket Road/Ames Street February 2017



# Erosion Control Measures in Madaket

- ❑ Met with presidents of all three Madaket Associations
- ❑ Erosion control project at intersection complete
- ❑ Permit from CONCOM to replace sand as needed
- ❑ Permits from DEP & USACOE for Sand Bank
- ❑ Island wide dredge plan being developed ,Hither Creek dredge disposal site on barrier beach to protect from over wash
- ❑ Provincetown Center for Coastal Studies (PCCS) Storm tide-pathways developed for the entire island, will identify locations of vulnerability for different levels of inundation
- ❑ Encourage private property owners (Madaket) to install erosion control measures
- ❑ Storm drain installation within the intersection layout to further dissipate water collection
- ❑ June 6, 2017, MCZM, PCCS public forum on erosion and flood inundation

# Town GIS Overlay Storm Tide Pathways



# Town of Nantucket Coastal Management Plan Identified Sites



# MCZM Ocean Management Plan



Offshore sand areas for further analysis and investigation

## Libby Gibson

---

**From:** Jeff Carlson  
**Sent:** Tuesday, February 04, 2020 9:01 AM  
**To:** Robert McNeil; Libby Gibson; Brian Turbitt  
**Cc:** John Giorgio; Town Manager  
**Subject:** RE: Sale of the sand from the Polpis Harbor Dredging Project

Good morning,

**Jeff:** Please advise (again) before next Wed as to the suitability of this sand for SBPF project mitigation & be prepared to explain at SB if need be.

In order for this sand to be used as nourishment material it would first need to be compatible sediment determined by grain size analysis. Given the current enforcements and protocols submitted by SBPF it may also require chemical and biological testing to determine if it was free of contaminants before being placed on the beach. I am not aware of any testing that has happened with this specific material but they are required to file that information with the Commission prior to its use. I am happy to answer any further questions.

Thanks,

*Jeff Carlson*

*Natural Resources Director*

*Town of Nantucket*

*2 Bathing Beach Road*

*Nantucket, MA 02554*

*508-228-7230*

**From:** Robert McNeil  
**Sent:** Monday, February 3, 2020 5:18 PM  
**To:** Libby Gibson <LGibson@nantucket-ma.gov>; Brian Turbitt <bturbitt@nantucket-ma.gov>; Jeff Carlson <JCarlson@nantucket-ma.gov>  
**Cc:** John Giorgio <jgiorgio@k-plaw.com>; Town Manager <townmanager@nantucket-ma.gov>  
**Subject:** RE: Sale of the sand from the Polpis Harbor Dredging Project

See my response in red below.

**Robert D. McNeil III, P.E., MPA**

Public Works Director

188 Madaket Road

Nantucket, MA 02554

Ph: (508) 228-7244

Email: [rmcneil@nantucket-ma.gov](mailto:rmcneil@nantucket-ma.gov)



**From:** Libby Gibson  
**Sent:** Friday, January 31, 2020 9:09 AM  
**To:** Brian Turbitt <bturbitt@nantucket-ma.gov>; Jeff Carlson <JCarlson@nantucket-ma.gov>; Robert McNeil <rmcneil@nantucket-ma.gov>

## Libby Gibson

---

**From:** John Giorgio <JGiorgio@k-plaw.com>  
**Sent:** Monday, February 03, 2020 4:39 PM  
**To:** Libby Gibson; Brian Turbitt; Jeff Carlson; Robert McNeil  
**Cc:** Town Manager; George Pucci  
**Subject:** RE: Sale of the sand from the Polpis Harbor Dredging Project

Libby:

I wanted to weigh in on this. I am assuming that the RFP or IFB contained a provision allowing the Town to cancel the procurement at any time, which in such case means that the Town may simply reject all bids and cancel the procurement. If the Town wanted to skip over SBPF's bid and award the contract to the next higher bidder, the Town would have to make a determination that SBPF is not a responsible or responsive bidder. The mere fact that SBPF has appealed the denial of the OOC would, in my opinion, be a tenuous ground for rejecting its bid and could potentially expose the Town to a legal challenge.

John

John W. Giorgio, Esq.  
KP | LAW  
101 Arch Street, 12th Floor  
Boston, MA 02110  
O: (617) 556 0007  
D: (617) 654 1705  
F: (617) 654 1735  
C: (617) 785 0725  
[jgiorgio@k-plaw.com](mailto:jgiorgio@k-plaw.com)  
[www.k-plaw.com](http://www.k-plaw.com)

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

**From:** Libby Gibson <LGibson@nantucket-ma.gov>  
**Sent:** Friday, January 31, 2020 9:09 AM  
**To:** Brian Turbitt <bturbitt@nantucket-ma.gov>; Jeff Carlson <JCarlson@nantucket-ma.gov>; Robert McNeil <rmcneil@nantucket-ma.gov>  
**Cc:** John Giorgio <JGiorgio@k-plaw.com>; Town Manager <townmanager@nantucket-ma.gov>  
**Subject:** Sale of the sand from the Polpis Harbor Dredging Project  
**Importance:** High

**Brian:** I expect there may be an "issue" or discussion about this at the 2/5 SB meeting, where it is on pending contracts for the bid award. See attached. Also, see attached email from Matt. If the Board were to say "we don't want to sell the sand to SBPF because they are suing the Town" – then we'd have to cancel the bid, correct? BY LAW, we need to take the highest bidder?

**Rob:** Please advise before next Wed what the going rate is per cy of sand & why the Town would not use this sand (including cost to truck it to DPW); and please be prepared to explain at SB on 2/5

**Jeff:** Please advise (again) before next Wed as to the suitability of this sand for SBPF project mitigation & be prepared to explain at SB if need be.

# Town of Nantucket Police Department

William J. Pittman  
Chief of Police

Charles Gibson  
Deputy Chief of Police



4 Fairgrounds Road  
Nantucket, Massachusetts  
02554-2804

Telephone (508) 228-1212  
Facsimile (508) 228-7246  
[www.nantucket-ma.gov/police](http://www.nantucket-ma.gov/police)

**TO:** Finance Director  
**FROM:** Deputy Chief Gibson   
**SUBJ:** Siasconset Beach Preservation Fund  
SALE OF DEWATERED SAND Contract

**DATE:** January 16, 2020

**COPY:** File

---

Please find attached for review the following contract for review/approval:

- Siasconset Beach Preservation Fund, Inc.
  - Contract for the Town to receive \$240,100.00 for the sale of 9,500 ± cubic yards of de-watered sand that was removed as part of the Polpis Harbor Dredging Project. Police Department.
  - There were three (4) bids received, they were:

Siasconset Beach Preservation Fund, Inc.	\$240,100.00
Strang, LLC,	\$101,800.00
P&M Reis Trucking, Inc.	\$101,100.00
Toscana Corp.	\$45,000.00

- The Siasconset Beach Preservation Fund bid was the highest responsive bid received.

Please advise if there are any issues or concerns with this Contract. Thanks.

## Libby Gibson

---

**From:** Robert McNeil  
**Sent:** Monday, February 03, 2020 5:18 PM  
**To:** Libby Gibson; Brian Turbitt; Jeff Carlson  
**Cc:** John Giorgio; Town Manager  
**Subject:** RE: Sale of the sand from the Polpis Harbor Dredging Project

See my response in red below.

**Robert D. McNeil III, P.E., MPA**  
Public Works Director  
188 Madaket Road  
Nantucket, MA 02554  
Ph: (508) 228-7244  
Email: [rmcneil@nantucket-ma.gov](mailto:rmcneil@nantucket-ma.gov)



**From:** Libby Gibson  
**Sent:** Friday, January 31, 2020 9:09 AM  
**To:** Brian Turbitt <[bturbitt@nantucket-ma.gov](mailto:bturbitt@nantucket-ma.gov)>; Jeff Carlson <[JCarlson@nantucket-ma.gov](mailto:JCarlson@nantucket-ma.gov)>; Robert McNeil <[rmcneil@nantucket-ma.gov](mailto:rmcneil@nantucket-ma.gov)>  
**Cc:** John Giorgio <[jgiorgio@k-plaw.com](mailto:jgiorgio@k-plaw.com)>; Town Manager <[townmanager@nantucket-ma.gov](mailto:townmanager@nantucket-ma.gov)>  
**Subject:** Sale of the sand from the Polpis Harbor Dredging Project  
**Importance:** High

**Brian:** I expect there may be an “issue” or discussion about this at the 2/5 SB meeting, where it is on pending contracts for the bid award. See attached. Also, see attached email from Matt. If the Board were to say “we don’t want to sell the sand to SBPF because they are suing the Town” – then we’d have to cancel the bid, correct? BY LAW, we need to take the highest bidder?

**Rob:** Please advise before next Wed what the going rate is per cy of sand & why the Town would not use this sand (including cost to truck it to DPW); and please be prepared to explain at SB on 2/5  
DPW has a contract with Cape Cod Aggregates for two similar items. One is for Stone Dust and the other is for Playground (mason) Sand. Unit prices are \$10/Ton and \$16/Ton respectively, NOT per cubic yard. This pricing is basically a delivered price (predicated on backhauling the materials from Hyannis by WON). Another example of our contracted source for similar aggregates include Gravel Borrow at \$110/CY under the Victor-Brandon Paving Contract. The conversion from 9,500-CY is roughly equivalent to 13,000-tons or \$208,000 at our \$16/ton contract price for Playground (mason) sand.  
DPW does not typically use beach sand in our operations, nor do we own a screening plant to convert this pile of dredged sand to useable clean sand free of shells and other debris, so the pile is not useful to us at this time.

**Jeff:** Please advise (again) before next Wed as to the suitability of this sand for SBPF project mitigation & be prepared to explain at SB if need be.

Thank you.

## Libby Gibson

---

**From:** Town Manager  
**Sent:** Wednesday, February 05, 2020 2:16 PM  
**To:** Libby Gibson  
**Subject:** FW: TIME SENSITIVE COMMUNICATION FOR THE SELECT BOARD

Did you get this?

Town Administration Staff  
*on behalf of Town Manager*  
Town of Nantucket  
16 Broad Street  
Nantucket MA 02554  
508-228-7255  
508-228-7272 Fax

**From:** Gibson, Charles <cgibson@police.nantucket-ma.gov>  
**Sent:** Wednesday, February 05, 2020 2:00 PM  
**To:** Town Manager <townmanager@nantucket-ma.gov>; Brian Turbitt <bturbitt@nantucket-ma.gov>; William Pittman <wpittman@police.nantucket-ma.gov>  
**Subject:** RE: TIME SENSITIVE COMMUNICATION FOR THE SELECT BOARD

These are the "questions" in the 13 page document with my answers: (please change or supplement as needed)

### POLICY ISSUES

- Is the proposal to sell dredged material to private parties for private projects a departure from the established public policy of creating a sand bank?
  - RESPONSE- Unsure of a "Public Policy", the Agenda and SB minutes of 2/8/17 refer to a presentation about Madaket erosion issues and a CZM grant. However the goals of a "Sand Bank" whereas dredged sand could be utilized for erosion mitigation was a major issue in the Polpis Harbor Dredge project. In fact, the project was delayed for several years due to the fact that no suitable dredge spoils deposit area could be found where the Polpis dredge sand could be used.
    - Areas in Pocomo and Quidnet where heavily researched by the project engineers to locate an area where the dredge spoils could be deposited.
      - In Pocomo, landowners would not give the Town an easement to deposit the sand upon their property.
      - In Quidnet, (Town owns some beach area there) the sand could be deposited there as the area was too small. Dredge spoils are not simply allowed to be piled up on the beach, they must be spread evenly above the high tide line and contoured and the available area was not big enough to accommodate the spoils.
    - Other areas were also looked at before determining the spoils location at 3 Shadbush Rd. The problem is that dredged sand is not all the same. The characteristics of the grain size and material need to be compatible with the deposit area and no area could be PERMITTED where the sand could be deposited on a beach for erosion control.

If yes, when was this policy change made and by whom?

- RESPONSE, the goal to use dredge spoils for mitigation and to offset the dredging costs was always a priority.

- How can any Town official state that there is no municipal need for dredged material for resiliency purposes when a storm could come at any time and create such a need?
  - RESPONSE- The DPW Superintendent is in the best position to determine what municipal needs are and he determined that the dredged sand had no practical use. I'm sure there are many contingencies that could be dreamed up where any number of items would be nice to have, but all of this must be viewed in the real-world practical sense of what 9,500 yards of sand would really do for any of it.
  - Wasn't the intent to be prepared for such a happening by having material available in a sand bank?
    - RESPONSE- As noted above, you cannot simply dump any type of sand upon a beach. Any such disposal must be permitted by several agencies and sand must be compatible. It could take months, even years to permit the disposal of sand on a beach even if it was compatible. Again this must be viewed in the real-world practical sense of what this particular 9,500 yards of sand would really accomplish.
- What does the purchaser intend to do with the dredged material?
  - RESPONSE- It is not up to the Town to interrogate bidders as to their intent beyond a general requirement that it be for lawful purposes. The procurement is governed by Mass General Law C.30B
  - Use it for mitigation purposes on the public beach below the bluff in Sconset?
    - RESPONSE- see above, but one would assume such.
  - Has the Coastal Resiliency Advisory Committee reviewed this proposal?
    - RESPONSE- No

## FINANCIAL ISSUES

- What is the purchase price per cubic yard of the dredged material?
  - RESPONSE- Bid specification required a total bid for 9,500 cubic yards. The high bid received was \$240,100.00. This works out to \$25.273 per cubic yard (240100/9500).
- What was the cost per cubic yard to the Town to permit, dredge, and store this material?
  - RESPONSE- The TOTAL low bid price for the Polpis Harbor dredging project was \$1,375,225.00. This works out to \$144.7605 per cubic yard (1375225/9500).
- How does this compare with the market rate, both on-and off-island?
  - RESPONSE- There is no known market for dewatered dredged sand from on or off island. A market price is simply determined by a willing seller and buyer. This cost was determined by a fair and legal procurement pursuant to MGL 30B.
- Was this sand put out to bid?
  - RESPONSE- Yes. Bids solicited pursuant to MGL 30B
  - If yes, what were the other bids, and who were the bidders?
    - RESPONSE-
      - SBPF- \$240,100.00
      - Strang LLC- \$101,800.00
      - P&M Reis Trucking - \$101,100.00
      - Toscana Corp.- \$45,000.00

- How did this transaction come about?
  - RESPONSE- The current storage location of 3 Shadbush Road was the only Town owned space available to temporarily store the sand until it was de-watered (dried out). Originally it was planned for the DPW yard but due to insufficient space, there was not enough room to store it there. In order to move the Polpis Harbor dredge project forward, an immediate storage location was required. The space at 3 Shadbush needs to be cleared for the Marine Department layup yard.
- Is the Town in the business of selling dredged material to private entities?
  - RESPONSE- The Town has never had the problem of having to find a storage location for dredged materials until recent projects. The ever increasing permit requirements for dredging has severely limited storage locations. Years ago when the Town had dredging projects (over 30 years), the permit requirements were much less stringent. The Town recently went through another storage issue with a much lesser quantity of dredge material (Town Pier, 1,000 cubic yards) where there was not enough room for this material at the DPW yard.
- Or was the Town approached by potential purchasers?
  - RESPONSE- The need to move the dewatered sand was generated by the approval of funding (\$450,000 at 2019 ATM) for the Marine Department layup yard. This project cannot move forward while the sand is there.
- Has any consideration been given to the appropriateness of selling dredged material to an entity that has current enforcement issues involving the use of unclean, and possibly contaminated, fill (in violation of a ConCom permit) on a Town-owned beach?
  - RESPONSE- The sale of the dewatered sand was done pursuant to MGL c.30B. The motivations or prior legal situations of bidders are not an appropriate determining factor of the procurement law. If the bidder presents a responsive and legal bid, that is what is required under State procurement law.
- Has any consideration been given to the appropriateness of doing business with an entity that may be in litigation with the Town over the ConCom's decision to deny permitting the very hard structure for which mitigation material might be intended?
  - RESPONSE- The Town cannot discriminate amongst bidders based upon prior Town litigation. Prior legal situations of bidders are not an appropriate determining factor of the procurement law. If the bidder presents a responsive and legal bid, that is what is required under State procurement law.

### **AMOUNT AND QUALITY OF THE SAND**

- How long ago was this material dredged from Polpis Harbor?
  - RESPONSE- The dredge materials were removed between 11/1/2018 and 1/15/2019
- Was it done under the coordination of Mr. Fronzuto?
  - RESPONSE- No. Mr. Frozuto retired from the Town prior to this project being started.
- Why is this material called "dewatered sand"?
  - RESPONSE- This is a term used to describe the dredged sand being wet and then being allowed for the water to drain from the sand.

- What does that mean?
  - RESPONSE- Dredged sand being removed from beneath the water wet and then being allowed for water to drain from the sand.
- How was it “dewatered”?
  - RESPONSE- Time and gravity.
- Has a sand analysis of the dredged material been conducted?
  - RESPONSE- Yes
- If yes, what are the results?
  - RESPONSE- They are attached here.
- Has the material been found to be beach compatible?
  - RESPONSE- Unknown. Every beach has unique requirements and that determination is made on a case-by-case basis.
- Does it meet the DEP Guidelines for Beach Nourishment?
  - RESPONSE- Unknown. Every beach has unique requirements and that determination is made on a case-by-case basis and then DEP will apply their own criteria.
- Does it meet the Conservation Commission and DEP definition of “clean fill”? Is it free from contaminants (both chemical and biological)?
  - RESPONSE- Unknown.
- What is the total amount of material dredged from Polpis Harbor?
  - RESPONSE- 9,500 cubic yards
- Where is it stored?
  - RESPONSE- 3 Shadbush Rd.
- What percentage of the available “dewatered sand from the Polpis Harbor dredging project” does this purchase of 9,500 cubic yards represent?
  - RESPONSE- 100%
- Is there any additional dredged material from other locations also being stored either at this site or at others?
  - RESPONSE- No

#### **OTHER USES FOR SAND**

- Does the Town presently have need for this material?
  - RESPONSE- No
- Will it need sand in the future?
  - RESPONSE- Unknown, but not this type and/or quantity of the dewatered sand subject to this inquiry.

- How is the Town's sand need determined?
  - RESPONSE- Superintendent of Public Works makes the determination

*Thanks*

Charles Gibson  
Deputy Chief of Police  
Nantucket Police Department  
4 Fairgrounds Road  
Nantucket, MA 02554-2804  
(508) 228-1212

**From:** Town Manager <[townmanager@nantucket-ma.gov](mailto:townmanager@nantucket-ma.gov)>  
**Sent:** Wednesday, February 5, 2020 9:07 AM  
**To:** Dawn Hill Holdgate <[dhillholdgate@nantucket-ma.gov](mailto:dhillholdgate@nantucket-ma.gov)>; Jason M. Bridges <[jmbridges@nantucket-ma.gov](mailto:jmbridges@nantucket-ma.gov)>; Kristie Ferrantella <[kferrantella@nantucket-ma.gov](mailto:kferrantella@nantucket-ma.gov)>; Matt Fee <[mfee@nantucket-ma.gov](mailto:mfee@nantucket-ma.gov)>; Rita Higgins <[rhiggins@nantucket-ma.gov](mailto:rhiggins@nantucket-ma.gov)>  
**Subject:** FW: TIME SENSITIVE COMMUNICATION FOR THE SELECT BOARD

If the Board requests answers to all of these questions before acting on the Pending Contract item, that will take some time to gather and it will be at least a couple of weeks before this can come back.

C. Elizabeth Gibson  
Town Manager  
Town of Nantucket  
(508) 228-7255

**From:** [danneatherton@comcast.net](mailto:danneatherton@comcast.net) <[danneatherton@comcast.net](mailto:danneatherton@comcast.net)>  
**Sent:** Tuesday, February 04, 2020 4:07 PM  
**To:** Erika Mooney <[EMooney@nantucket-ma.gov](mailto:EMooney@nantucket-ma.gov)>  
**Cc:** Libby Gibson <[LGibson@nantucket-ma.gov](mailto:LGibson@nantucket-ma.gov)>  
**Subject:** TIME SENSITIVE COMMUNICATION FOR THE SELECT BOARD

TO: ERIKA

FROM: D. ANNE/NCC TEAM

RE: QUESTIONS RE PROPOSED CONTRACT TO SELL TOWN-OWNED SAND

COPY FYI: LIBBY

ATTACHMENT FOR DISTRIBUTION TO MEMBERS OF THE SB

Attached please find a memorandum to the Select Board regarding an item on the agenda for tomorrow, Wednesday, February 5.

Atherton Questions/Comments/Assertions re Polpis Harbor Dredged Sand Sale  
2/5/20 SB Pending Contracts

1. *Per CMP – intention of Town was to create a sand bank of dredged material from Polpis Harbor.*

Do not see that in the CMP; there has been discussion about a “sand bank” as part of an overall island-wide Dredge Plan (which is not complete) but it is not an adopted public policy.

2. *Comment in letter that dredged material was used at 3 specific areas for beach nourishment (Madaket, Hummock Pond Road, Quaise) – do not believe any “dredged” materials were used because Polpis Harbor is the first dredging the Town has done in many years outside of small jobs like at the Town Pier.*

3. There is no established public policy of creating a sand bank.

4. No Town official has stated that there is no municipal need for dredged material for resiliency purposes. The DPW Director has indicated that there is no municipal use for this particular sand for a variety of reasons, including the need to transport and screen it; there is no currently available space at DPW for it; there is no current project or area that the Town has identified for it.

5. Do not believe so. Believe that the yet to be completed Dredge Plan and now the on-going Coastal Resiliency Plan process would identify where nourishment or other use of dredged sand could potentially be used; and, then it would need to be permitted by ConCom and potentially DEP or ACOE.

6. The Town does not ask bidders what it intends to do with surplus property that the Town is selling.

7. No.

8. \$25.27/cy

9. Based on the low bid price for the Polpis Harbor dredging project of \$1,375,225 – that would be \$144.76 per cy

10. Have not researched the market rate of dredged, unscreened sand either on or off island; however, the bid the Town has with Cape Cod Aggregates for the screened mason sand that is used for various DPW purposes is \$16/ton. Have not calculated the conversion to cy

11. Yes.

12. 4 bidders in total: SBPF - \$240,100; Strang, LLC - \$101,800; P&M Reis Trucking - \$101,100; Toscana - \$45,000

13. The current storage location of 3 Shadbush Road was the only Town owned space available to temporarily store the sand until it was de-watered (dried out). Originally it was planned for the DPW yard but due to insufficient space, there was not enough room to store it there. In order to move the Polpis Harbor dredge project forward, an immediate storage location was required. This space was identified and now needs to be cleared to make room for the Marine Department layup yard planned for that site.

14. Not sure that a one time sale of sand can be considered “being in the business of selling dredged material to private entities” - so I would say “no we are not in that business” however, a number of factors led to this sand being determined surplus and not needed for Town operations, including: a storage location, storage requirements, testing and use requirements, lack of required easements provided by property owners near the dredging project. Decades ago when the Town had dredging projects (over 30 years), the permit requirements were much less stringent, use was less restricted, space was more readily available and the spoils could be more readily placed nearby the dredged area.

15. I have not had a chance to ask every staff person in the Town who might have had something to do with this project but I believe the answer is “no”.

16. The sale of the dewatered sand was done pursuant to MGL c.30B. The motivations or prior legal situations of bidders are not an appropriate determining factor of the procurement law. If the bidder presents a responsive and legal bid, that is what is required under State procurement law. Further, any sand that is used by SBPF is subject to ConCom review & approval.

17. Again, the sale of the dewatered sand was done pursuant to MGL c.30B. The motivations or prior legal situations of bidders are not an appropriate determining factor of the procurement law. The fact that SBPF has appealed the denial of the ConCom OOC could be tenuous ground for rejected a bid.

18. The dredge materials were removed between 11/1/2018 and 1/15/2019

19. No.

20. This is a term used to describe the dredged sand being wet and then being allowed for the water to drain from the sand.

21. Again, (see 20)

22. Initially, it was dewatered on the barge, then transported to the current site by truck, where it sat, dewatering further. It was “dewatered” by sitting out in the open for a year.

23. Tests were required prior to the dredging project commencing – did not have time to research if testing has occurred since.

24. Did not have time to research this.

25 26. Did not have time to research this.

27. Did not have time to research this; however, if used by SBPF, again it is subject to ConCom requirements as to testing.

28. 9500 cy

29. Town-owned property at Industry Rd

30. All of it.

31. Not from the Polpis project. Approx 1000 cy from a small amount of dredging at the Town Pier last month was removed to the landfill..

32. No.

33. Possibly.

34. Again, the Dredge Plan and the CR Plan will help inform this determination.

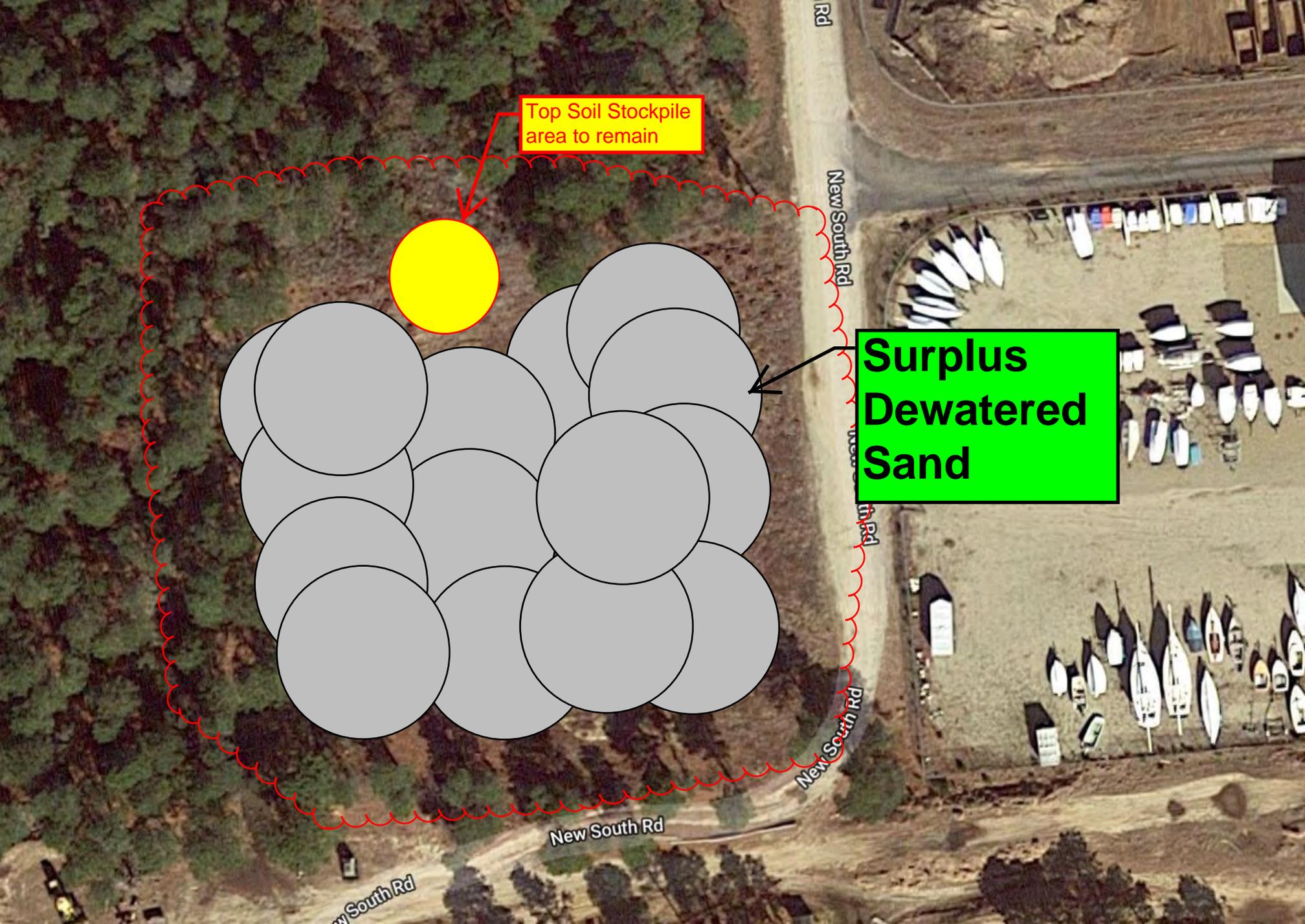




Milestone Road

Office

Sand Storage Area



Top Soil Stockpile  
area to remain

Surplus  
Dewatered  
Sand

Rd

New South Rd

New South Rd

New South Rd

New South Rd

| Why it is **not** in the best interests of the Town to proceed with the proposed sale of 9,500 cubic yards of sand currently stockpiled on Town property located on Shadbush Road.

| The Town has a comprehensive plan for the use of such sand for **municipal** purposes.

| That plan is  
called the Coastal  
Management Plan  
(CMP).

| The Board of Selectmen formally adopted the CMP in 2014. The CMP focuses only on Town-owned properties.

| The CMP Workgroup conducted thirty-six public meetings including six public hearings over the course of two years from March 2012 to March 2014 to produce the plan. The Workgroup was Co Chaired by Dr. Sarah Oktay and Bob DeCosta, a member of the Select Board at that time. The other members, appointed by the SB, were: Carl Borchert, Jamie Feeley, Bam LaFarge, Emily Molden, Kurt Riden, and John Stover.

| The CMP Workgroup divided the island into 10 sections and recommended specific **Action Items** for each section.

| There are sixteen (16)  
Action Items  
recommended in the  
CMP that require sand  
for nourishment.

# Quaise Rd–Chuckrow's

- ▶ Repair return on adjacent bulkhead
- ▶ Place dredge spoils (Polpis Harbor Entrance Channel) to nourish area
- ▶ Establish a single point pedestrian access away from the bulkhead
- ▶ Re-grade parking lot to drain into wet land adjacent to the property to the east
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Massachusetts Avenue

- ▶ Install Jersey barriers at the intersection of Ames Street and Madaket Road, back barriers with sand
- ▶ Provide one pedestrian access, delineated by snow fence
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Remove pavement back to the intersection and slope drainage away from the eroding bank, redirecting runoff into the vegetative swale west of the road layout
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Ames Street–Hither Creek

- ▶ Monitor intersection of Ames Street and Madaket Road
- ▶ Monitor distance from top of bank to home located at the head of Hither Creek
- ▶ Utilize area for dredge spoil disposal site when Hither Creek channel is dredged to increase protection to the head of Hither Creek, Millie's Bridge and Smith Point
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Madaket Road

- ▶ Install Jersey barriers at the intersection of Ames Street and Madaket Road, back barriers with sand
- ▶ Provide one pedestrian access, delineated by snow fence
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Remove pavement back to the intersection and slope drainage away from the eroding bank, redirecting runoff into the vegetative swale west of the road layout
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Sheep Pond Road

- ▶ Original roadway has been abandoned
- ▶ Provide one pedestrian access, delineated by snow fence
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage
- ▶ Maintain new access road to neighborhood

# Hummock Pond Road

- ▶ Relocate Jersey barriers 100' east of the bank, back barriers with sand
- ▶ Provide one pedestrian access, delineated by snow fence to the beach
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Remove pavement back to the barriers, slope drainage away from the eroding bank, redirecting runoff into the vegetative swale east-west of the road layout
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# West Miacomet Road

- ▶ Provide one pedestrian access, delineated by snow fence
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Re-grade parking lot to direct drainage away from bank and into the pond east of the parking lot
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# East Miacomet Road

- ▶ Provide one pedestrian access, delineated by snow fence
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Re-grade parking lot to direct drainage away from bank and into the pond west of the parking lot
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# South Shore Road/Sewer Beds

- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Western Avenue/Surfside Road

- ▶ Provide one pedestrian access, delineated by snow fence (current condition)
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Direct runoff from parking lot into a vegetative swale south of the parking lot
- ▶ Insure that storm drains are maintained and functioning properly
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Nonantum Road

- ▶ Provide one pedestrian access, delineated by snow fence (current condition)
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Direct runoff from parking lot and roadway away from the bank
- ▶ Insure that storm drains are maintained and functioning properly
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Tom Nevers Road

- ▶ Provide one pedestrian access, delineated by snow fence to the beach at the lowest most traveled point, adjust for changing conditions
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Remove any pavement abutting the top of the bank, slope drainage away from the eroding bank,
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Codfish Park Road

- ▶ Provide one pedestrian access, delineated by snow fence at the lifeguarded beach
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Maintain existing jersey barriers in place and insure plantings and alternative access is suitable
- ▶ Remove sand after storm inundation and return sand (not to be removed for other uses) to the barrier beach for nourishment
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Hoicks Hollow Road

- ▶ Provide one pedestrian access, delineated by snow fence
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Maintain existing parking lot and redirect run off away from the access
- ▶ Continue to allow only emergency vehicle access
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Sesachacha Road

- ▶ Provide vehicular access, when appropriate
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Maintain and encourage use of the parking a lot adjacent to the pond
- ▶ Memorialize access to be used for contractor to open the pond on an as needed basis
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

# Squam Road

- ▶ Provide one pedestrian access, delineated by snow fence
- ▶ Provide beach nourishment and plant native, salt tolerant vegetation to stabilize bank slope
- ▶ Continuous monitoring, post storm, photo record
- ▶ Appropriate Signage

| Since the town has a plan that documents the need for nourishment at sixteen sites around the island, it would **not** be in the Town's best interest to sell the 9,500 cubic yards of sand currently stockpiled at Shadbush Road.

| In addition, it is prudent for the Town to have stockpiled sand available to meet any emergencies, especially those caused by severe weather events.

| The Town should cancel the proposed contract and find another Town-owned location to stockpile the 9,500 cubic yards of sand if the property at Shadbush Road is needed for other purposes.

**EROSION  
HAPPENS.**

[www.savenantucketbeaches.org](http://www.savenantucketbeaches.org)

Thank you.

February 12, 2020

**From:** [Meghan Perry](#)  
**To:** [Erika Mooney](#)  
**Subject:** Polpis Harbor Dredging Permits  
**Date:** Sunday, February 9, 2020 5:57:45 PM  
**Attachments:** [DEP Polpis Harbor Dredging and Sand Bank.pdf](#)

---

Hi Erika,

I thought the attached combined permit from Mass DEP and US Army Corps of Engineers with regards to the Polpis Harbor dredging, the Sand Bank two storage locations on town property and intended use of the sand would be of interest and something to have in the packet for the select board meeting this week.

Also the Civic League hosted a meeting on Saturday discussing island wide resiliency and the Polpis Harbor dredging came up in addition to locations that would benefit from the sand for mitigation. NCTV 18 recorded it if anyone is interested in viewing.

Let me know if the documents don't come through.

Thanks!

Meghan



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker  
Governor

Karyn E. Polito  
Lieutenant Governor

Matthew A. Beaton  
Secretary

Martin Suuberg  
Commissioner

October 4, 2016

David Fronzuto  
Town of Nantucket  
16 Broad Street  
Nantucket, MA 02554

Re: **COMBINED PERMIT - CHAPTER 91 PERMIT and 401 WATER QUALITY  
CERTIFICATION**  
Application for BRP WW 26  
COMBINED PERMIT FOR DREDGING – MAJOR/MINOR PROJECT

At: Polpis Harbor, NANTUCKET

401 WQC Transmittal No: X269790  
Chapter 91 Permit No: 14251  
Wetlands File No: SE48-699  
ACoE Application No:

Dear Mr. Fronzuto:

The Department has reviewed your application for a combined Chapter 91 Dredge Permit and Water Quality Certification ("Combined Permit"), referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, 314 CMR 9.00 and MGL c.91, 310 CMR 9.00, the Department has determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of Polpis Harbor are designated in the Massachusetts Surface Water Quality Standards as Class SA. Such waters are intended "as excellent habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Background: Polpis Harbor is located approximately 3 miles northeast of the entrance to Nantucket Harbor. It is an active waterfront utilized by recreational and commercial vessels. Due to its geographic location, Polpis Harbor is also a haven of storm refuge for boaters.

On May 29, 1992, the Department issued a 401 Water Quality Certification, transmittal # 21929, to the Town of Nantucket to dredge the Polpis Harbor entrance channel. On July 2, 1992, Chapter 91 Permit No. 229 was also issued to the Town of Nantucket to dredge the same channel.

Proposed project: The proposed project scope entails conducting maintenance dredging within previously authorized dredge limits, to a design depth of -6.0 feet Mean Low Water (MLW), including a 1-foot allowable overdredge to -7.0 feet MLW and 3H:1V side slopes. The estimated dredge volume is 8,300 yd<sup>3</sup>.

Dredging will be performed using either hydraulic or mechanical methods. Mechanical methods will consist of a barge-mounted excavator or crane with a closed bucket placing the dredged material into a barge/scow. Hydraulic methods will consist of a suction-cutterhead and the sediment slurry will be pumped directly into a barge/scow to allow for settling and the supernatant effluent will be pumped back into Polpis Harbor. The scow will then be transported with the aid of a tug boat to the Steamship Authority wharf and transferred where the dredged material will be off-loaded onto dump trucks and brought to the DPW yard located at 188 Madaket Road and a vacant lot located off New South Road near the Airport to be stockpiled. Both locations are to be permitted as Intermediate Facility (IF) under 314 CMR 9.07(4).

Eelgrass: An eelgrass survey was conducted in October 2013, adhering to the recommended methodologies presented in the MA Division of Marine Fisheries (DMF) Technical Report TR-43 "*Technical Guidelines for the Delineation, Restoration, and Monitoring of Eelgrass (Zostera marina) in Massachusetts Coastal Waters*". An underwater video camera with a monitor was utilized to visually confirm the presence of eelgrass along each survey transect. The locations shown to contain eelgrass were tagged using GPS so that the limits of existing eelgrass could be determined relative to proposed dredging and nourishment activities.

Based on the eelgrass survey, the proposed dredge plan was developed to entirely avoid direct impacts to the confirmed eelgrass areas within or in close proximity to the limits of the authorized channel (see Special Conditions 17-21)

ALTERNATIVES ANALYSIS: Three alternatives were evaluated for this project:

**Alternative 1- No Dredge:** Under this alternative, dredging would not be performed within the existing authorized entrance channel, and navigation conditions would continue to deteriorate. Shoaling would continue to increase, reducing tidal flushing and increasing the potential for vessel groundings that may result in spill and/or release of oil and hazardous material (OHM) into the harbor or sediment suspension from prop wash of the vessel. For these reasons, Alternative 1 was eliminated.

**Alternative 2 - Maintenance Dredging:** Under Alternative 2, maintenance dredging would be performed within all areas within the established limits of the existing navigation channel that are above the authorized depth of -6.0 feet MLW. Implementation of this alternative would restore/improve navigation, public access and use and tidal flushing within the waterway; however, it also would result in a direct impact to approximately ±32,030 SF (±0.7 acres) of existing/confirmed eelgrass habitat that is located within the southern-most reach of the 100-foot wide channel. Alternative 2 is not considered a viable option due the direct impacts to eelgrass habitat that would result from dredging.

**Alternative 3 - Modified Maintenance Dredging:** Under Alternative 3, maintenance dredging is proposed to restore areas within the existing navigation channel that are above the authorized depth of -6.0 feet MLW, with the exception that no dredging is proposed within the southern-most reach of the existing 100-foot wide channel due to the presence of eelgrass. Instead, channel access will be relocated slightly east to where existing water depths are currently at a minimum -5.0 feet MLW or deeper. Channel markers will be placed by the Town that delineates a 50-foot wide access channel at this location of the harbor. Alternative 3 was the preferred alternative.

**Beneficial reuse:** The dredged material will be beneficially reused to restore and enhance coastal resiliency along the eroding shorelines of Nantucket.

**Proposed Nantucket Sand Bank:** While the Town of Nantucket prefers to nourish its public shoreline area(s), these areas are not always available due to the need of nourishment and the need/timing of the dredge does not always arise at the same time. Private eroding beaches may be nourished if easements for public access below the existing high water mark can be secured from the owner of the beach to be nourished. However, the Town has not been successful in obtaining all the easements for public access in the past two years. As a result, the Town decided to establish a Sand Bank in order to proceed with the dredging of the Polpis Harbor channel and to allow the dredged material to be available for beneficial reuse at both publicly and privately owned eroding beaches.

The Sand Bank will provide the Town of Nantucket more flexibility in managing and reusing dredged material for nourishment. The Town is currently in the initial planning phase required to implement a comprehensive dredge program and has secured the necessary funding to proceed with the related design and permitting efforts. A preliminary island-wide matrix has been developed by the Town identifying potential dredge and beach nourishment sites (see Attachment 1).

The Town has conducted a precursory assessment of potential private parties interested in purchasing dredged sediments and confirmed that there is a significant demand for sand. The Town also confirmed that there is a shortage of available material from upland sources and the price per cubic yard of sand ranged from \$40 to \$52. Multiple parties expressed interest in purchase the dredged sand from Polpis Harbor due to an immediate need of material and potential cost savings for not purchasing from upland sources. The interested parties understand that a valid Order of Conditions from the Conservation Commission would be required and beach public access easement in-hand.

Based on the response of the private entities, it is anticipated that 80 percent of the dredged sediment from Polpis will be purchased by the interested private entities. Prior to commencement of the maintenance dredging of Polpis Harbor, the Town of Nantucket will finalize the purchase agreement with all the interested private parties. The purchase agreement will include:

1. proof of existing valid permit authorization for beach nourishment at the property of interest;

2. copy of all applicable public beach access easements that have been secured for the public use of the private land being nourished with dredged material from the publicly funded dredging project, and
3. payment for the quantity of beach sand to be purchased and picked up for further distribution.

No dredged sediment will be sold by the Town to any private entity that does not have the required public access easement(s) in-hand. The Town will administer and monitor the purchase protocol to ensure proper authorization(s) and documentation(s) are in place for the dredged material to be distributed amongst the approved private entities.

Once the dredged sand is transported from the barge to Steamship Wharf where it will be unloaded onto trucks and distributed to the private properties with the final purchased agreement. Any of the dredged sand that is not purchased by private entities will be trucked and placed at the designated Intermittent Facilities for stockpile. The stockpiled material will be available for reuse on as-needed basis and will provide an established/authorized reuse location.

The proceeds generated under the Sand Bank will be allocated to the Town's General Fund for future dredging and nourishment project. Dredging and nourishment projects funded by this source of revenue are considered as public funded projects. Private entities interested in purchasing the sand will have to abide by the above conditions (Michael Counts, personal communication-electronic mail dated September 22, 2016).

Sediment sampling data: Nine core samples were collected within the proposed dredge footprint for gradation analysis. Results of the gradation analysis showed all nine sediment samples contained less than ten percent of particles (0.5 percent to 3 percent) passing the No. 200 U.S. Standard Series Testing Sieve.

In accordance with 314 CMR 9.07(2)(a), no chemical testing is required if the sediment to be dredged contains less than ten percent of particles passing the No. 200 U.S. Standard Series Testing Sieve, and if the required "due diligence review" demonstrates to the Department's satisfaction that the area is unlikely to contain anthropogenic concentrations of oil or hazardous materials. As such, Special Condition no. 9 requires a due diligence review be conducted and its findings be submitted to the Department.

Dredged Material Dewatering: Based on the results of the gradation analysis, very little or no dewatering will be required for the dredged material. In this case, the dredged material will settle rapidly in the barge/scow and the supernatant effluent will return back to the Nantucket/Polpis Harbor.

Rare Species and Rare Wildlife Habitat: The site is located within the Priority Habitats of Rare Species, Estimated Habitats of Rare Wildlife, and Certified Vernal Pools in accordance with the Massachusetts Natural Heritage Atlas, 13<sup>th</sup> Edition. According to a letter dated March 18, 2015, from the Division of Fisheries & Wildlife, Natural Heritage & Endangered Species Program (NHESP), it has determined that this project as proposed must be conditioned in order to avoid adverse effect the actual Resource Area Habitat of state-protected rare wildlife species and a prohibited "take" (see Special Condition 16).

Public Notice: The public notice of the Chapter 91 dredge and 401 WQC combined application was published in the Nantucket Inquirer and Mirror on May 19, 2016. The Department did not receive any comment during the 21-day public comment period under 314 CMR 9.05(3)(e) and the 15-day public comment period under 310 CMR 9.13(1)(c)5, which ended on June 9, 2016 and June 3, 2016 respectively.

Section 61 Findings: Pursuant to M.G.L. Chapter 30, Sections 61 to 62H (M.E.P.A.) this project was reviewed as EOE No. 15241 and the Secretary's Certificate, issued on September 5, 2014 found that t an Environmental Impact Report (EIR) was not required.

**Therefore, based on information currently in the record, the Department grants a Combined Permit for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law. The Department further certifies in accordance with 314 CMR 9.00 that there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. Finally, the Department has determined that upon satisfying the conditions and mitigation requirements of this approval, the project provides a level of water quality necessary to protect existing uses and accordingly finds that the project to be implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00**

STANDARD COMBINED PERMIT CONDITIONS:

1. Acceptance of this Combined Permit shall constitute an agreement by the Applicant to conform to all terms and conditions stated herein.
2. This Combined Permit is issued upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Applicant prior to the commencement of any activity hereby authorized.
3. This Combined Permit shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This Combined Permit may be revoked after the Department has given written notice of the alleged noncompliance to the Applicant, or his agent, and those persons who have filed a written request, with the Department, for such notice and have afforded the Applicant a reasonable opportunity to correct said noncompliance.
4. This Combined Permit is issued subject to all applicable federal, state, county, and municipal laws, ordinances, by-laws, and regulations, including but not limited to, a valid Order of Conditions issued pursuant to the Wetlands Protection Act, M.G.L. Chapter 131, s.40.
5. This Combined Permit is issued upon the express condition that dredging and transportation and disposal of dredge material shall be in strict conformance with all applicable requirements and authorizations of the Department.
6. The Applicant shall assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of

Massachusetts, its officers, employees, and agents from all claims, audits, damages, costs and expenses incurred by reason thereof.

7. Dredging under this Combined Permit shall be conducted in a manner not to cause unnecessary obstruction of the free passage of vessels. When conducting authorized dredging, care shall be taken not to cause any shoaling. If, however, any shoaling is caused, the Applicant shall, at his expense remove the shoal areas. The Applicant shall pay all costs of supervision, and if at any time the Department deems necessary a survey or surveys of the area dredged, the Applicant shall pay all costs associated with such work. Nothing in this Combined Permit shall be construed as to impair the legal rights of any persons, or authorize dredging on land not owned by the Applicant without consent of the owner(s) of such property.

#### SPECIAL COMBINED PERMIT CONDITIONS

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of the Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of work, or any other portion of the work thereafter, the Department shall be notified of any change(s) in the proposed project or plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Combined Permit.
3. Dredging in accordance with this Combined Permit may begin following the 21-day appeal period and once all other Permits have been received.
4. Work in waters and wetlands shall conform to Part E – Proposed Scope of Project and Use Activity Description and plans/figures submitted in this application to the Department, 11 sheets prepared by CLE Engineering, Inc., dated April 1, 2016, and are unsigned and unstamped. The Department shall be notified if there are modifications and or deletions of work as specified in the plans. Depending on the nature and the scope of any change, approval by the Department may be required.
5. The applicant and its contractor shall allow agents of the Department to enter the project sites to verify compliance with the conditions of this Combined Permit.
6. The Department shall be notified, attention Ken Chin 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Combined Permit.
7. The term of the Chapter 91 dredge permit of this Combined Permit is five years in accordance with 310 CMR 9.15(2). The term of the 401 WQC dredging of the Combined Permit remains in effect for the same duration as the federal permit that requires it or five years from the date of issuance of this Combined Permit whichever comes first.

8. The applicant may request an extension of the 401 dredging of the Combined Permit in accordance with 314 CMR 9.09(3). If the Department grants an extension, the Chapter 91 dredge permit of the Combined Permit will also be extended for the same term.
9. Within 21 days of issuance of the Combined Permit, the applicant shall perform a due-diligence review in accordance with 314 CMR 9.07(2)(a) to determine that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the proposed dredge area(s). The findings of the due-diligence review shall be submitted to the Department prior to commencement of the dredging activity.
10. Future maintenance dredging may be conducted as necessary for the duration of this Combined Permit, provided that:
  - a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Combined Permit or any violations which did occur have been resolved to the satisfaction of the Department;
  - b. Confirm that the private entity has a valid permit for the beach nourishment activity;
  - c. information has been submitted to the Department, if applicable, regarding chemical characteristics and final end use/disposal of the dredged material for review and approval and no future maintenance dredging has commenced without obtaining end use/disposal approval from the Department;
  - d. **Documentation** showing the grain-size distribution of the sediment to be dredged is compatible with the grain-size distribution of the approved receiving beach(es) in accordance with the document entitled Beach Nourishment, Mass DEP's Guide to Best Management Practices for Projects in Massachusetts, March 2007 and is submitted to the Department;
  - e. coordinates of the maintenance dredge footprint are the same as the dredge footprint authorized under this Certification;
  - f. a current due-diligence evaluation is done to determine that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area and submitted to the Department prior to maintenance dredging;
  - g. a bathymetric survey has been submitted to the Department in compliance with Condition no. 21;
  - h. the volume of future maintenance dredging does not exceed 8,300 cubic yards and the Department is notified prior to commencement of maintenance dredging.
11. The Town shall maintain all final purchase agreements. At a minimum, the purchase agreement shall include the following information:
  - a. name of the private entity;
  - b. address of the nourishment location;
  - c. copy of the valid permit for nourishment;
  - d. public beach access agreement;
  - e. quantity of sand purchased and price per cubic yard.

Copy of the purchase agreement shall be provided to the Department upon request.

12. When conducting future maintenance dredging at Station 3+00 and 17+00 of the entrance channel adjacent to Quaise Point, equipment such as a long reach excavator shall be situated above the Mean High Tide (MHT) line. Any temporary impact to the coastal beach

shall be restored back to the pre-dredging condition. In the event that dredging cannot be carried out above the MHT line or cause additional impact to other wetland resources, the applicant or its contractor shall submit a proposed work plan to the Wetlands and Waterways Program, Attn: Ken Chin for review and approval. Dredging may not commence without obtaining the approval from the Department.

13. Best Management Practices (BMPs) such as a silt curtain shall be deployed surrounding the dredge area to minimize turbidity. At a minimum, the silt curtain shall be bottom-weighted to minimize the degree of lifting/flailing or billowing and shall be of suitable material/grade appropriate based on the velocity of the current at the site. Intermediate vertical floats or other means shall be placed on the silt curtain to lift the bottom of the silt curtain at low tide so that the bottom edges of the curtain remain close to the mudline at low tide but do not rake the sediment in areas subject to tidal influence. Dredging shall be carried out using a closed, environmental bucket if the sediment does not consist solely of densely compacted silt/clay.
14. Best Management Practices (BMPs) shall be implemented during transportation of the dredged material to the licensed receiving facility. At a minimum, when transported upon public roadways, all dredged material shall have no free liquid as determined by the Paint Filter Test or other suitably analogous methodology acceptable to the Department, and a tarpaulin or other means shall be used to cover the dredged material during transport.
15. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.
16. The applicant shall comply with the conditions set forth in the March 15, 2015 letter issued by the Natural Heritage Endangered Species Program of the Division of Fisheries & Wildlife.
17. If it is feasible, a buffer of 100 feet shall be maintained between the top of slope of the channel and any identified bordering eelgrass beds.
18. In area where the buffer is less than 100 feet, a pre-and post-dredge eelgrass survey shall be conducted. The eelgrass survey protocol shall be submitted electronically to the Wetlands and Waterway Division in the Boston Office, attn.: Ken Chin, and to the Division of Marine Fisheries (DMF) ([DMF.EnvReview-South@state.ma.us](mailto:DMF.EnvReview-South@state.ma.us)) for review and approval prior to commencement of the dredging activity of Polpis Harbor.
19. The approved pre-dredge eelgrass survey should be performed during the eelgrass growing season in May or September. Of these two potential survey months, whichever most closely precedes the planned dredge activity shall be selected. The approved post-dredge surveys should be performed in the same growing season selected in the pre-dredge survey. Survey results shall be submitted to the Department and DMF for review. Any eelgrass loss documented through the survey will require mitigation according to a mitigation plan developed in coordination with DEP and DMF.
20. Prior to construction, all contractors will be made aware of eelgrass in the project vicinity and be instructed to avoid eelgrass at all times during construction activities. Any eelgrass beds within 500 feet of the construction footprint should be marked with buoys prior to construction to facilitate avoidance.

21. Within 90 days of the completion of the initial dredging and any future maintenance dredging to be conducted authorized under this Combined Permit, a bathymetric survey of the dredged area within [name of the waterbody] depicting post-dredge conditions shall be conducted. At a minimum, the survey shall include an overlay of the dredge footprint (i.e. top of slope) with sufficient coordinates in the Massachusetts State Plane (e.g. longitude and latitude) to clearly delineate the dredge footprint. The survey shall be submitted within five working days after its completion to the Department and a copy shall be sent to the Massachusetts Coastal Zone Management office, attention: Robert Boeri. This submittal shall also include a cross section or profile showing the water depths at mean low water within the dredge footprint.
22. In order to protect spawning, larval and juvenile development of winter flounder, no dredging shall occur between January 15<sup>th</sup> and May 31<sup>st</sup>.

The applicant, or its contractor, shall make every feasible effort to complete the project within the Combined Permitted timeframe. Should the applicant, or their contractor, fail to complete the project and wish to request an amendment to the Combined Permit for incursion into the no-dredge period, the written request shall be received by the Department by January 2<sup>nd</sup>. The following information shall be included in the request:

- a. project location and transmittal number,
- b. the date on which dredging started,
- c. the number of days and hours per day the dredge operated,
- d. expected daily average production rate and the actual daily average production rate,
- e. an explanation of why the project failed to remain on schedule,
- f. an account of efforts made to get the project back on schedule,
- g. a plan depicting the areas that remain to be dredged,
- h. the number of cubic yards that remain to be dredged,
- i. an accurate estimate of the number of days required to complete the project,
- j. an evaluation of the impact of continued dredging on the species of concern,
- k. a description of any efforts that will be made to minimize the impacts of the project on the species of concern, and a realistic assessment of any societal/financial effects of a denial of permission to continue dredging.

The Department will share the information with other resource agencies and a decision to grant or deny the amendment shall be made by January 15<sup>th</sup>. Requests for amendment received after January 2<sup>nd</sup> will be considered at the Department's discretion.

23. No later than four weeks after issuance of the Combined Permit, the applicant shall submit a notification procedure outlining the reporting process to the Department for incidents, relating to the dredging activities, impacting surrounding resource areas and habitats such as, but not limited to, observed dead or distressed fish, or other aquatic organisms, observed oily sheen on surface water, sediment spill, turbidity plume beyond the deployed BMP's, and barging or equipment accident/spill. If at any time during implementation of the project any incident environment impacts such as those listed above, all site related activities impacting the water shall cease until the source of the problem is identified and adequate mitigating measures employed to the satisfaction of the Department.

---

Failure to comply with this Combined Permit is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, MGL c.91, 310 CMR 9.00 or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

This Combined Permit does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, Combined Permit application, or supplemental documents will require further notification to the Department.

### NOTICE OF APPEAL RIGHTS

#### Chapter 91 Appeal Process (310 CMR 9.17)

Pursuant to 310 CMR 9.17(1)(a) and 9.17(2), the applicant may appeal this decision within twenty-one (21) days of the date of Combined Permit issuance, by submitting a written request, by certified mail, for an adjudicatory hearing. Any notice of claim for an adjudicatory hearing must include the following information: the DEP Combined Application license/permit Number; the complete name, address and telephone number of the party filing the request; if represented by counsel, the name, address and telephone number of the attorney; a clear statement that a formal adjudicatory hearing is being requested; and a clear and concise statement of the specific objections to the Department's license decision, and the relief sought through the adjudicatory hearing, including, specifically, the changes desired in the final Combined Permit.

The following persons shall have the right to an adjudicatory hearing concerning this decision by MassDEP to grant or deny a license or Combined Permit, in accordance with 310 CMR 9.17(1):

- a. an applicant who has demonstrated property rights in the lands in question, or which is a public agency;
- b. any person aggrieved by the decision of MassDEP to grant a Combined Permit who has submitted written comments within the public comment period;
- c. ten (10) residents of the Commonwealth who, pursuant to M.G.L. c. 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the Combined Permit activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative;
- d. the municipal official in the affected municipality who has submitted written comments within the public comment period; and
- e. CZM, for any project identified in 310 CMR 9.13(2) (a) for CZM participation or, in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

A person requesting an adjudicatory hearing must submit a "Notice of Claim" to the Department, with a copy of the MassDEP Transmittal Form and including the detail specified below, within twenty-one (21) days of the date of issuance of this decision. The MassDEP Fee Transmittal Form is available at the following website:

<http://www.mass.gov/eea/docs/dep/service/adr/adjherfm.doc>. The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

Case Administrator  
MassDEP  
One Winter Street, 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP Waterways Regulation Program  
[appropriate Regional Office address]

The MassDEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Mass. Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 4062  
Boston, Massachusetts 02211

Information must be included in the hearing request

Pursuant to 310 CMR 9.17(3), any Notice of Claim requesting an adjudicatory hearing must include the following information:

- a. the 401 Combined Permit Transmittal Number and MassDEP Waterways Application File Number;
- b. the complete name, address, fax number and telephone number of the applicant;
- c. the address of the project;
- d. the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- e. if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found in 310 CMR 9.02;
- f. a clear statement that a formal adjudicatory hearing is being requested;
- g. a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final-written decision; and
- h. a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

Dismissal of request

The request for appeal will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal

housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Please note that the Department may revoke this Combined Permit for non-compliance with the terms and conditions set forth. Therefore, it is recommended that you contact the Department prior to performing any alterations or use modifications for review and, if necessary, approval pursuant to M.G.L. Chapter 91.

---

401 WQC Appeal Process (314 CMR 9.10):

Certain persons shall have a right to request an adjudicatory hearing concerning Combined Permits by the Department when an application is required:

- a. the applicant or property owner;
- b. any person aggrieved by the decision who has submitted written comments during the public comment period;
- c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
- d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate.

Case Administrator  
Department of Environmental Protection  
One Winter Street, 2<sup>nd</sup> Floor  
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection  
One Winter Street, 5<sup>th</sup> Floor  
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 314 CMR 9.10(3):

- a. the 401 Combined Permit Transmittal Number and DEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;
- c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. a clear and concise statement that an adjudicatory hearing is being requested;
- f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Combined Permit; and
- g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 4062  
Boston, MA 02211

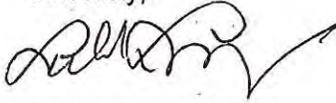
The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

---

Failure to comply with this Combined Permit is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions about this decision, please contact Ken Chin at 617-292-5893.

Sincerely,



Lealdon Langley  
Director  
Wetlands and Waterways Program

enclosure: Departmental Action Fee Transmittal Form

ecc:

Barbara Newman, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road,  
Concord, MA 01742-2751  
Robert Boeri, CZM, 251 Causeway Street, Suite 800, Boston, MA 02114  
John Logan, DMF, 1213 Purchase St., 3<sup>rd</sup> floor, New Bedford, MA 02740-6694  
Carlos Fragata, Jim Mahala, DEP SERO  
Michael Counts, CLE Engineering, Inc. 15 Creek Road, Marion, MA 02738 Consultant  
Sheila Lucey, Harbor Master, 34 Washington Street, Nantucket, Ma 02554

cc: Nantucket Conservation Commission, 2 Bathing Beach Road, Nantucket, MA 02554

KC/X269790

## Attachment 1

Harbor	Dredge Location	Time/Frame of When Dredgings Needed (Immediately within 5 years, more than 5 years, not needed)	Estimated Volume of Needed Dredging (cubic yards)	Estimated Cost of Needed Dredging (including cost of disposal)	Potential Disposal Location for Needed Dredging	Last Time this channel was dredged
Madaket Harbor	Hither Creek	1-3 YRS	10,000	\$350,000	Public Beach Nourishment ** S/B	1989
Madaket Harbor	Madaket Channel	1-3 YRS	35,000	\$700,000	Public Beach Nourishment **S/B	1989
Nantucket Harbor	Nantucket Harbor and Federal Channel	Immediate need *Scheduled 10/15	40,000	0 Federally Maintained	To be determine	2015
Nantucket Harbor	Nantucket Town Pier	Immediate need	10,000	\$250,000	.Not identified **S/B	
Nantucket Harbor	Children's Beach	1-3 YRS	2,000	\$75,000	** S/B	2006
Nantucket Harbor	Easy Street Mooring Field	3-5 YRS	25,000	\$500,000	Public Beach Nourishment ** S/B	
Polpis Harbor	Main Channel (area near entrance)	Immediate need *Scheduled 10/16	9,000	\$250,000	Public Beach Nourishment **S/B	1993
Nantucket Harbor	Head of Harbor	5-7 YRS	40,000	1,000,000	Public Beach Nourishment **S/B	1996
**/B Sand Bank						



**Massachusetts Department of Environmental Protection**  
**One Winter Street, Boston MA 02108 • Phone: 617-292-5751**

**Communication For Non-English Speaking Parties**  
310 CMR 1.03(5)(a)



**1 English:**

This document is important and should be translated immediately. If you need this document translated, please contact MassDEP's Diversity Director at the telephone numbers listed below.



**2 Español (Spanish):**

Este documento es importante y debe ser traducido inmediatamente. Si necesita este documento traducido, por favor póngase en contacto con el Director de Diversidad MassDEP a los números de teléfono que aparecen más abajo.



**3 Português (Portuguese):**

Este documento é importante e deve ser traduzida imediatamente. Se você precisa deste documento traduzido, por favor, entre em contato com Diretor de Diversidade da MassDEP para os números de telefone listados abaixo.



**4(a) 中國 (傳統) (Chinese (Traditional)):**

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與MassDEP的多樣性總監聯繫。



**4(b) 中国 (简体中文) (Chinese (Simplified)):**

本文件非常重要，應立即翻譯。如果您需要翻譯這份文件，請用下面列出的電話號碼與MassDEP的多样性總監联系。



**5 Ayisyen (franse kreyòl) (Haitian) (French Creole):**

Dokiman sa-a se yon bagay enpòtan epi yo ta dwe tradui imedyatman. Si ou bezwen dokiman sa a tradui, tanpri kontakte Divèsite Direktè MassDEP a nan nimewo telefòn ki nan lis pi ba a.



**6 Việt (Vietnamese):**

Tài liệu này là rất quan trọng và cần được dịch ngay lập tức. Nếu bạn cần dịch tài liệu này, xin vui lòng liên hệ với Giám đốc MassDEP đa dạng tại các số điện thoại được liệt kê dưới đây.



**7 ប្រទេសកម្ពុជា (Kmer (Cambodian)):**

ឯកសារនេះគឺមានសារៈសំខាន់និងគួរត្រូវបានបកប្រែភ្លាម។ ប្រសិនបើអ្នកត្រូវបានបកប្រែឯកសារនេះសូមទំនាក់ទំនងឆ្នោតក្រសួង MassDEP នៅលេខទូរស័ព្ទដែលបានរាយខាងក្រោម។



**8 Kriolu Kabuverdianu (Cape Verdean):**

*Es documento é importante e deve ser traduzido imdiatamente. Se bo precisa des documento traduzido, por favor contacta Director de Diversidade na MassDEP's pa es numero indicode li d'boche.*



**9 Русский язык (Russian):**

Этот документ является важным и должно быть переведено сразу. Если вам нужен этот документ переведенный, пожалуйста, свяжитесь с директором разнообразия MassDEP по адресу телефонных номеров, указанных ниже.



**10 العربية (Arabic):**

هذه الوثيقة الهامة وينبغي أن تترجم على الفور. اذا كنت بحاجة الى هذه الوثيقة المترجمة، يرجى الاتصال مدير التنوع في MassDEP على أرقام الهواتف المدرجة أدناه.



**11 한국어 (Korean):**

이 문서는 중요하고 즉시 번역해야 합니다. 당신이 번역이 문서가 필요하다 아래의 전화 번호로 MassDEP의 다양성 감독에 문의하시기 바랍니다



**12 հայերէն (Armenian):**

Այս փաստաթուղթը շատ կարևոր է եւ պէտք է թարգմանել անմիջապէս. Եթէ Ձեզ անհրաժեշտ է այս փաստաթուղթը թարգմանվել դիմել MassDEP բազմազանությունը տնօրէն է հեռախոսահամարների թվարկված են ստորեւ.



**13 فارسی (Farsi (Persian):**

این سند مهم است و باید فوراً ترجمه شده است. اگر شما نیاز به این سند ترجمه شده، لطفاً با ما تماس تنوع مدیر MassDEP در شماره تلفن های ذکر شده در زیر.



**14 Français (French):**

Ce document est important et devrait être traduit immédiatement. Si vous avez besoin de ce document traduit, s'il vous plaît communiquer avec le directeur de la diversité MassDEP aux numéros de téléphone indiqués ci-dessous.



**15 Deutsch (German):**

Dieses Dokument ist wichtig und sollte sofort übersetzt werden. Wenn Sie dieses Dokument übersetzt benötigen, wenden Sie sich bitte Diversity Director MassDEP die in den unten aufgeführten Telefonnummern.



**16 Ελληνική (Greek):**

Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως. Αν χρειάζεστε αυτό το έγγραφο μεταφράζεται, παρακαλούμε επικοινωνήστε Diversity Director MassDEP κατά τους αριθμούς τηλεφώνου

που αναγράφεται πιο κάτω.



**17 Italiano (Italian):**

Questo documento è importante e dovrebbe essere tradotto immediatamente. Se avete bisogno di questo documento tradotto, si prega di contattare la diversità Direttore di MassDEP ai numeri di telefono elencati di seguito.



**18 Język Polski (Polish):**

Dokument ten jest ważny i powinien być natychmiast przetłumaczone. Jeśli potrzebujesz tego dokumentu tłumaczone, prosimy o kontakt z Dyrektorem MassDEP w różnorodności na numery telefonów wymienionych poniżej.



**19 हिन्दी (Hindi):**

यह दस्तावेज महत्वपूर्ण है और तुरंत अनुवाद किया जाना चाहिए. आप अनुवाद इस दस्तावेज की जरूरत है, नीचे सूचीबद्ध फोन नंबरों पर MassDEP की विविधता निदेशक से संपर्क करें.



DEPARTMENT OF THE ARMY  
US ARMY CORPS OF ENGINEERS  
NEW ENGLAND DISTRICT  
696 VIRGINIA ROAD  
CONCORD MA 01742-2751

September 19, 2016

Regulatory Division  
File Number: NAE-2014-01550

Town of Nantucket, Massachusetts  
David Fronzuto  
16 Broad Street  
Nantucket, Massachusetts 02554

Dear Mr. Fronzuto:

We have reviewed your application to annually maintenance dredge up to 1.58 acres of the entrance channel to -6' MLW, plus 1' allowable overdredge, for up to 8,300 CY of sandy sediment. The sediment will be hydraulically or mechanically dredged, dewatered in barges at the dredge site, and transported to the Steamship Authority Wharf to be transferred into dump trucks. The sediment will then be stockpiled at the town-owned DPW yard and vacant lot off New South Road for future beach nourishment on area beaches. This project is located in Polpis Harbor at Nantucket Island, Massachusetts. The work is shown on the enclosed plans entitled "POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT, NANTUCKET MASSACHUSETTS", on 11 sheets, and dated "APRIL 1, 2016".

Based on the information you have provided, we have determined that the proposed activity, which includes work and/or a discharge of dredged or fill material into waters of the United States, including wetlands, will have only minimal individual or cumulative environmental impacts. Therefore, this work is authorized under the enclosed February 2015 General Permits for Massachusetts (GPs for MA), specifically GP 5, under the pre-construction notification process. This work must be performed in accordance with the terms and conditions of the GPs and also in compliance with the following special condition(s):

1. The work authorized herein shall not be conducted during the time of year (TOY) restriction of March 16 to October 3, in order to minimize adverse impacts to federally listed endangered species.
2. You must complete and return the enclosed Work Start Notification Form to this office at least two weeks before the anticipated starting date.
3. The National Marine Fisheries Service has provided the following Essential Fish Habitat conservation recommendation in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

Condition 3a: The work authorized herein shall not be conducted during the time of year (TOY) restriction of 15 January to 31 May, in order to minimize adverse impacts to winter flounder EFH.

Please contact Phillip Nimeskern of my staff at (978) 318-8660 if you have any questions.

Sincerely,



Barbara Newman  
Chief, Permits & Enforcement Branch  
Regulatory Division

Enclosures

cc:

Michael Count, CLE Engineering, 15 Creek Road, Marion, MA 02738  
[MCount@cleengineering.com](mailto:MCount@cleengineering.com)

Ed Reiner, U.S. EPA, Region 1, Boston, Massachusetts, [reiner.ed@epa.gov](mailto:reiner.ed@epa.gov)

Alison Verkade, NOAA; [alison.verkade@noaa.gov](mailto:alison.verkade@noaa.gov)

Robert Boeri, Coastal Zone Management, Boston, Massachusetts, [Robert.Boeri@state.ma.us](mailto:Robert.Boeri@state.ma.us)

Jim Mahala, Acting Chief, DEP SERO, Wetlands and Waterways, Lakeville, Massachusetts;  
[jim.mahala@state.ma.us](mailto:jim.mahala@state.ma.us) (DEP File No. X269790)

Ken Chin, MassDEP, [ken.chin@state.ma.us](mailto:ken.chin@state.ma.us)

Michael Girvan, MassDEP-WRP, Boston, Massachusetts; [michael.girvan@state.ma.us](mailto:michael.girvan@state.ma.us) ,  
(DEP File No. X269790)

Steve Pothier, Waterways Management Section, First Coast Guard District (dpw), Boston,  
Massachusetts; [steven.r.pothier@uscg.mil](mailto:steven.r.pothier@uscg.mil)

Nantucket Conservation Commission, 2 Bathing Beach Road, Nantucket, MA, 02554.  
[jcarlson@nantucket-ma.gov](mailto:jcarlson@nantucket-ma.gov) ; [jcuppone@nantucket-ma.gov](mailto:jcuppone@nantucket-ma.gov)

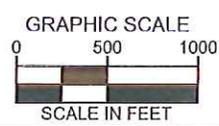


PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
MLW = 0.0  
MHW = +3.04'  
AHTL = +4.10'

CLE ENGINEERING, INC.  
15 CREEK ROAD, MARION MA, 02738

LOCUS MAP



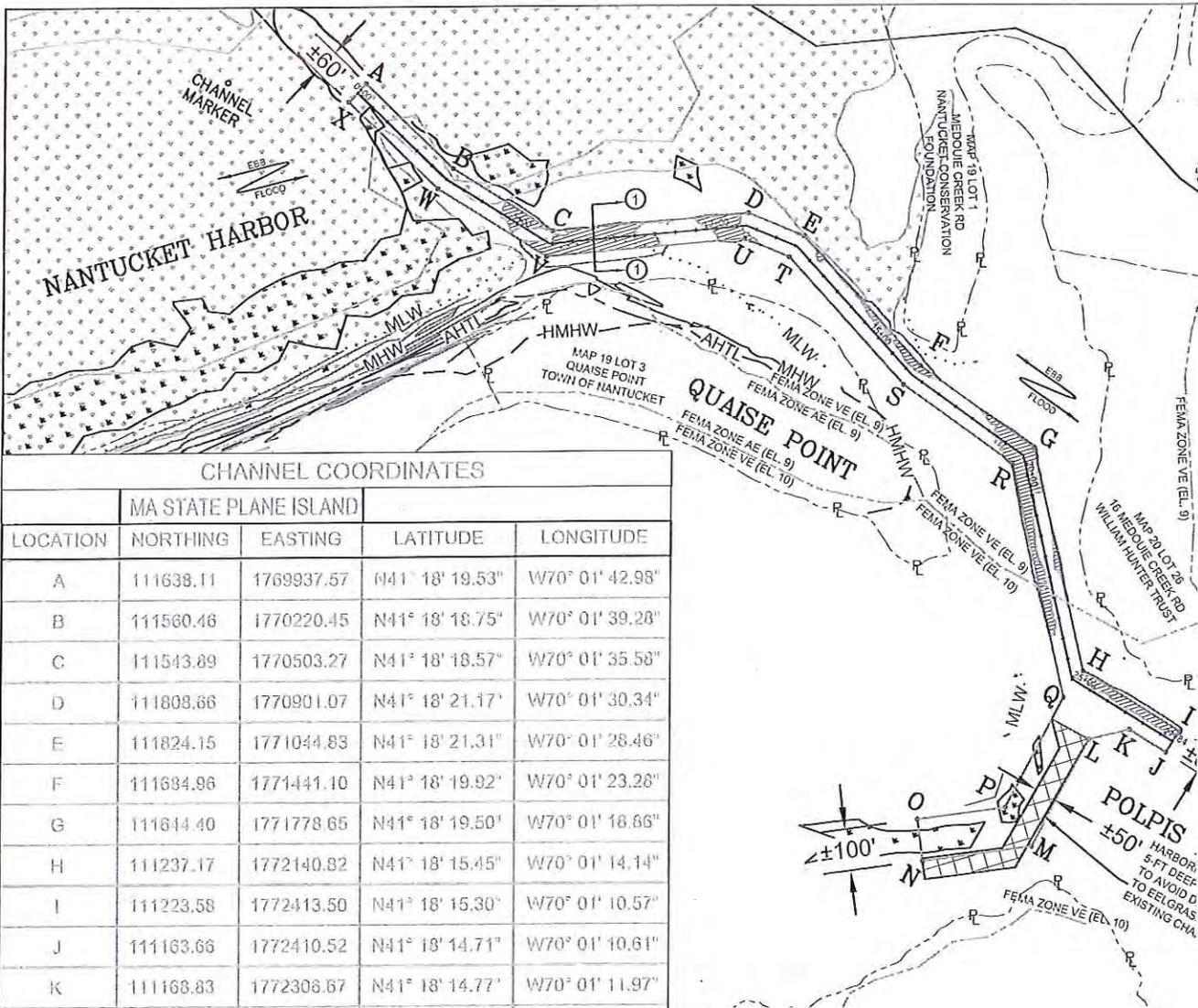
POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
NANTUCKET, MASSACHUSETTS

AT: POLPIS HARBOR/NANTUCKET HARBOR  
COUNTY OF: NANTUCKET  
APPLICATION BY: TOWN OF NANTUCKET

DATE: APRIL 1, 2016

SHEET 1 OF 11

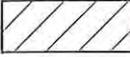
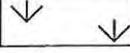
\\nautilus\jobfiles\2016\12\116\_1003\raw\gis\12116\_dredge\_permitting\_plan\locus\_r1



CHANNEL COORDINATES

LOCATION	MA STATE PLANE ISLAND			
	NORTHING	EASTING	LATITUDE	LONGITUDE
A	111638.11	1769937.57	N41° 18' 19.53"	W70° 01' 42.98"
B	111560.46	1770220.45	N41° 18' 16.75"	W70° 01' 39.28"
C	111543.89	1770503.27	N41° 18' 18.57"	W70° 01' 35.58"
D	111808.66	1770901.07	N41° 18' 21.17"	W70° 01' 30.34"
E	111824.15	1771044.83	N41° 18' 21.31"	W70° 01' 28.46"
F	111634.96	1771441.10	N41° 18' 19.92"	W70° 01' 23.28"
G	111644.40	1771778.65	N41° 18' 19.50"	W70° 01' 18.66"
H	111237.17	1772140.82	N41° 18' 15.45"	W70° 01' 14.14"
I	111223.58	1772413.50	N41° 18' 15.30"	W70° 01' 10.57"
J	111163.66	1772410.52	N41° 18' 14.71"	W70° 01' 10.61"
K	111168.83	1772308.67	N41° 18' 14.77"	W70° 01' 11.97"
L	111101.72	1772232.05	N41° 18' 14.11"	W70° 01' 12.96"
M	110813.06	1772233.63	N41° 18' 11.26"	W70° 01' 12.96"
N	110556.80	1772019.72	N41° 18' 09.73"	W70° 01' 15.77"
O	110737.53	1771980.70	N41° 18' 10.53"	W70° 01' 16.54"
P	110963.43	1772133.05	N41° 18' 11.76"	W70° 01' 14.27"
Q	111159.37	1772129.71	N41° 18' 14.69"	W70° 01' 14.29"
R	111587.54	1771748.92	N41° 18' 18.94"	W70° 01' 19.25"
S	111626.18	1771427.42	N41° 18' 19.34"	W70° 01' 23.46"
T	111763.04	1771037.75	N41° 18' 20.71"	W70° 01' 28.56"
U	111750.59	1770922.10	N41° 18' 20.59"	W70° 01' 30.07"
V	111482.82	1770519.81	N41° 18' 17.97"	W70° 01' 35.36"
W	111500.92	1770210.65	N41° 18' 18.16"	W70° 01' 39.41"
X	111580.26	1769921.69	N41° 18' 18.96"	W70° 01' 43.19"

LEGEND:

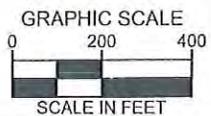
- ..... MLW = EL. 0.0'
- MHW = EL. +3.04'
- AHTL = EL. +4.10'
-  PROPOSED MAINTENANCE DRED TO EL. -6.0' MLW
-  EELGRASS (SEE GENERAL NOTE)
-  EELGRASS (MA GIS 1995 & 2001)
-  PROP. AREA OF RE-ALIGNED CH (NO DREDGING PROPOSED)
- HISTORIC MEAN HIGH WATER (H)
- FEMA LINE
- EX./PROP. CHANNEL LIMIT/BOT.(
- PROP. TOP OF SLOPE

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
MLW = 0.0  
MHW = +3.04'  
AHTL = +4.10'

CLE ENGINEERING, INC.  
15 CREEK ROAD, MARION MA, 02738

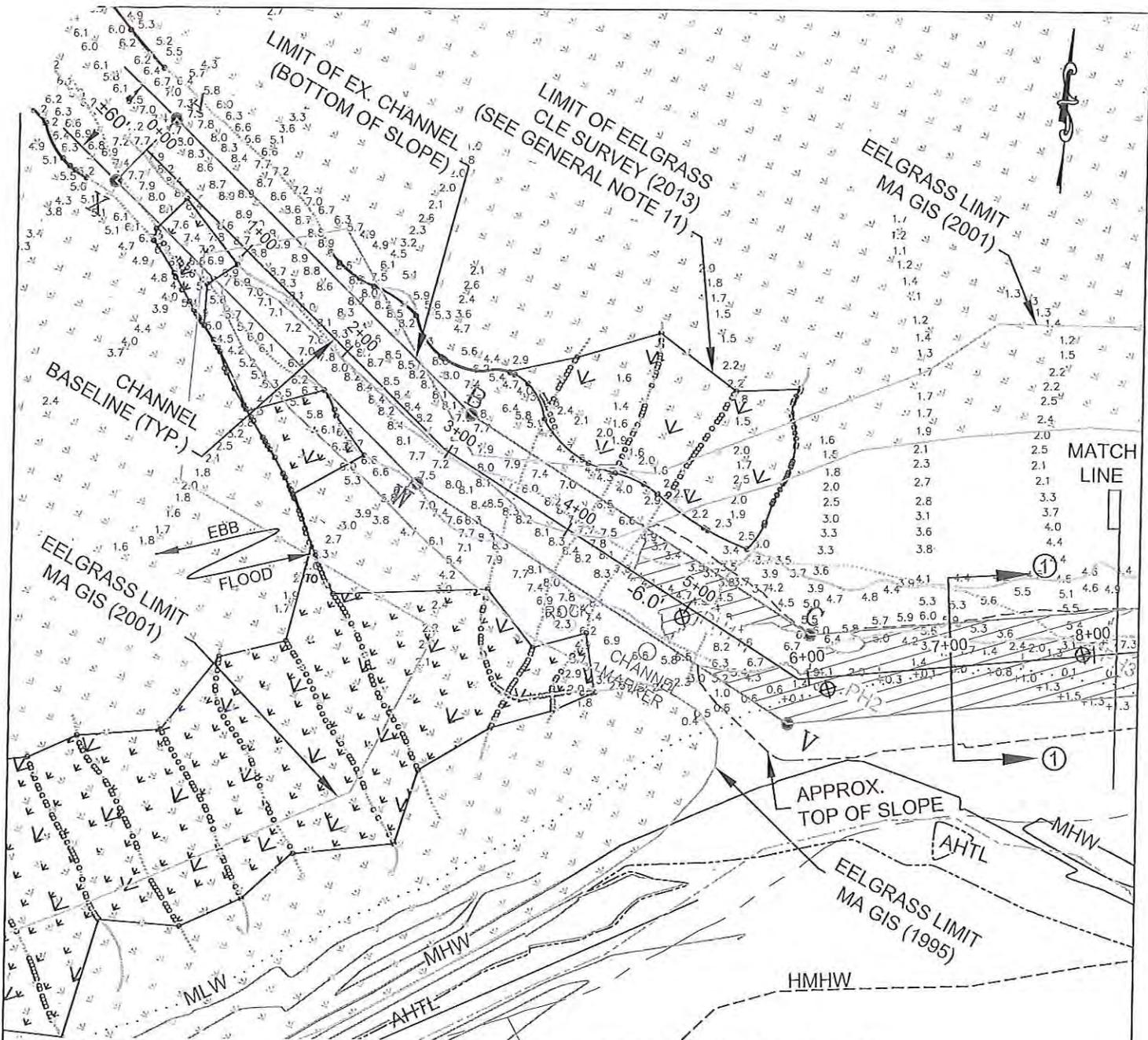
SITE OVERVIEW



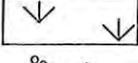
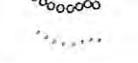
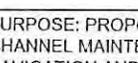
POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
NANTUCKET, MASSACHUSETTS  
AT: POLPIS HARBOR/NANTUCKET HARBOR  
COUNTY OF: NANTUCKET  
APPLICATION BY: TOWN OF NANTUCKET

DATE: APRIL 1, 2016

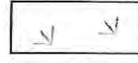
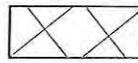
N:\b01\p01\12116\_1300\dwg\p01\_12116\_1300\_dredging\_permittng\_plans.dwg\_1.r



**LEGEND:**

- ..... MLW = EL. 0.0'
- MHW = EL. +3.04'
- AHTL = EL. +4.10'
-  PROPOSED MAINTENANCE DREDGING TO EL. -6.0' MLW
-  EELGRASS (SEE GENERAL NOTE 10)
-  EELGRASS VERIFIED BY U/W CAMERA (10/3/13)
-  EELGRASS SURVEY TRANSECT (10/3/13)

**LEGEND (CONTINUED):**

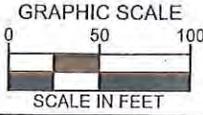
-  EELGRASS (MA GIS 1995 & 2001)
-  PROP. AREA OF RE-ALIGNED CHANNEL (NO DREDGING PROPOSED)
- HISTORIC MEAN HIGH WATER (HMHW)
- FEMA LINE
- EX./PROP. CHANNEL LIMIT/BOT.OF SLOPE
- PROP. TOP OF SLOPE

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
MLW = 0.0  
MHW = +3.04'  
AHTL = +4.10'

CLE ENGINEERING, INC.  
15 CREEK ROAD, MARION MA, 02738

**SITE PLAN**

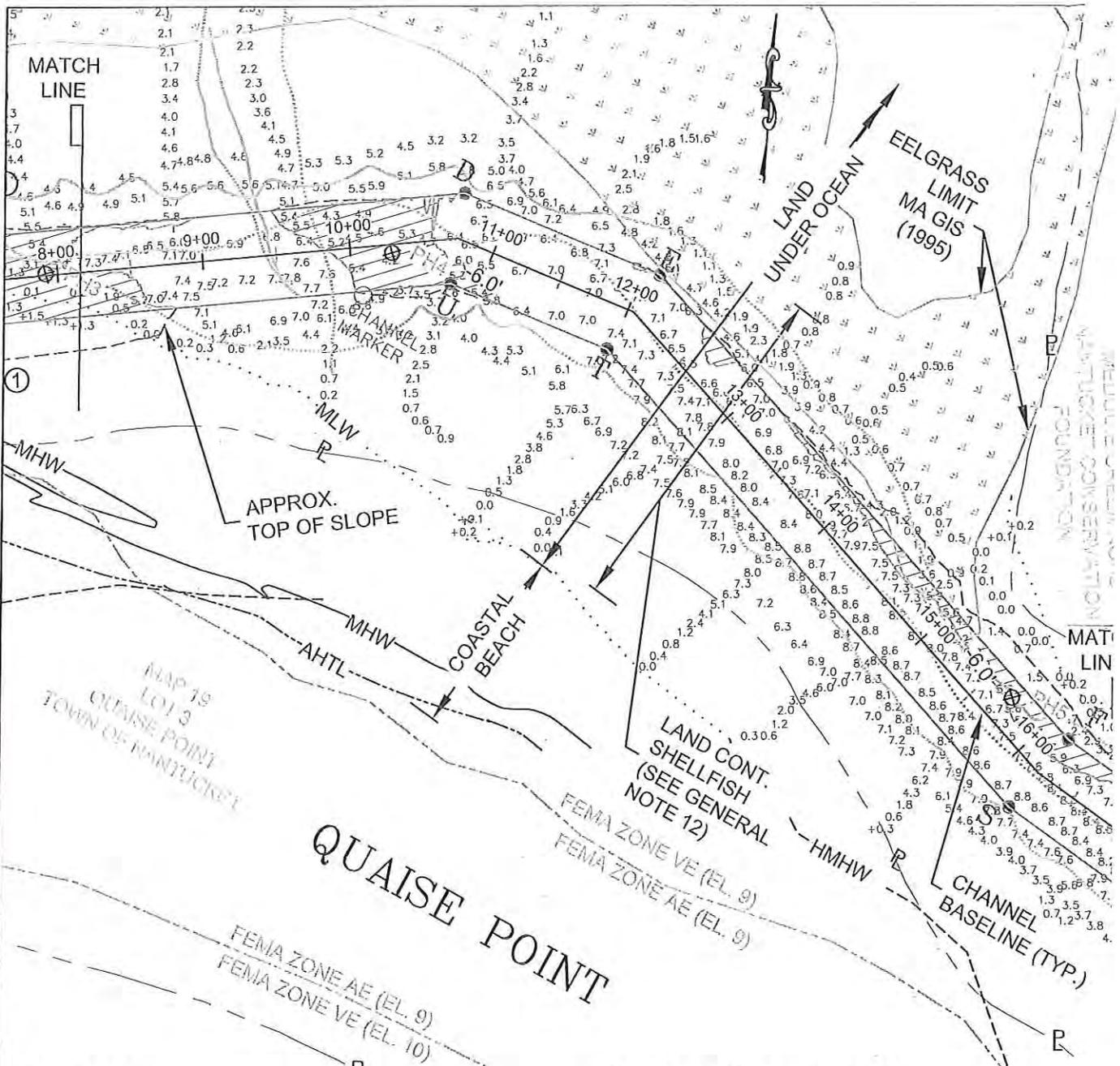


POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
NANTUCKET, MASSACHUSETTS  
AT: POLPIS HARBOR/NANTUCKET HARBOR  
COUNTY OF: NANTUCKET  
APPLICATION BY: TOWN OF NANTUCKET

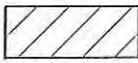
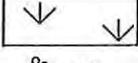
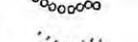
DATE: APRIL 1, 2016

SHEET 3 OF 11

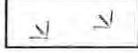
\\naehns\jcollins\2016\12116\_00\Drawings\12116\_dredging\pml\tblg\plans\aceo\_11



**LEGEND:**

- ..... MLW = EL. 0.0'
- MHW = EL. +3.04'
- AHTL = EL. +4.10'
-  PROPOSED MAINTENANCE DREDGING TO EL. -6.0' MLW
-  EELGRASS (SEE GENERAL NOTE 10)
-  EELGRASS VERIFIED BY U/W CAMERA (10/3/13)
-  EELGRASS SURVEY TRANSECT (10/3/13)

**LEGEND (CONTINUED):**

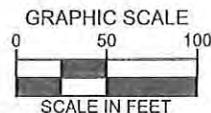
-  EELGRASS (MA GIS 1995 & 2001)
-  PROP. AREA OF RE-ALIGNED CHANNEL (NO DREDGING PROPOSED)
- HISTORIC MEAN HIGH WATER (HMHW)
- FEMA LINE
- EX./PROP. CHANNEL LIMIT/BOT.OF SL
- PROP. TOP OF SLOPE

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
MLW = 0.0  
MHW = +3.04'  
AHTL = +4.10'

CLE ENGINEERING, INC.  
15 CREEK ROAD, MARION MA, 02738

**SITE PLAN**

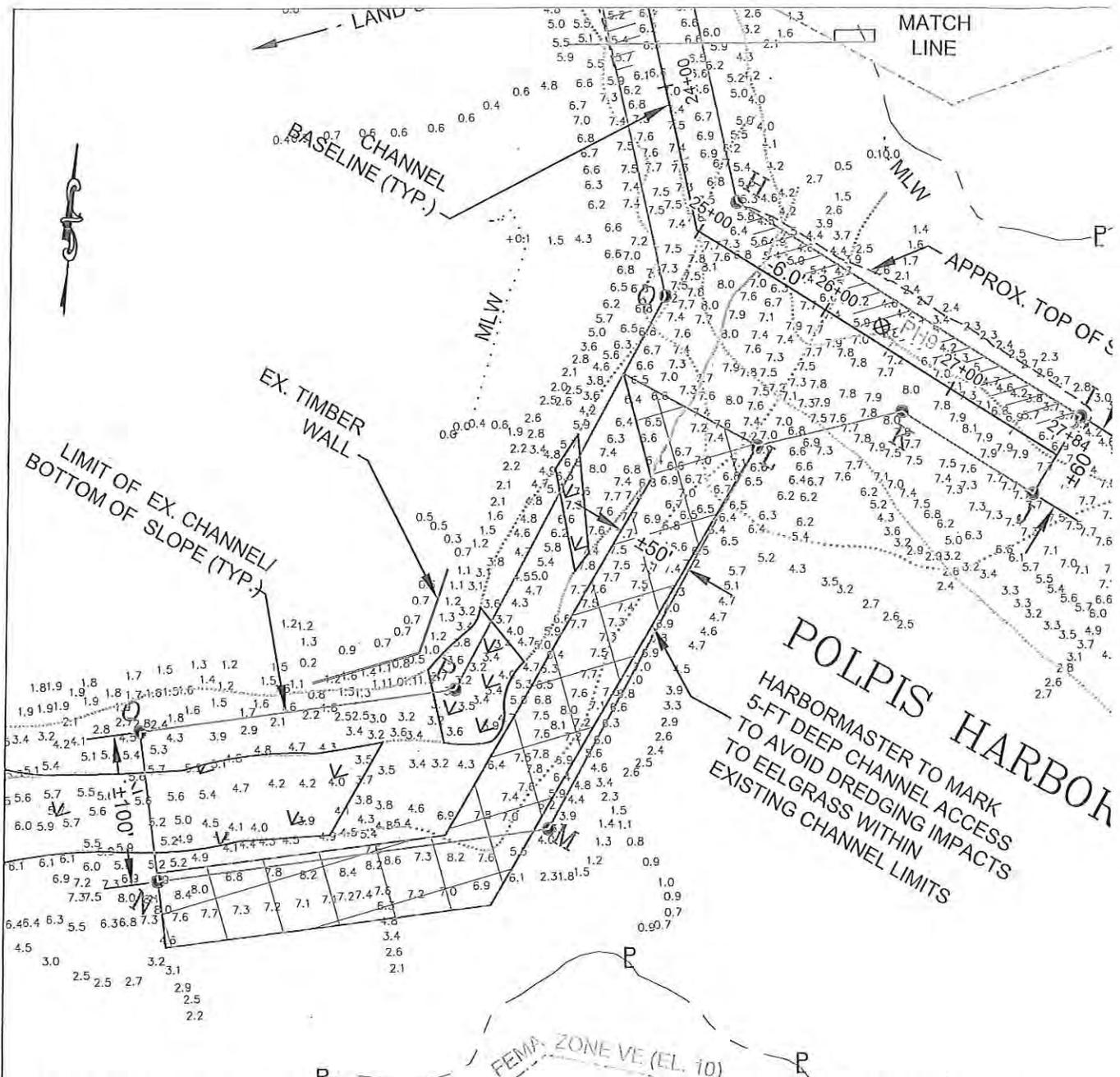


POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
NANTUCKET, MASSACHUSETTS  
AT: POLPIS HARBOR/NANTUCKET HARBOR  
COUNTY OF: NANTUCKET  
APPLICATION BY: TOWN OF NANTUCKET

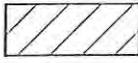
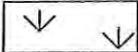
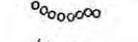
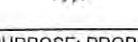
DATE: APRIL 1, 2016

SHEET 4 - 11

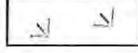




**LEGEND:**

- ..... MLW = EL. 0.0'
- MHW = EL. +3.04'
- AHTL = EL. +4.10'
-  PROPOSED MAINTENANCE DREDGING TO EL. -6.0' MLW
-  EELGRASS (SEE GENERAL NOTE 10)
-  EELGRASS VERIFIED BY U/W CAMERA (10/3/13)
-  EELGRASS SURVEY TRANSECT (10/3/13)

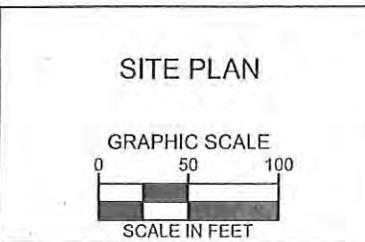
**LEGEND (CONTINUED):**

-  EELGRASS (MA GIS 1995 & 2001)
-  PROP. AREA OF RE-ALIGNED CHANNEL (NO DREDGING PROPOSED)
- HISTORIC MEAN HIGH WATER (HMH)
- FEMA LINE
- EX./PROP. CHANNEL LIMIT/BOT. OF SLOPE
- PROP. TOP OF SLOPE

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
 MLW = 0.0  
 MHW = +3.04'  
 AHTL = +4.10'

CLE ENGINEERING, INC.  
 15 CREEK ROAD, MARION MA, 02738

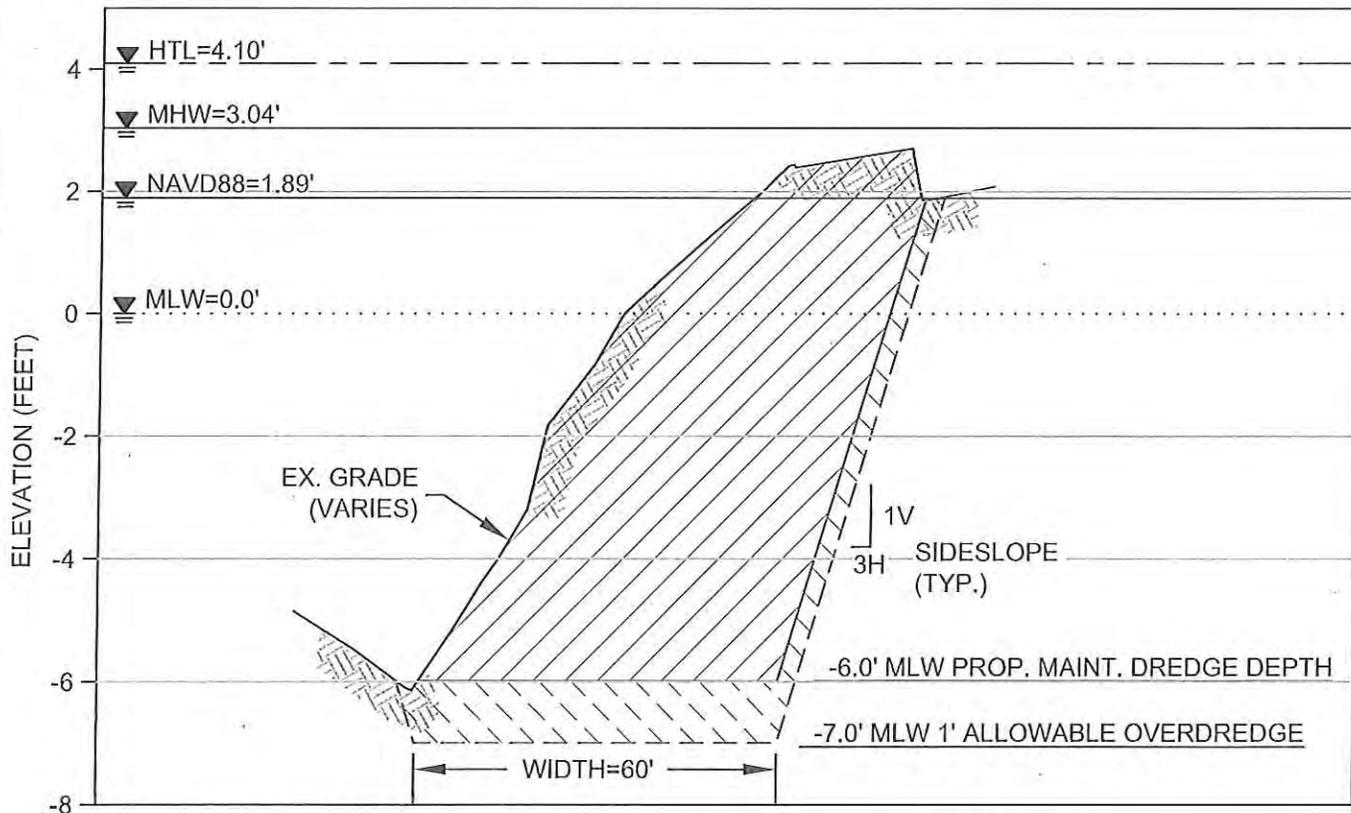


POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
 NANTUCKET, MASSACHUSETTS

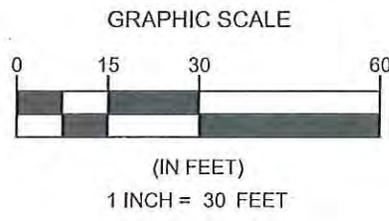
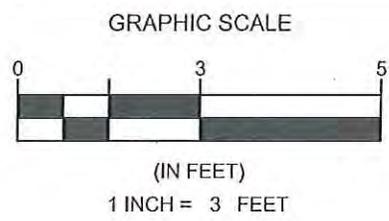
AT: POLPIS HARBOR/NANTUCKET HARBOR  
 COUNTY OF: NANTUCKET  
 APPLICATION BY: TOWN OF NANTUCKET

DATE: APRIL 1, 2016 , REV. 8/8/16

SHEET



STA. 7+00  
**TYPICAL DREDGE SECTION 1-1**  
 HORIZONTAL SCALE 1"=30'  
 VERTICAL SCALE 1"=3'



I:\external\p0166\_2012\12118\_100\drawings\12118\_dredge permitting plans-sheet\_7

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
 MLW = 0.0  
 MHW = +3.04'  
 AHTL = +4.10'

CLE ENGINEERING, INC.  
 15 CREEK ROAD, MARION MA, 02738

**TYPICAL CROSS SECTION**

GRAPHIC SCALE

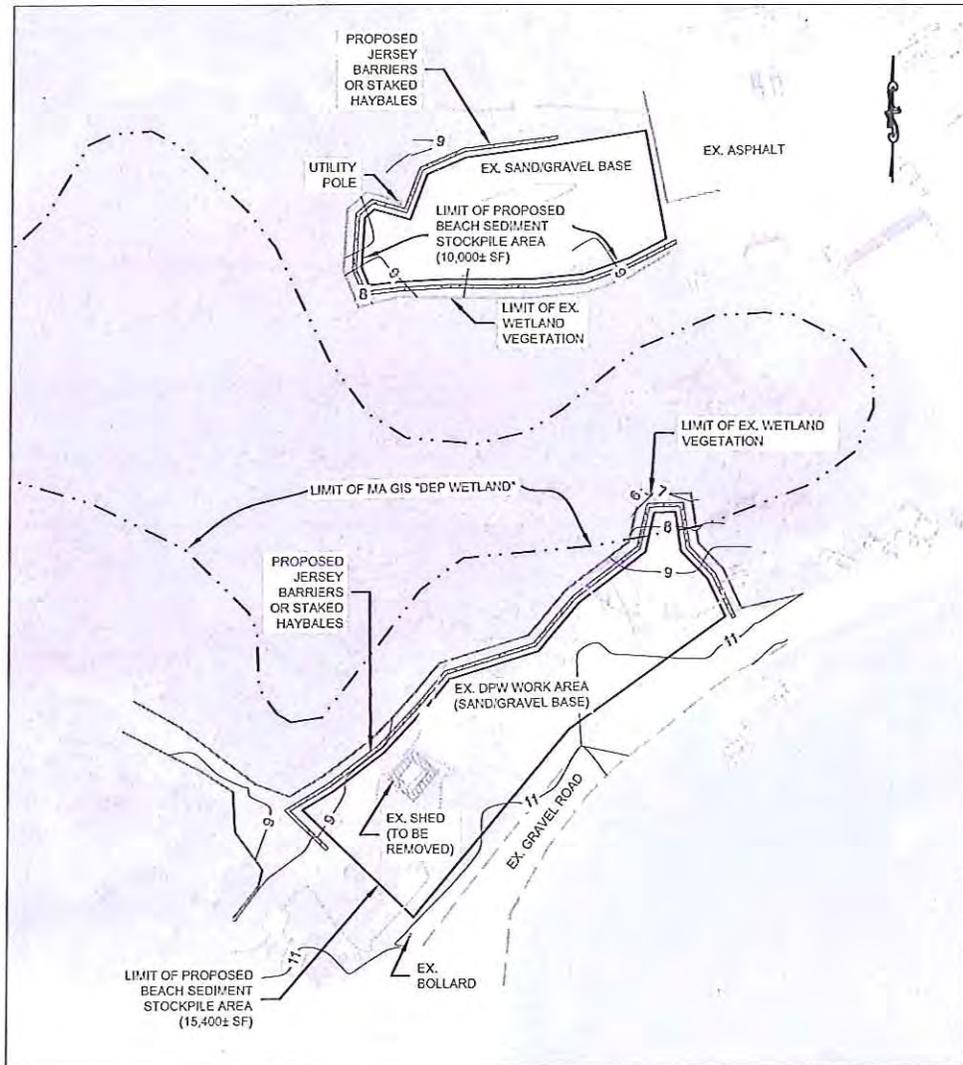
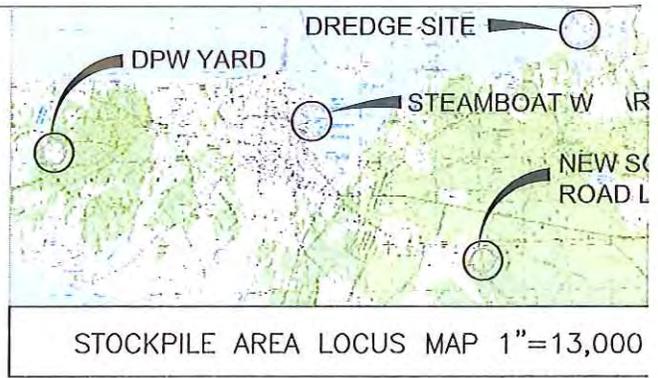
SCALE IN FEET

POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
 NANTUCKET, MASSACHUSETTS

AT: POLPIS HARBOR/NANTUCKET HARBOR  
 COUNTY OF: NANTUCKET  
 APPLICATION BY: TOWN OF NANTUCKET

DATE: APRIL 1, 2016

SHEET 7 OF 11



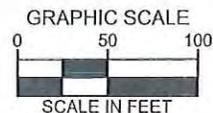
**STOCKPILE AREA**  
**DPW YARD (188 MADAKET ROAD)**  
 SCALE: 1"=100'

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
 MLW = 0.0  
 MHW = +3.04'  
 AHL = +4.10'

CLE ENGINEERING, INC.  
 15 CREEK ROAD, MARION MA, 02738

**DREDGE SEDIMENT STOCKPILE PLAN**



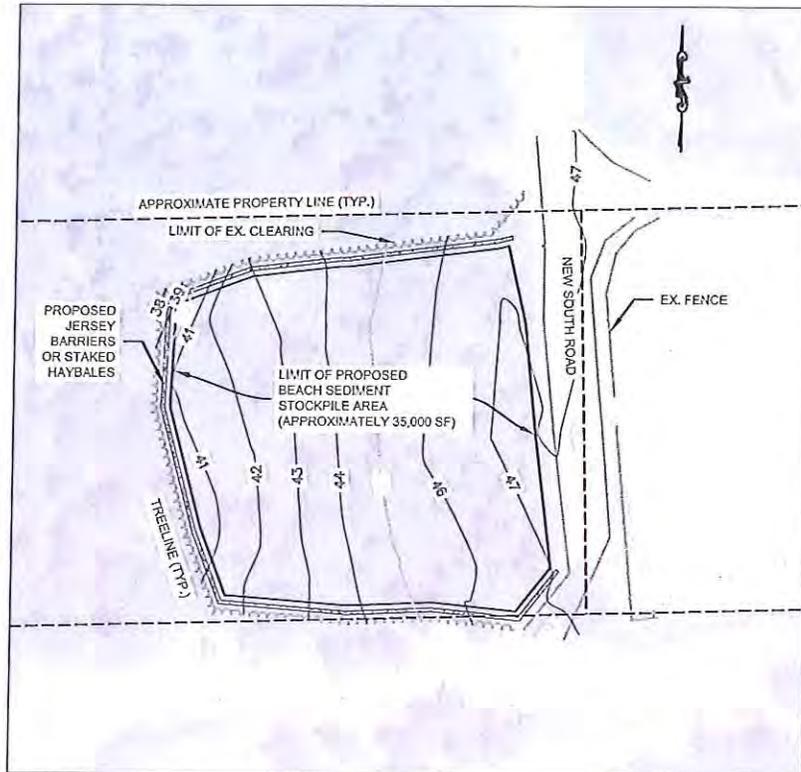
POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
 NANTUCKET, MASSACHUSETTS

AT: POLPIS HARBOR/NANTUCKET HARBOR  
 COUNTY OF: NANTUCKET  
 APPLICATION BY: TOWN OF NANTUCKET

DATE: APRIL 1, 2016

SHEET

8-11



**STOCKPILE AREA  
VACANT LOT (NEW SOUTH ROAD)  
SCALE: 1"=100'**

**STOCKPILE AREA NOTES:**

1. VERTICAL DATUM: NAVD88
2. RESULTS OF TOPOGRAPHY FROM CLE ENGINEERING, INC. (CLE) SURVEY DATED 2/4/16.
3. LIMITS OF WETLAND VEGETATION AS SHOWN WERE FIELD VERIFIED ON 2/4/16. LIMITS OF DEP WETLANDS (SHRUB SWAMP) ARE BASED UPON AVAILABLE MA GIS INFORMATION.
4. PROJECT BENCHMARK IS DISK 8449130 H EL. 5.78' MLLW (3.69' NAVD88) LOCATED AT THE CHILDRENS BEACH BOAT RAMP IN NANTUCKET, MA.
5. COORDINATES ARE BASED ON NAD 83 STATE PLANE MASSACHUSETTS ISLAND.
6. PROPERTY LINES SHOWN ARE APPROXIMATE. INFORMATION OBTAINED FROM NANTUCKET GIS DATABASE.
7. DPW YARD STOCKPILE AREA IS LOCATED IN FEMA ZONE X AS SHOWN ON MAP 25019C066G DATED JUNE 9, 2014.
8. NEW SOUTH ROAD VACANT LOT STOCKPILE AREA IS LOCATED IN FEMA ZONE X AS SHOWN ON MAP 25019C0093G DATED JUNE 9, 2014.
9. THE INFORMATION DEPICTED ON THIS MAP REPRESENTS THE RESULTS OF SURVEYS MADE ON THE DATES SHOWN, AND CAN ONLY BE CONSIDERED AS INDICATING THE CONDITIONS AT THAT TIME.
10. POSSESSION AND USE OF THE MATERIAL CONTAINED ON THESE DRAWINGS IS GRANTED ONLY IN CONNECTION WITH ITS USE AS IT RELATES TO THE TITLED PROJECT. ANY OTHER USE, REPRODUCTION OR DISCLOSURE OF THE INFORMATION CONTAINED HEREON IS EXPRESSLY PROHIBITED WITHOUT THE WRITTEN CONSENT OF CLE ENGINEERING INC.

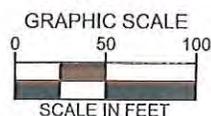
© COPYRIGHT 2016, CLE ENGINEERING, INC.

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
MLW = 0.0  
MHW = +3.04'  
AHTL = +4.10'

CLE ENGINEERING, INC.  
15 CREEK ROAD, MARION MA, 02738

**DREDGE SEDIMENT  
STOCKPILE PLAN &  
NOTES**

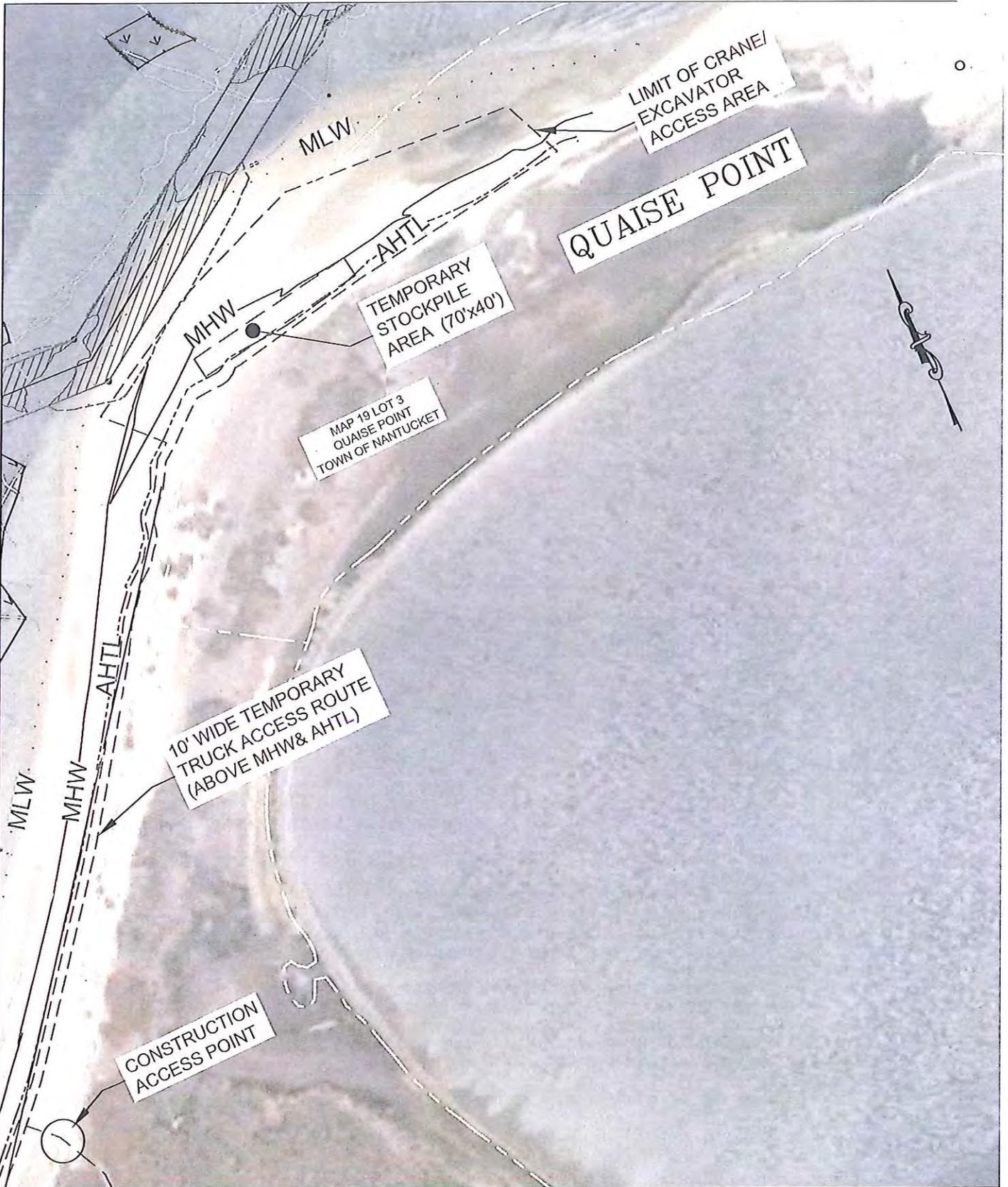


POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
NANTUCKET, MASSACHUSETTS

AT: POLPIS HARBOR/NANTUCKET HARBOR  
COUNTY OF: NANTUCKET  
APPLICATION BY: TOWN OF NANTUCKET

DATE: APRIL 1, 2016

SHEET 9 OF 11



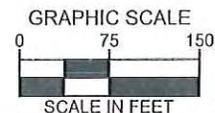
\nath\m\l\offlin\2012\12116\_500\m\w\g\12116\_access\_road\_for\_stops & ch.01

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE  
 CHANNEL MAINTENANCE DREDGING TO IMPROVE  
 NAVIGATION AND TIDAL FLUSHING

DATUM:  
 MLW = 0.0  
 MHW = +3.04'  
 AHTL = +4.10'

CLE ENGINEERING, INC.  
 15 CREEK ROAD, MARION MA, 02738

**SITE PLAN:  
 ACCESS ROAD**



POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE  
 DREDGING PROJECT  
 NANTUCKET, MASSACHUSETTS

AT: POLPIS HARBOR/NANTUCKET HARBOR  
 COUNTY OF: NANTUCKET  
 APPLICATION BY: TOWN OF NANTUCKET

DATE: APRIL 1, 2016

SHEET 10 OF 1

**GENERAL NOTES:**

1. VERTICAL DATUM: MEAN LOW WATER (MLW) = 0.0'; NAVD88= 1.89'; MEAN HIGH WATER (MHW) = 3.04'; ANNUAL HIGH TIDE LINE (AHTL) = 4.10'.
2. RESULTS OF HYDROGRAPHY FROM CLE ENGINEERING, INC. (CLE) SURVEY DATED 10/2/13, 10/3/13 & 10/22/13. SOUNDINGS ARE IN FEET AND TENTHS, AND REFER TO DEPTHS BELOW MLW. RESULTS OF TOPOGRAPHIC SURVEY FROM SURVEY DATED 10/22/13.
3. SEDIMENT SAMPLES COLLECTED BY TG+B MARINE SERVICES, INC. ON 5/8/14.
4. ALL DREDGE SEDIMENTS TO BE BENEFICIALLY RE-USED FOR PERMITTED COMPATIBLE BEACH NOURISHMENT SITES ACROSS THE ISLAND. DREDGE SEDIMENTS WILL BE DEWATERED, UNLOADED INTO DUMP TRUCKS AT THE STEAMSHIP AUTHORITY DOCK, AND TRANSFERRED TO A STOCKPILE AREA LOCATED AT THE TOWN OF NANTUCKET DEPARTMENT OF PUBLIC WORKS YARD AT 188 MADAKET ROAD, NANTUCKET, MA.
5. LIMITS OF FRESH WATER WETLANDS, AS SHOWN, HAVE NOT BEEN DELINEATED. LIMITS ARE APPROXIMATE AND BASED UPON AVAILABLE MAGIS INFORMATION AND OBSERVED FIELD CONDITIONS.
6. PROJECT BENCHMARK IS DISK 9130 K 1981 LOCATED AT THE BRANDT POINT USCG STATION IN NANTUCKET, MA. SITE BENCHMARK IS HUB SET ON BEACH AT ENTRANCE TO POLPIS HARBOR AT EL. +3.91' MLW.
7. COORDINATES ARE BASED ON NAD 83 STATE PLANE MASSACHUSETTS ISLAND.
8. CHANNEL LIMITS SCALED IN BY CLE BASED UPON EXISTING PROJECT PLAN TITLED "PROPOSED HARBOR MAINTENANCE DREDGING AND BEACH NOURISHMENT, POLPIS HARBOR NANTUCKET, MA" MA DEM CONTRACT NO 3253.
9. CHANNEL MARKERS AND EX. TIMBER CHANNEL WALL LOCATION LOCATED IN THE FIELD WITH DGPS DURING TIME OF HYDROGRAPHIC SURVEY.
10. LIMITS OF EELGRASS INTERPOLATED BASED UPON TRANSECT LINES SURVEYED BY CLE ON DATES 10/2/13, 10/3/13, 10/22/13 & 10/23/13.
11. LAND CONTAINING SHELLFISH AREAS, AS SHOWN, ARE BASED UPON THE MOST CURRENT AVAILABLE MA GIS DATA OF WHICH REPRESENTS "POTENTIALLY SUITABLE HABITAT," AS IDENTIFIED BY MA DIV. OF MARINE FISHERIES. NO SHELLFISH SURVEY HAS BEEN PERFORMED TO CONFIRM PRESENCE OF ACTUAL HABITAT.
12. LIMITS OF EXISTING REMNANT DEGRADED/OVERWAHSED SALT MARSH, AS SHOWN, ARE APPROXIMATE AND REFLECT BOTH FIELD SURVEY & VISUAL OBSERVATIONS MADE BY CLE ON 10/12/13 & 5/8/14 RESPECTIVELY.
13. PROPERTY LINE INFORMATION FROM MA GIS DATABASE.
14. THE INFORMATION DEPICTED ON THIS MAP REPRESENTS THE RESULTS OF SURVEYS MADE ON THE DATES SHOWN, AND CAN ONLY BE CONSIDERED AS INDICATING THE CONDITIONS AT THAT TIME. INTERPOLATED INFORMATION FROM BETWEEN SOUNDING RUNS IS NOT GUARANTEED. SHOALS, OBSTRUCTIONS OR OTHER DIFFERING CONDITIONS MAY EXIST BETWEEN THESE RUNS. CONSULT WITH CLE ENGINEERING FOR MORE DETAILED INFORMATION.
15. POSSESSION AND USE OF THE MATERIAL CONTAINED ON THESE DRAWINGS IS GRANTED ONLY IN CONNECTION WITH ITS USE AS IT RELATES TO THE TITLED PROJECT. ANY OTHER USE, REPRODUCTION OR DISCLOSURE OF THE INFORMATION CONTAINED HEREON IS EXPRESSLY PROHIBITED WITHOUT THE WRITTEN CONSENT OF CLE ENGINEERING INC.

© COPYRIGHT 2016, CLE ENGINEERING, INC.

**DREDGE NOTES:**

1. ALL PROPOSED MAINTENANCE DREDGING SHALL BE TO A DEPTH OF -6.0' MLW WITH A 1-FT ALLOWABLE OVERDREDGE TO A DEPTH OF -7.0' MLW.
2. PROPOSED LIMITS OF DREDGING ARE CONSISTENT WITHIN THOSE LAST AUTHORIZED UNDER THE FOLLOWING REGULATORY APPROVALS:
  - MEPA ENF/SECRETARY CERT. EEA NO. 8868, ISSUED 12/5/1991.
  - MA DEP CHAPTER 91 PERMIT #229, ISSUED 7/2/1992.
  - ORDER OF CONDITIONS MA DEP FILE #SE 48-699, ISSUED 2/21/1992.
  - MA DEP WQ CERT TRANS# 21929, ISSUED 5/29/1992; REV. 3/8/1993.
  - U.S. ARMY CORPS OF ENGINEERS PERMIT #1991-02370, ISSUED 6/1/1992.
3. TOTAL ESTIMATED DREDGE VOLUME =±8,300 CY (INCLUDES 1' ALLOWABLE OVERDREDGE & 3H:1V SIDESLOPES).  
TOTAL ESTIMATED DREDGE AREA = ±69,039 SF (INCLUDES 3H:1V SIDESLOPES).

**SURVEY NOTES:**

PROJECT NAME: POLPIS HARBOR  
 PROJECT NUMBER: 12118  
 PLOT SCALE: 1"=100'  
 SURVEY DATE: 10/2/13, 10/3/13, 10/22/13  
 SURVEYOR: M.COUNT, J. GUARD  
 VESSEL: CLE LOWE  
 TRANS./FATH.: 200KHZ, NARROW BEAM, ODOM MKII,  
 WEATHER COND: MOSTLY SUNNY, WIND LIGHT WSW, SEAS CALM  
 PROJECT DATUM: MLW  
 COOR. SYSTEM: NAD-83, MASS ISLAND  
 DATA REDUCTION: SOUNDING DATA SORTED W/HYPACK, 1' RADIUS  
 TIDAL DATA: SCREW SET AT EL. +3.21' MLW ON TIMBER CHANNEL WALL TO SET TIDEBOARD  
 BENCHMARK: PROJECT BENCHMARK IS DISK 9130 K 1981 AT USCG STATION BRANDT POINT, NANTUCKET EL. +4.84' MLW. SITE BENCHMARK IS HUB SET ON BEACH EL. +3.91' MLW

PURPOSE: PROPOSED POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING TO IMPROVE NAVIGATION AND TIDAL FLUSHING

DATUM:  
 MLW = 0.0  
 MHW = +3.04'  
 AHTL = +4.10'

CLE ENGINEERING, INC.  
 15 CREEK ROAD, MARION MA, 02738

**NOTES**



POLPIS HARBOR ENTRANCE CHANNEL MAINTENANCE DREDGING PROJECT  
 NANTUCKET, MASSACHUSETTS

AT: POLPIS HARBOR/NANTUCKET HARBOR  
 COUNTY OF: NANTUCKET  
 APPLICATION BY: TOWN OF NANTUCKET

DATE: APRIL 1, 2016

SHEET 11 OF 11



# Seniors Ride **FREE** Every Wednesday in February!!

Ride The WAVE to appointments, shopping, dinner with friends and more!

Customers 65 or older ride for half fare with valid ID.

Mid Island Loop  
Miacomet Loop  
Sconset via Old South Road Route

Weekdays

7:00 am - 9:00 pm

Weekends

7:00 am - 7:00 pm

For real-time bus locations, download the "Where's My Bus" app at [nrtatransloc.com](http://nrtatransloc.com)

For more information, pick up a copy of the Rider's Guide or visit our website: [www.nrtawave.com](http://www.nrtawave.com)



# Nantucket Regional Transit Authority

20 R South Water Street, Nantucket, MA 02554

Phone: 508-325-9571 • TTY: 508-325-7516

www.nrtawave.com • nrtan@nantucket-ma.gov

TO: NRTA ADVISORY BOARD AND SELECT BOARD

FROM: PAULA LEARY, NRTA ADMINISTRATOR



RE: DOWNTOWN BUS SERVICE

DATE: FEBRUARY 4, 2020

I am providing the Board with a scenario based on the discussion at the January 22, 2020 joint Board meeting. The ultimate goal of the Select Board is to provide service from the lot at 2 Fairgrounds Road into Town with 10 minute service and a direct route. It is the Board's desire to provide this service for summer 2020. I have taken into consideration the various issues and am presenting options for consideration. The scenario below utilizes the NRTA's existing Airport Route and extending the service dates and hours that enable the service to be provided summer 2020.

The Airport Route operates June 20 thru September 7 (Labor Day) from 10:00 a.m. to 6:00 p.m. operating on a 20 minute schedule. The downtown stop is on Washington Street. Passengers would be able to disembark at the stop sign on the corner of Candle and Salem Streets. In order to maintain the 20 minute schedule the lot would not be directly serviced, but stops will need to be located on Old South Road in close proximity to the lot. Attached are graphics for the bus stop location. Mike Burns will provide information on this at the meeting.

A decision will need to be made on how to fund the service. Although this most likely qualifies under the local assessment regulation for new service, the service is spanning two fiscal years FY20 and FY21. The service would only qualify as new service in FY20. FY21 would need to be funded from another funding source. If the service were to continue the FY21 amount would need to be a consistent funding source.



# Nantucket Regional Transit Authority

20 R South Water Street, Nantucket, MA 02554

Phone: 508-325-9571 • TTY: 508-325-7516

www.nrtawave.com • nrt@nantucket-ma.gov

## Service:

- Target general public
- 7 am to 10 pm
- Every 20 minutes
- Buses would leave town and the airport at :00, :20, and :40 reaching the lot stop approximately 5-10 minutes after its departure.
- Fares (\$1.50 each way) and pass rates would be consistent with NRTA's current structure

## Option 1:

- May 15 – September 30
- 139 days
- FY20 \$136,160\*
- FY21 \$174,800
- Total Operating Costs: \$300,960
- Marketing Costs: \$10,000

## Option 2:

- May 26 (Tuesday after Memorial Day) – September 30
- 108 days
- FY20 \$102,720\*
- FY21 \$174,800
- Total Operating Costs: \$267,520
- Marketing Costs: \$10,000

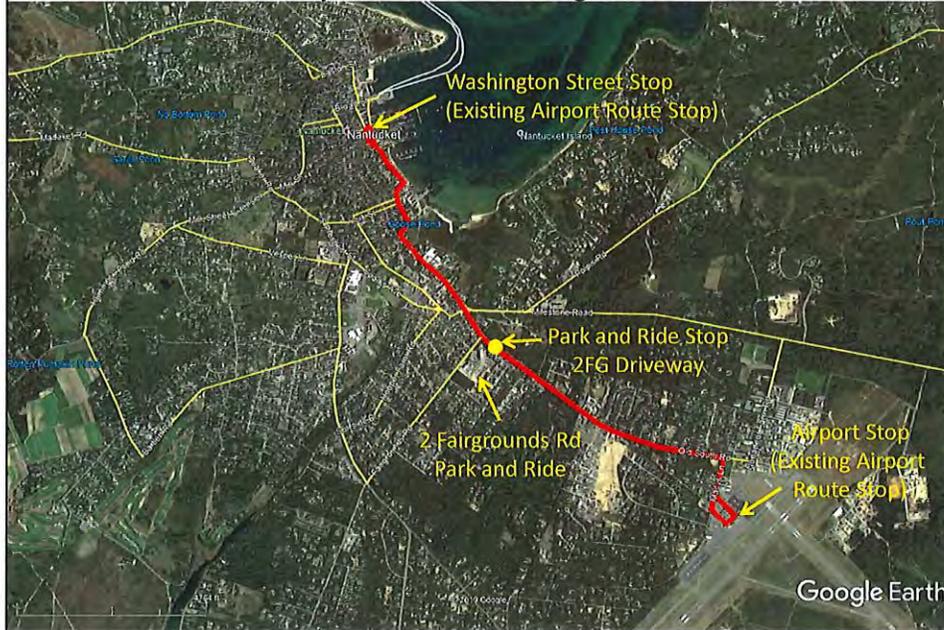
## Option 3:

- May 26– September 7
- 105 days
- FY20: \$102,720\*
- FY21: \$104,880
- Total Operating Costs: \$197,600
- Marketing Costs: \$10,000

\*FY20 amounts include \$10,000 marketing costs for local assessment purposes.



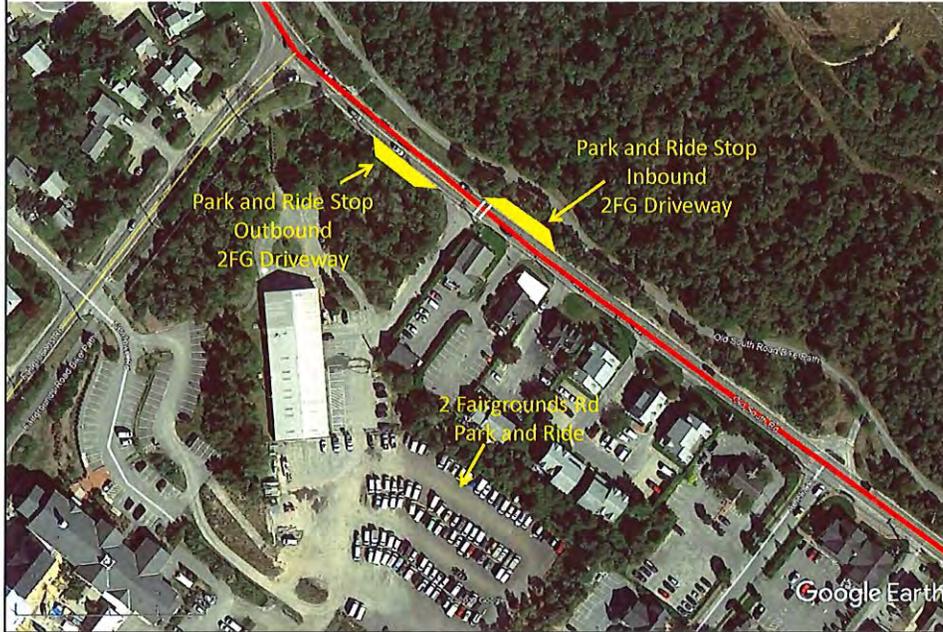
### 2 Fairgrounds Park and Ride / Expanded Airport Route 20 Minute Headway and Mirror Parking Enforcement Schedule



### 2 Fairgrounds Park and Ride / Expanded Airport Route 2 Fairground Rd Conceptual Bus Stop Improvements



**2 Fairgrounds Park and Ride / Expanded Airport Route**  
**2 Fairground Rd Temporary Bus Stop Improvements**



**2 Fairgrounds Park and Ride / Expanded Airport Route**  
**2 Fairground Rd Temporary Bus Stop Improvements**



**2 Fairgrounds Park and Ride / Expanded Airport Route**  
**2 Fairground Rd Temporary Bus Stop Improvements**





---

Town of Nantucket Sewer Department  
**WASTEWATER MANAGEMENT**

David C. Gray Sr.  
Director  
81 S. Shore Rd  
Nantucket, Ma 02554

Town Direct 508-228-7200 x 7801  
Town Cell 401-413-8370  
[dgray@nantucket-ma.gov](mailto:dgray@nantucket-ma.gov)  
[sewer@nantucket-ma.gov](mailto:sewer@nantucket-ma.gov)

February 05, 2020

Re: Request for Noise Bylaw Waiver

**Sanitary Sewer Construction-Replacement Project (Bathing Beach - Walsh St - Rays Court)**

- The Sewer Department is requesting a Noise Bylaw Waiver for a sewer replacement project requiring 24/7 dewatering by diesel pump within the project areas.
- This project requires installation of well points, with a manifold across the ground to the pumping system, and with discharge into one of the following: the sanitary sewer or the stormwater system.
- We are requesting a Waiver within the project area from February 10, 2020 through May 15, 2020. The entire requested timeline may not be necessary, pending weather or other unknown circumstances.

**Project Areas Delineated**

- Bathing Beach Road from N. Beach Street intersection to the town concession (**Area 1**)
- Walsh Street from East Lincoln Avenue to Henry Street (**Area 2**)
- Rays Court from Fair Street to Main Street (**Area 3**)

Sincerely,

A handwritten signature in blue ink, appearing to read "David C. Gray Sr.", written over a light blue circular stamp.

David C. Gray Sr.  
Sewer Director



## Agenda Item Summary

Agenda Item #	VIII. 2.
Date	2/07/2020

### Staff

Ken Beaugrand, Real Estate Specialist

### Subject

Approval of Historic Preservation Easement to Nantucket Preservation Trust ("NPT") from Byron L. Sylvaro Post 82, American Legion, 21 Washington Street

### Executive Summary

The Community Preservation Committee granted funding to the American Legion for the restoration of the exterior architectural features with the requirement that a permanent Historical Preservation Easement be granted for the benefit of the Town and its citizens. The easement has been approved by NPT, the Massachusetts Historical Society and needs to be approved by the Town. Town Counsel has reviewed the documentation and approved of the execution by the Town.

### Staff Recommendation

Approve based on Town Counsel's review

### Background/Discussion

The easement is designed to preserve the footprint of the building as well as the restoration of the historic fabric of the exterior and provides for public access to the structure as a condition of the CPC award.

Impact: Environmental  Fiscal  Community  Other

Preserves the historic character of the downtown portion of the Town

### Board/Commission Recommendation

n/a

### Public Outreach

Award approved at Town meeting.

### Connection to Existing Applicable Plan (i.e. Strategic Plan, Master Plan, etc.)

Consistent with preserving the historical character of the island.

### Attachments

Easement, Town Counsel opinion



January 22, 2020

**Vicki S. Marsh**  
vmarsh@k-plaw.comHon. Dawn E. Hill Holdgate and  
Members of the Select Board  
Town & County Building  
16 Broad Street  
Nantucket, MA 02554Re: Historic Preservation Restriction – 21 Washington Street

Dear Members of the Select Board:

You have requested that I review the Historic Preservation Restriction (the “Restriction”) from Byron L. Sylvaro Post # 82, American Legion (the “Grantor”) to the Nantucket Preservation Trust, Inc. (the “Grantee”), on the property located at 21 Washington Street, Nantucket and the buildings known as the “Charles G. and Henry Coffin Warehouse (also known as the French and Coffin Warehouse,”) and now known as the American Legion Hall (the “Property”). In conjunction with my review of the Restriction, I reviewed the letter dated August 26, 2019 from the Massachusetts Historical Commission (the “MHC”) which approved of the latest version of the Restriction. Upon my review of the Restriction, it is my opinion that it is in acceptable form for presentation to the Select Board for your approval and determination as to whether the Restriction is in the public interest. The Restriction is in the same form as approved by MHC, except that I have corrected the Approval Page for the Select Board.

I also reviewed the Vote under Article 30 of the 2016 Annual Town Meeting, and find that the Restriction is consistent with the requirements of that Vote to record an “appropriate historic preservation restriction ... running in favor of an entity authorized by the Commonwealth to hold such restrictions for such expenditures; meeting the requirements of Chapter 184 of the General Laws pursuant to Section 12 of the Community Preservation Act.” In reviewing the Restriction, I find, in my opinion, that it is an appropriate historic preservation restriction, which complies with the requirements of Chapter 184, §§ 31-33 of the General Laws and Section 12 of Chapter 44B of the General Laws, known as the Community Preservation Act. The Restriction is a permanent restriction which meets the requirements of Chapter 184, §§ 31-33 of the General Laws, and is held by the Nantucket Preservation Trust, Inc., a non-profit Massachusetts corporation which is authorized to accept historic preservation restrictions pursuant to G.L. c. 184, §§31-33.

I reviewed the description of the Property in the Deed to the Byron L. Sylvaro Post #82, American Legion recorded with Nantucket County Registry of Deeds in Book 104, Page 154 and find that it is consistent with the description of the Property in the Restriction and the Plan recorded with said Registry of Deeds as Plan No. 2018-4. But I did not perform a title examination of the Property to determine whether the Grantor is the owner of the Property free of mortgages that would have a priority over the Restriction, or if foreclosed could result in a termination of the Restriction.



Hon. Dawn E. Hill Holdgate and  
Members of the Select Board  
January 22, 2020  
Page 2

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Vicki S. Marsh".

Vicki S. Marsh

VSM/dmm

cc: Town Manager  
Mr. Michael May, Executive Director of  
Nantucket Preservation Trust

706397/NANT/19713/0001

**GRANT OF  
HISTORIC PRESERVATION RESTRICTION**

**THIS HISTORIC PRESERVATION RESTRICTION** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Byron L. Sylvaro Post #82, American Legion, a nonprofit Massachusetts entity with a mailing address of Post Office Box 265, Nantucket, Massachusetts 02554 (hereinafter "Grantor") and the NANTUCKET PRESERVATION TRUST, INC., a nonprofit Massachusetts entity with a mailing address of Post Office Box 158, Nantucket, Massachusetts 02554 (hereinafter "Grantee").

**WITNESSETH:**

WHEREAS, Grantor is the owner of that certain parcel of land, together with the building thereon, located in Nantucket, Nantucket County, Massachusetts, now known and numbered as 21 Washington Street, being the property on that certain map entitled "Perimeter Plan of Land in Nantucket, Mass." prepared for the Byron L. Sylvaro Post #82, American Legion, dated January 21, 2018 and recorded with the Nantucket County Registry of Deeds as Plan 4 of 2018 (hereinafter "the Property"), a copy of which is attached hereto and incorporated herein by reference as Exhibit B, by virtue of deed dated July 24, 1928 and recorded July 28, 1928 with Nantucket County Registry of Deeds in Book 104, Page 154. The Property is bounded and described as set forth in the aforementioned Plan and Deed and in Exhibits A and B attached hereto and incorporated herein by reference, and includes the following structure:

The Charles G. and Henry Coffin Warehouse (also known as the "French and Coffin Warehouse", now known as the American Legion Hall; hereinafter "the Building") was constructed around 1837-1838, and is a notable example of the type of brick warehouses built for whale oil storage and processing during the height of Nantucket's Whaling Era. The building stands in the former commercial and warehouse district of Nantucket near the head of the Commercial Wharf, which was built by the Coffin family in the 1820s. Built of brick in transitional late Federal/Greek Revival style, the warehouse retains its original trapezoidal floor plan which covers nearly all of its building lot with the exception of a paved walkway along the east elevation. The structure retains characteristic period details in its brick construction, internal timber-frame construction, wooden window lintels and sills, brick cornice, and pitched roof without dormers or skylights. Alterations to the building during the twentieth century concealed original features on the building's east elevation where cementitious render has been applied over original brickwork and at façade (north elevation) where steel angle irons have been installed in the place of original wooden lintels at window heads. Despite these modifications, the vast majority of original details remain in original or repairable condition presenting a rare example of a locally important building type from the height of Nantucket's nineteenth-century prosperity. Immediately south of the Building is an open patio paved with concrete and containing

an impermanent contemporary structure composed of half-height wooden walls set on blocks atop the pavement, and metal poles that support a metal roof structure with a removable cloth roof (hereinafter “the Patio Structure”).

WHEREAS, the Property and the Building contribute to the historic setting of the surrounding historic district;

WHEREAS, the Community Preservation Committee of Nantucket (hereinafter the “CPC”) has determined that it is important that the property and the exterior of the building be preserved and that they remain available for the benefit of the people of the Town and County of Nantucket, and in support of such interest recommended that Town Meeting appropriate for the Community Preservation Fund the sum of \$64,300.00 to be used for the preservation of the Property and the exterior of the Building (hereinafter the “Grant”);

WHEREAS, the 2016 Annual Town Meeting, therefore voted under Article 30 to appropriate the funds recommended by the CPC for the Grant and required as a condition of this appropriation that the Grantor convey an appropriate historic preservation restriction to a qualified recipient, a copy of said vote is attached as Exhibit F herein;

WHEREAS, Grantee is authorized to accept historic preservation restrictions to protect property significant in local, state, and national history and culture under the provisions of Mass. Gen Laws c. 184, §§31, 32, and 33 (hereinafter “the Act”);

WHEREAS, Grantee is a publicly supported, tax-exempt, non-profit organization whose primary purposes include the preservation and conservation of sites, buildings, and objects of local, state, and national significance and is a qualifying recipient of qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter “the Code”);

WHEREAS, the Building is significant for its architectural design and historic uses that reflect the economic, aesthetic, and cultural history of Nantucket, Massachusetts, and that illustrate historic design, setting, materials, and workmanship;

WHEREAS, because of its architectural, historic, and cultural significance, the Property is a contributing resource within the Nantucket Historic District, listed in the National Register of Historic Places and as a National Historic Landmark on November 13, 1966, as amended on October 16, 2013, is included in the Nantucket Historic District established by the Town of Nantucket on June 4, 1970;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter the “preservation values”) and significance of the Building

and Property, and have the common purpose of conserving and preserving the aforesaid preservation values and significance of the Building;

WHEREAS, the preservation values of the Building and the Property are documented in a set of reports, drawings, and photographs (hereinafter the "Baseline Documentation") attached hereto and incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Property as of the effective date of this grant;

WHEREAS, the Baseline Documentation shall consist of the following: (1) "Perimeter Plan of Land in Nantucket, Mass." prepared for the Byron L. Sylvaro Post #82, American Legion and dated January 21, 2018, a copy of which is attached hereto and incorporated herein by reference as Exhibit B; (2) a set of ten (10) exterior photographs produced by Brian Pfeiffer, dated June 4, 2019 copies of which are attached hereto and incorporated herein by reference as Exhibit C; and (3) historical documentation consisting of a Massachusetts Historical Commission Inventory Form B of the Property, prepared by Debra B. Treyz under the supervision of Michael May, Nantucket Preservation Trust, dated August 15, 2016, a copy of which is attached hereto and incorporated herein by reference as Exhibit D, said documentation to be kept on file at the offices of the Grantee.

WHEREAS, the grant of a preservation restriction by the Grantor to Grantee on the Property and the exterior of the Building will assist in preserving and maintaining the Property and the exterior of the Building, and its architectural, historic, and cultural features for the benefit of the people of the Town and County of Nantucket, Commonwealth of Massachusetts, and the United States of America; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation restriction in perpetuity on the Property and the exterior of the Building pursuant to the Act;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the Act, Grantor does hereby voluntarily grant and convey unto the Grantee this preservation restriction (hereinafter "the Restriction"), in perpetuity, over the Property and the exterior of the Building, and expressly excluding any and all other property now or hereafter belonging to the Grantor.

1. PURPOSE. It is the Purpose of this Restriction to assure that the architectural, historic, and cultural features of the Property and both the exterior of the Building and its internal structural elements as defined herein will be retained and maintained as set forth herein forever substantially in their current condition for conservation and preservation purposes and that those original features which have

been concealed will be revealed and repaired as part of a long-term maintenance plan to restore the integrity of the Building's original character-defining architectural elements. To these ends, subject to Paragraphs 2 and 3 of this Restriction, the Property and the exterior of the Building will be retained and maintained forever substantially unchanged so that they continue to contribute to the historical setting and significance of the Nantucket Historic District; and any change of the Property or the exterior of the Building that will significantly impair or interfere with the preservation values of the Property or the exterior of the Building is hereby prohibited.

## 2. GRANTOR'S COVENANTS.

2.1 **Grantor's Covenants: Covenant to Maintain.** Grantor agrees at all times to maintain, replace, repair, and reconstruct the exterior of the Building, as hereinafter set forth, as necessary to preserve the exterior of the Building in substantially the same structural condition and state of repair as that existing on the effective date of this Restriction. Grantor's obligation to maintain shall also require that the Property's open space area to the east of the Building, exterior staircase on the east elevation of the Building, and storage structure at the rear of the eastern elevation be maintained in good appearance. Subject to the casualty provisions of Paragraphs 7 and 8 of this Restriction, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the exterior of the Building whenever necessary in accordance with *The Secretary of the Interior's Standards for the Treatment of Historical Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter "the Secretary's Standards"). For the purpose of identifying categories of Major Maintenance requiring review and approval by Grantee and Minor Maintenance that, pursuant to Paragraph 6(c) hereof, does not require such review, copies of maintenance guidelines are attached hereto and incorporated herein by reference as Exhibit E and hereinafter referred to as the "Restriction Guidelines." Grantor's obligation to maintain shall be subject to the provisions of Paragraphs 3.1(f) and 6(b) hereof.

2.2 **Grantor's Covenants: Prohibited Activities.** The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this Paragraph:

(a) the Building shall not be demolished, removed, or razed except as provided in Paragraphs 7 and 8 hereof;

(b) nothing shall be erected or allowed to grow on the Property that would impair the visibility of the Building from Washington Street;

(c) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;

(d) the Property shall not be divided or subdivided in law or in fact, except for minor lot line adjustments that do not result in the creation of additional buildable lots; and

(e) no aboveground utility transmission lines, except those reasonably necessary for the existing Building or made pursuant to utility easements already recorded, may be created on the Property.

### 3. GRANTOR'S CONDITIONAL RIGHTS.

3.1 **Conditional Rights Requiring Approval by Grantee.** Without the prior express written approval of Grantee, which approval may not be unreasonably withheld, but which may be subject to such reasonable conditions as Grantee in its discretion may determine, Grantor shall not undertake any of the following actions on the Building:

- (a) alter the following features of the Building, subject, however, to the maintenance covenants of Paragraph 2.1 hereof:
  - (1) the exterior massing, foundation walls, and roof planes, including:
    - a. brick and stonework of the foundation below and above grade; and
    - b. existing roof surfaces which may be maintained with asphalt or wooden shingles, and wooden rake boards;
  - (2) exterior architectural features of all elevations including the façade (north elevation) and the east, west and south elevations; such protected architectural features shall include:
    - a. all brick walls, entablatures, and cornices; window and door openings, lintels, and sills; door cases, doors, window cases, and sash; and tie-rod plates;
    - b. the exterior stairway on the east elevation;
    - c. the entry porch at the east elevation, including posts, railings, gable roof, treads and risers; and
    - d. the rear chimney, its brickwork and flashings;
  - (3) cementitious render on the east side of the structure may be maintained through minor repairs of cracks; however, the material may not be replaced in-kind but only removed to expose original brickwork;
  - (4) window heads and sills that have been rebuilt with steel angle irons and concrete may be maintained, but shall not be rebuilt with steel or concrete, but shall be rebuilt to match original wooden window heads and sills when their materials shall require replacement;

- (5) internal timber-frame construction including floor timbers, posts, roof trusses, ties, rafters, and all other original structural elements; and
  - (6) all iron tie rods and tie-rod plates that secure the building's structural stability;
- (b) erect or replace any external signs or external advertisements except: (i) such plaque permitted under Paragraph 12.8 of this Restriction; (ii) a sign stating solely the address of the Property; (iii) the sign currently affixed to the façade of the Building identifying the "Byron L. Sylvaro Post #82, American Legion"; and (iv) a sign permitted under Paragraph 6(b);
- (c) make permanent substantial topographical changes;
- (d) construct additional service structures, or enlarge or re-configure existing Patio Structure or paving;
- (e) enlarge, modify or otherwise change the Patio Structure, its shingled wood half-walls, cloth roof, or the concrete pavement on which it stands, now used as exterior restaurant seating for a Lessee of the Grantor, nor shall the Grantor permit its current Lessee or subsequent Lessees to make any enlargement, modification or change of this structure;
- (f) change the use of the Building and the Property to any use which Grantee reasonably determines would conflict with the Purpose of the Restriction; and
- (g) conduct activities identified as Major Maintenance and Minor Maintenance in the Restriction Guidelines that reasonably may be expected to make material changes in the exterior appearance, materials, or workmanship of the protected features of the Building, except as otherwise provided herein.

**3.2 Archaeological Activities.** The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by Grantor and approved in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (Mass. Gen. Laws, c. 9, §27C, 950 C.M.R. 70.00).

**3.3 Review of Grantor's Requests for Approval.** In connection with Grantee's approval of the conditional rights set forth in Paragraphs 3.1 and 3.2 above, Grantor shall submit to Grantee two copies of information (including plans, specifications, and designs, and Nantucket Historic District Commission application and materials where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within

forty-five (45) days of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted so long as the request sets forth the provisions of this Paragraph relating to deemed approval after the passage of time, provided nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

4. **STANDARDS FOR REVIEW.** Grantee shall apply the Secretary's Standards in exercising any authority created by this Restriction to inspect the Property or the exterior of the Building or to the extent necessary to inspect the interior of the Building for the sole purpose of evaluating any construction to or alteration, repair, maintenance, or reconstruction of the exterior of the Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage.

5. **PUBLIC ACCESS.** Grantor shall not block views of the Building from the public right of way on Washington Street either by intentional planting or fencing; Grantor further agrees to permit Grantee to make baseline documentation available to interested members of the public at Grantee's offices and by depositing copies of such baseline documentation in Grantee's library.

6. **GRANTOR'S RESERVED RIGHTS NOT REQUIRING FURTHER APPROVAL BY GRANTEE.** Subject to the provisions of Paragraphs 2.1, 2.2, 3.1 and 3.2 of this Restriction, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by Grantee without further approval by Grantee:

- (a) the right to engage in all those activities and uses that: (i) are permitted by governmental statute or regulation; and (ii) are not inconsistent with the Purpose of this Restriction;
- (b) the right to maintain a sign similar in size to the "Byron L. Sylvaro Post #82, American Legion" sign currently affixed to the façade of the Building which measures 24" x 30" identifying the owner of the Property and its use as a business if applicable; and the right to maintain a glazed display box for notices not to exceed in size the display box currently affixed to the façade of the Building, which measures 22" x 28" x 4";

- (c) the right to conduct Minor Maintenance of the Building and Patio Structure, as such maintenance is defined in the Restriction Guidelines, that is not reasonably expected to make material changes in the exterior appearance, materials, or workmanship of the Building, provided such work is done strictly according to the Secretary's Standards, and provided that the Grantor uses in-kind materials, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Building. Changes in appearance, materials, or workmanship from that existing prior to the maintenance and repair require the prior approval of the Grantee in accordance with the provisions of Paragraph 3 of this Restriction;
- (d) the right to continue all manner of existing institutional and commercial use and enjoyment of the Building and Property, including but not limited to the right to maintain existing paved walkways with the use of same or similar surface materials; the right to maintain existing utility lines and plantings; the right to cut, remove, and clear grass or other vegetation, and the right to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Restriction and Paragraphs 2 and 3 of this Restriction;
- (e) the right to renovate, update, and otherwise alter or change the interior of the Building provided that such renovations, updating or alterations shall not require the removal or alteration of the original structural elements, including: timber posts, floor beams, plates, trusses, rafters, or other structural timber elements; or the removal or alteration of original iron tie-rods or iron tie-rod plates;
- (f) the right to conduct in the Building or on the Property activities that are not inconsistent with the protection of the preservation values of the Property and the exterior of the Building; and
- (g) The right to make such modifications to the Building as may be required by governmental entities to comply with local, state or federal laws, provided that such changes are reviewed and approved by the Grantee whose approval shall not be unreasonably withheld.

7. **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE.** In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of such damage or destruction, such notification to include what, if any, emergency work has already been completed. Grantor shall

undertake no repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and to protect public safety, without Grantee's prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and
- (c) a report of such restoration/reconstruction work necessary to return the Building to the condition existing as of the date hereof.

**8. REVIEW AFTER CASUALTY DAMAGE OR DESTRUCTION.** If, after reviewing the report provided in Paragraph 7 above and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 hereof, Grantor and Grantee agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 hereof, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of the Grantee, alter, demolish, remove, or raze the Building, and/or construct new improvements on the Property. Grantor and Grantee may then agree to seek to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and Paragraph 14 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 of this Agreement, Grantor and Grantee are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts's arbitration statute then in effect, provided however that nothing herein shall compel the Grantor to expend funds in excess of those received from insurance proceeds.

9. **Insurance.** Grantor shall keep the Property insured by an insurance company rated "A" or better by Best's as currently insured. Such insurance shall include Grantee's interest and name Grantee as an additional insured. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request thereof, certificates of such insurance coverage; provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this Paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds. If the Grantor conveys the Property to a person or entity, then the subsequent Property owner shall be obligated to keep the Property insured by an insurance company rated "A" or better by Best's for the guaranteed building cost against loss from perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage, such property damage insurance to include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property and Building without cost or expense to Grantor or contribution or coinsurance from Grantor.

10. **INDEMNIFICATION.** Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors, officers, and employees, or independent contractors from and against any and all claims, liabilities, expense, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury, death, or other damage occurring on or about the Property, unless such injury, death, or damage is caused by Grantee or any agent, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this Paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

11. **TAXES.** Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such

payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property.

## 12. ADMINISTRATION AND ENFORCEMENT

12.1. **Written Notice.** Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods - by overnight courier postage prepaid, facsimile transmission to 508-228-1371, registered or certified mail with return receipt requested, or hand delivery; if to Grantor, then to Byron L. Sylvaro Post #82, American Legion, 21 Washington Street, P. O. Box 265 Nantucket, Massachusetts 02554, and if to Grantee, then to Nantucket Preservation Trust, Inc., at 11 Centre Street, P.O. Box 158, Nantucket, Massachusetts 02554.

Each party may change its address set forth herein by a notice to such effect to the other party.

12.2. **Evidence of Compliance.** Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein or that otherwise evidences the status of this Restriction to the extent of Grantee's knowledge thereof.

12.3. **Inspection.** Grantee shall be permitted to conduct an annual inspection of the Property, including the exterior of the Building, in order to confirm Grantor's compliance with this Preservation Restriction Agreement. Such inspection shall be conducted at reasonable times and following advance notice to the Grantor of no less than ten (10) days. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

12.4. **Grantee's Remedies.** Grantee may, following thirty (30) days written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this Restriction by *ex parte*, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Building to the condition and appearance that existed prior to the violation complained of. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, which violation has continued more than thirty (30) days after notice by the Grantee to the Grantor, Grantor shall reimburse Grantee for any reasonable costs or expenses incurred

in connection with Grantee's enforcement of the terms of this Restriction, including court costs and attorney's, architectural, engineering, and expert witness fees.

In the event that Grantor is required to reimburse Grantee pursuant to the terms of this Paragraph, the amount of such reimbursement until discharged shall constitute a lien on the Property.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

**12.5 Notice from Government Authorities.** Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within ten (10) business days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

**12.6 Notice of Proposed Sale.** Grantor shall promptly notify Grantee in writing of any proposed sale of the Property prior to sale closing.

**12.7 Liens.** Any lien on the Property created pursuant to any Paragraph of this Restriction may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien provided in Mass. Gen. Laws c. 254, §5, except that no lien created pursuant to this Restriction shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

**12.8 Plaque.** Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 6 inches by 24 inches in size, giving notice of the significance of the Building and the existence of this Restriction. The plaque shall be approved by Grantor prior to installation, such approval not to be unreasonably withheld.

### **13. BINDING EFFECT; ASSIGNMENT.**

**13.1 Runs with the Land.** Except as provided in Paragraphs 8 and 14, the obligations imposed by this Restriction shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Building and Property. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest, and all persons hereafter claiming by, under, or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed

granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Building and the Property shall have no obligation pursuant to this instrument when such owner shall cease to have any ownership interest in the Building and the Property by reason of a *bona fide* transfer. The restrictions, stipulations, and covenants contained in this Restriction shall be included by Grantor, by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of the fee simple title to or any lesser estate in the Building and the Property or any part hereof, including by way of example and not limitation, a lease of all or a portion of the Property, but excluding any lease with a term of fewer than one hundred twenty (120) days.

**13.2 Assignment.** Subject to Grantor's consent, which consent shall not be unreasonably withheld, Grantee may convey, assign, or transfer this Restriction to a local, state, or national organization that qualifies under the Act as an eligible donee whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, or architectural resources, or if no such organization agrees to accept such assignment, then to a unit of federal, state, or local government, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out as a condition of the transfer. Grantee shall give Grantor sixty (60) days written notice prior to making any such assignment.

**13.3. Recording and Effective Date.** Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of the County of Nantucket. Grantor and Grantee intend that the restrictions arising under this Restriction take effect on the day and year this instrument is recorded in the land records of the County of Nantucket.

**14. EXTINGUISHMENT.** Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Property and the Building in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but shall not be limited to, partial or total destruction of the Building resulting from casualty. Extinguishment shall meet the requirements of the Act for extinguishment including approvals following public hearings by the Town of Nantucket and the Massachusetts Historical Commission as required by the Act to determine that such extinguishment is in the public interest. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or of any other property received in connection with an exchange or involuntary conversion of the Property) after such extinguishment, all expenses reasonably incurred by Grantor and Grantee in connection with such sale shall be paid out of the sale

proceeds; and the net proceeds shall be paid to Grantor unless otherwise ordered by a court or other government authority of competent jurisdiction.

15. **CONDEMNATION.** If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds; and the net proceeds shall be paid to Grantor unless otherwise ordered by a court or other government authority of competent jurisdiction.

16. **INTERPRETATION.** The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Building and the Property shall not apply in the construction or interpretation of this Restriction, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

(b) This instrument may be executed in two counterparts, one of which may be retained by the Grantor, and the other, after recording, to be retained by the Grantee. In the event of any discrepancy between the counterparts produced, the recorded counterpart shall in all cases govern. In the event of any discrepancy between two copies of any documentation retained by the parties, the copy retained by Grantee shall control.

(c) This instrument is made pursuant to the provisions of the Act, but the invalidity of the Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property and Building are devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property and the Building during the term of the Restriction, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Restriction.

17. **AMENDMENT.** If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of the Restriction or the status of Grantee under any applicable laws, including Section 501(c) (3) of the Code and the laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit additional development on the Property other than the development permitted by this Restriction on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, and open space values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the land records of the County of Nantucket. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

18. **COMPLIANCE WITH BUILDING LAWS.** Grantor and Grantee recognize that there may be circumstances where alterations are required to be made to the exterior of the Building in order to comply with local, state, and/or federal ordinances and laws which might otherwise not be permissible under this Restriction without Grantee's approval. In such event, Grantor agrees to notify Grantee in writing of such requirement and, if requested by Grantee within 45 days of such notification, to cooperate with Grantee in seeking a variance or waiver from such requirement or a modification of such requirement to mitigate any adverse effect of such compliance.

THIS RESTRICTION reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Historic Preservation Restriction, unto the said Grantee and its successors and permitted assigns forever. This HISTORIC PRESERVATION RESTRICTION may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

EXECUTED and SEALED on \_\_\_\_\_, 20\_\_.

GRANTOR

Byron L. Sylvaro Post #82, American Legion

BY: \_\_\_\_\_  
Richard Leone, President

BY: \_\_\_\_\_  
Brian Legg, Treasurer

GRANTEE

Nantucket Preservation Trust, Inc.

BY: \_\_\_\_\_  
Craig Muhlhauser, President

BY: \_\_\_\_\_  
Alison Potts, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared Richard Leone in his capacity as President of Byron L. Sylvaro Post #82, American Legion, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as President of Byron L. Sylvaro Post #82, American Legion, a nonprofit entity.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared the above-named Brian Legg, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Treasurer of Byron L. Sylvaro Post #82, American Legion, a nonprofit entity.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared the above-named Craig Muhlhauser, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as President of the Nantucket Preservation Trust, Inc., a nonprofit entity.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared the above-named Alison Potts, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Treasurer of the Nantucket Preservation Trust, Inc., a nonprofit entity.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL BY SELECT BOARD OF THE TOWN OF NANTUCKET**

We, the undersigned members of the Select Board of the Town of Nantucket, Massachusetts, hereby certify that at a meeting held on \_\_\_\_\_, 20\_\_, the Select Board voted to approve the foregoing Grant of Historic Preservation Restriction by the Byron L. Sylvaro Post #82, American Legion to the Nantucket Preservation Trust, Inc. pursuant to Massachusetts General Laws, Chapter 184, Section 32, as being in the public interest.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

TOWN OF NANTUCKET  
By its Select Board

\_\_\_\_\_  
Dawn E. Hill Holdgate, Chairperson

\_\_\_\_\_  
Rita Higgins, Vice Chairperson

\_\_\_\_\_  
Jason Bridges

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Kristie L. Ferrantella

**COMMONWEALTH OF MASSACHUSETTS**

NANTUCKET, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared Dawn E. Hill Holdgate, Rita Higgins, Jason Bridges, Matthew G. Fee and Kristie L. Ferrantella, members of the Select Board of the Town of Nantucket proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned to be the person whose names are signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose, as members of the Select Board of the Town of Nantucket.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



**APPROVAL BY MASSACHUSETTS HISTORICAL COMMISSION  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Mass. Gen. Laws c. 184, §32.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Brona Simon  
Executive Director and Clerk  
Massachusetts Historical Commission

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_,ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it in her capacity as Executive Director and Clerk of the Massachusetts Historical Commission for its stated purposes.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

## SCHEDULE OF EXHIBITS

- A. **Legal Description**
- B. **Recorded Plan or Survey of Property**
- C. **Documentary Photographs of the Building**
- D. **Massachusetts Historical Commission - Survey Form B**
- E. **Restriction Guidelines**
- F. **2016 Annual Nantucket Town Meeting, Article 30**

**EXHIBIT A**

**Legal Description**

The land, with improvements thereon, in the Town and County of Nantucket, Commonwealth of Massachusetts, situated at 21 Washington Street, and bound and described as follows:

EASTERLY by Washington Street, 45.90 feet and 36.89 feet on two courses

SOUTHERLY by land of N.L.T. Nominee Trust, 68.94 feet, then 17.50 feet, then 11.64 feet on three courses

WESTERLY by land of Larry B. & Elizabeth M. Whelden, Trustees, 47.45 feet and  
0.51 feet on two courses

NORTHERLY by land of 17A Washington Street, LLC, 17.89 feet and by  
land of Artists Association of Nantucket, Inc., 43.99 feet.

Source: Nantucket Registry of Deeds, Book 104, Page 154.

Said land is shown on a plan dated January 21, 2018 and recorded as Plan No. 2018-4 at the Nantucket Registry of Deeds.

For title reference, see Deed recorded in Book 104, Page 154, at said Registry.

EXHIBIT B

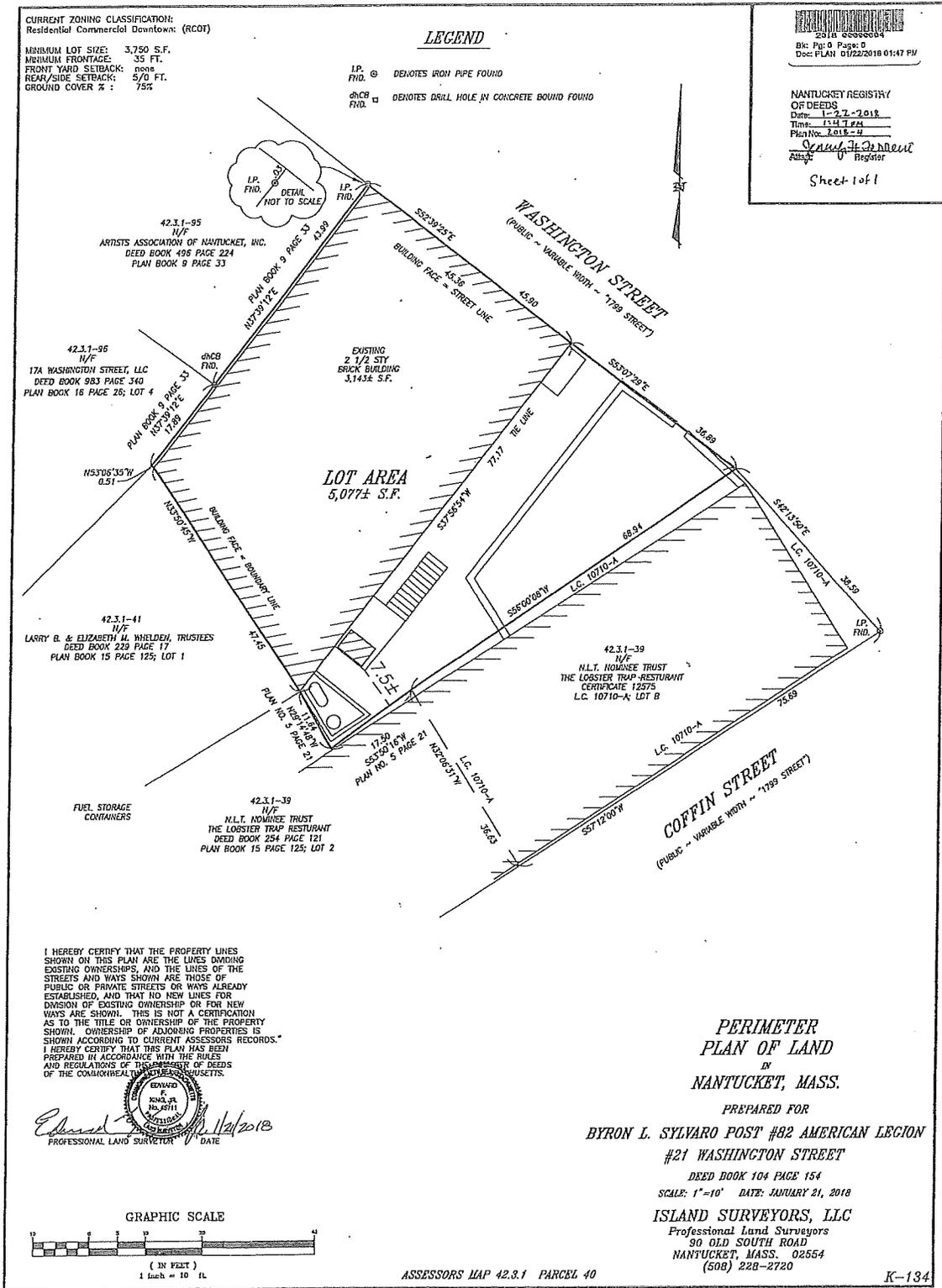


EXHIBIT C



**Photo #1 – east elevation of the Building (photo background and right) and the Patio Structure with its half walls and cloth roof (photograph left)**

EXHIBIT C

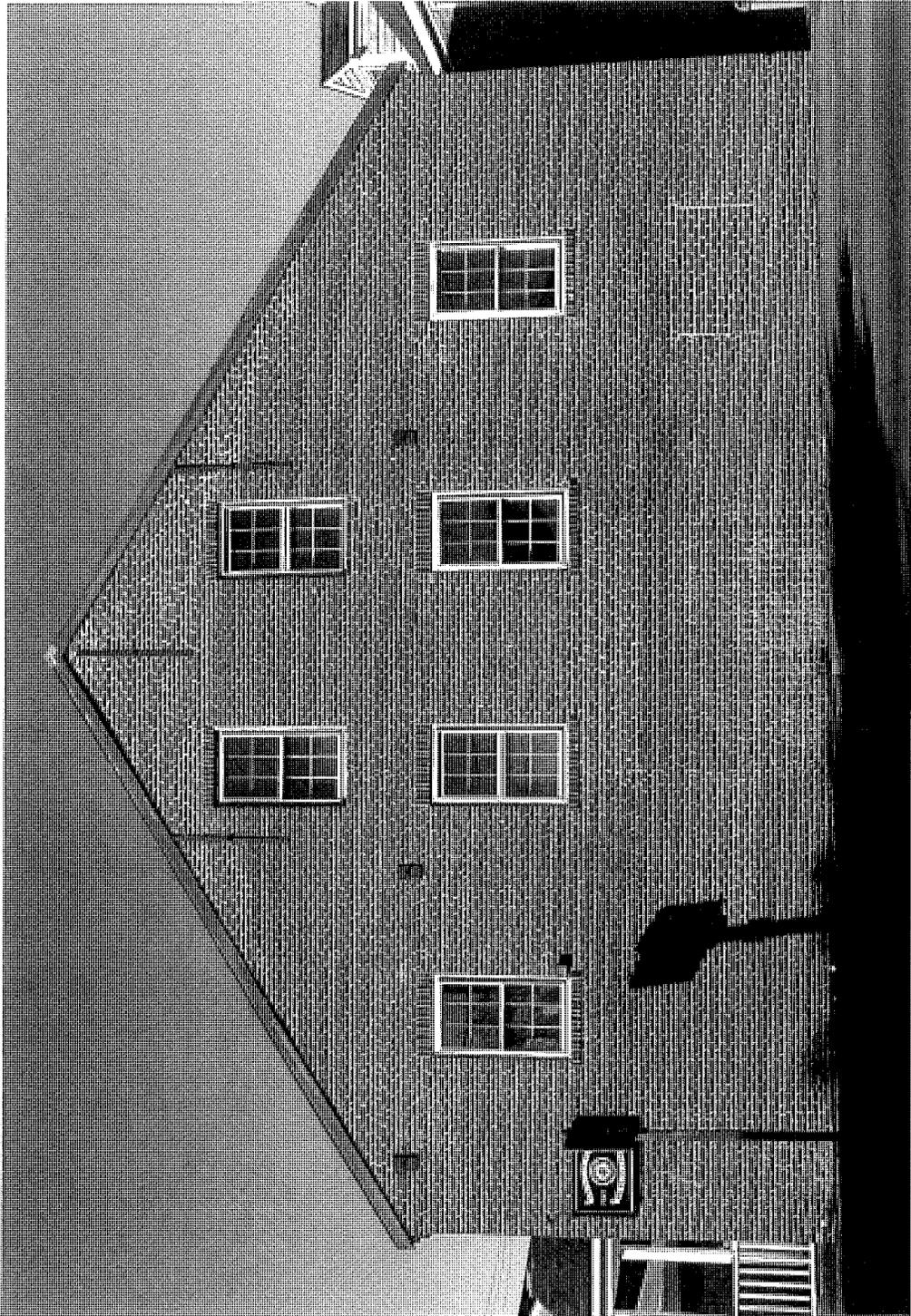
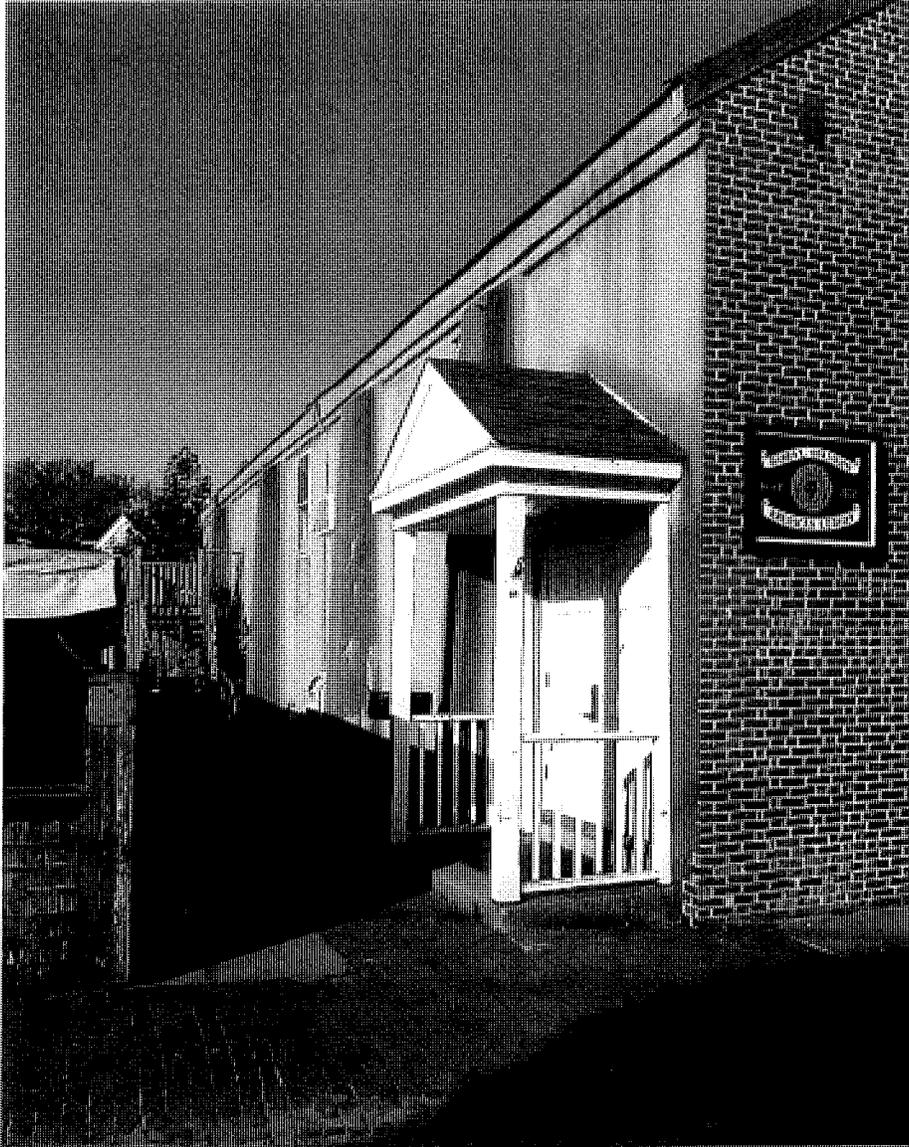


Photo #2 – façade (north elevation) of the Building

EXHIBIT C



**Photo #3 – east elevation of the Building**

EXHIBIT C



**Photo #4 – east elevation of the Building**

EXHIBIT C

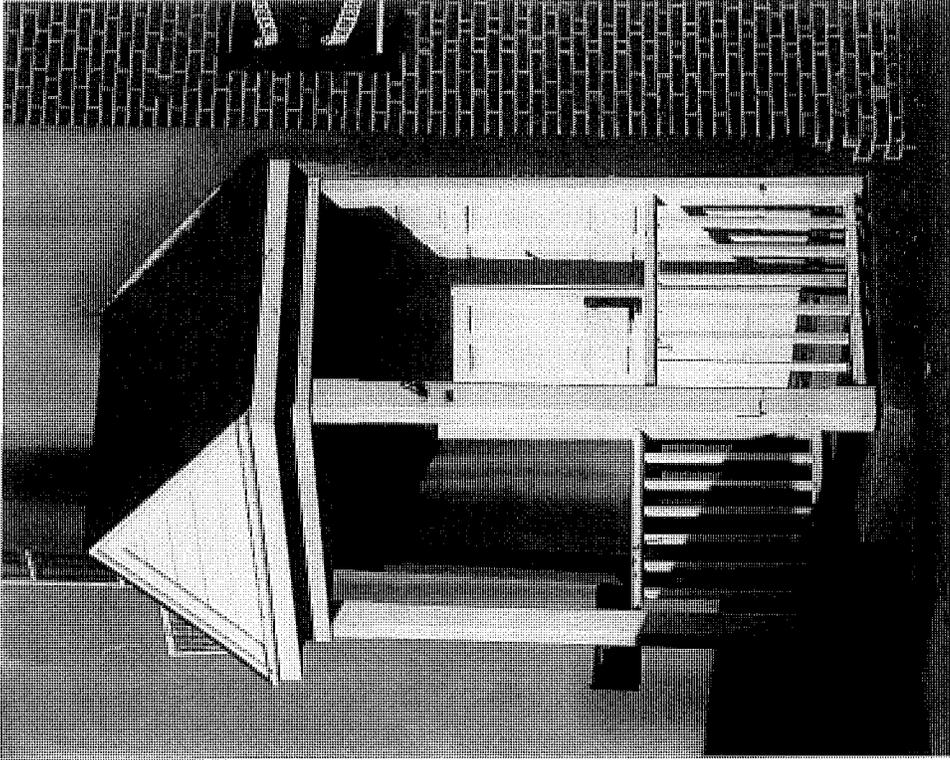


Photo # 5 – east elevation of the Building – north entry

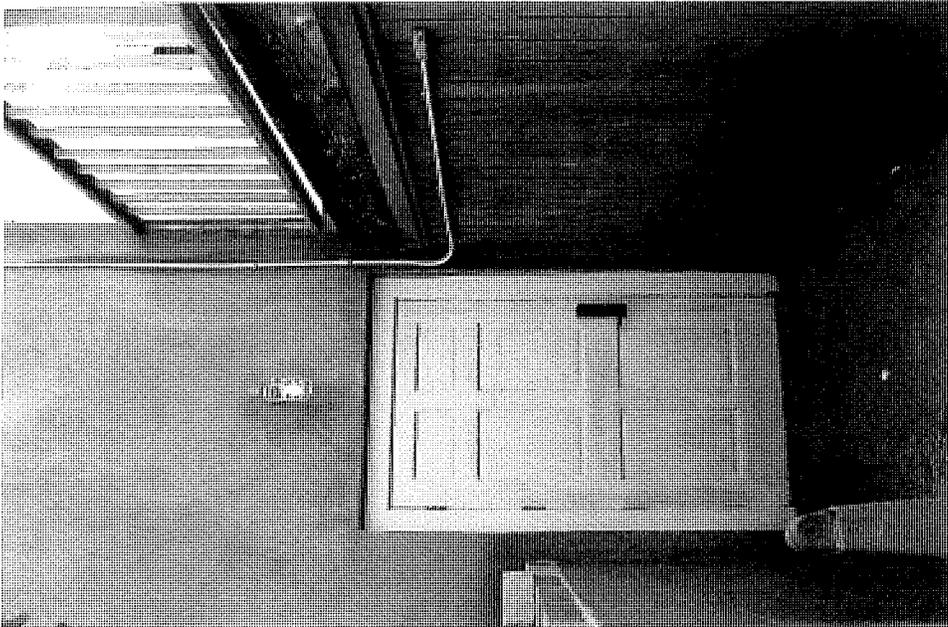


Photo #6 – east elevation of the Building – south entry

EXHIBIT C

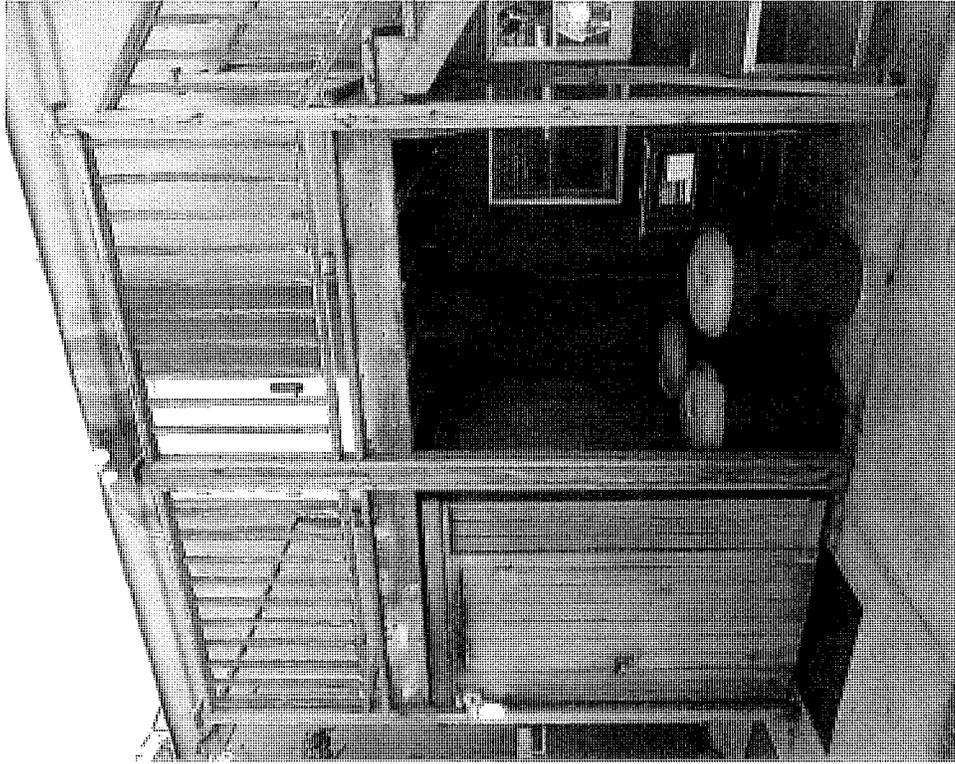


Photo #7 - east elevation of the Building - added exterior staircase



Photo #8 - west elevation seen from the northwest corner of the Building

EXHIBIT C

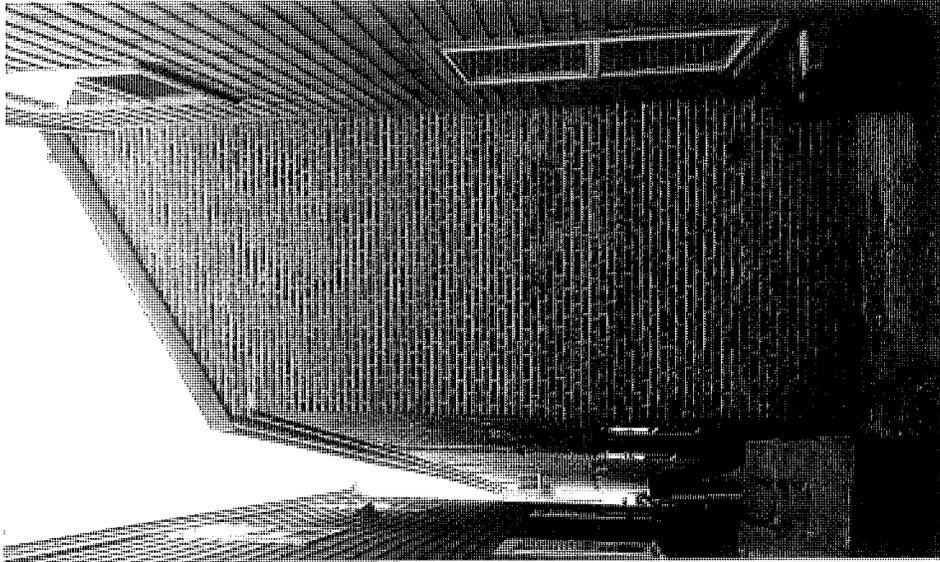


Photo #9— south elevation and oblique view of the west elevation of the Building (photo left)



Photo #10 – south elevation of the Building seen from its southeast corner looking westward into alley

**EXHIBIT D**

**FORM B – BUILDING**

MASSACHUSETTS HISTORICAL COMMISSION  
MASSACHUSETTS ARCHIVES BUILDING  
220 MORRISSEY BOULEVARD  
BOSTON, MASSACHUSETTS 02125

Assessor's Number USGS Quad Area(s) Form Number

42.3.1 40 [ ] [ ] [ ]

Town/City: Nantucket

Place: (neighborhood or village): Old Town Historic District

**Photograph**



Address: 21 Washington Street

Historic Name: Charles G. and Henry Coffin Warehouse  
Originally the Wm. French & Jared Coffin Candle House

Uses: Present: social club & public assembly hall  
Original: whale oil processing & storage

Date of Construction: 1837-38

Source: construction receipts Nantucket Hist. Assoc.

Style/Form: Greek Revival

Architect/Builder: Davis Gorham & Christopher Capen, masons

**Exterior Material:**

- Foundation: rubble stone & brick
- Wall/Trim: brick laid in common bond
- Roof: asphalt shingle on timber-frame structure

Outbuildings/Secondary Structures: temporary fence/wall and awning at terrace to enclose outdoor dining area

Major Alterations (with dates): blocking of small entry at east end of façade (1930-50), removal of original entry at façade (ca 1955); east elevation covered with cement render (ca. 2010); added porch & door, exterior stair and rear door at east elevation (ca. 1980-2010)

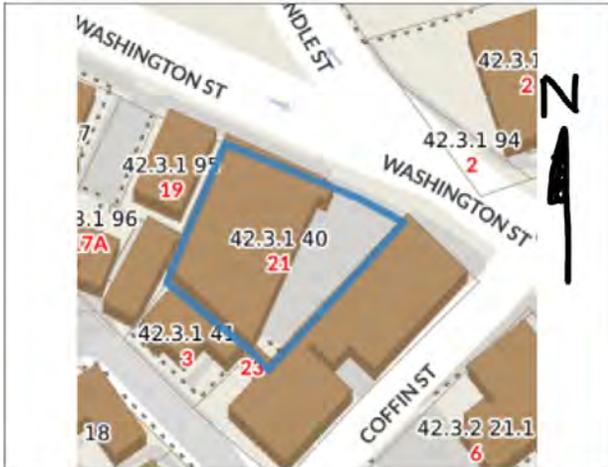
Condition: fair

Moved: no  yes  Date:

Acreage: 5,077 square feet

Setting: built-up commercial district at the head of a former wharf on Nantucket Harbor

**Locus Map**



Recorded by: Brian Pfeiffer & Deb Trayz  
Organization: Nantucket Preservation Trust  
Date (month / year): June 2019

## EXHIBIT D

### INVENTORY FORM B CONTINUATION SHEET

NANTUCKET

21 Washington Street

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

--	--

- Recommended for listing in the National Register of Historic Places.  
*If checked, you must attach a completed National Register Criteria Statement form.*

*Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.*

#### **ARCHITECTURAL DESCRIPTION:**

*Describe architectural features. Evaluate the characteristics of this building in terms of other buildings within the community.*

The Charles G. and Henry Coffin Warehouse, originally the French & Coffin Candle House, is a two-storey brick structure of transitional Federal/Greek-Revival style set on the southwest side of Washington Street south of Nantucket's central business district and opposite the Commercial Wharf. The building covers nearly all its irregularly shaped lot of 5,071 square feet and stands on the property lines (north, east and west) with a narrow side yard on its south side. The structure has a trapezoidal floor plan measuring approximately 46 feet in width by 78 feet on its west side and 70 feet on its south; the façade is set at an irregular angle to accommodate the curve in Washington Street. The building stands nearly forty-five degrees off the cardinal points; for convenience of reference the façade is called north and all other elevations are called in relation to the façade.

The former warehouse is constructed of bearing-wall masonry with wood interior framing. Masonry is laid up in common bond composed of seven courses of stretchers to each row of alternating headers and stretchers with occasional courses containing eight rows of stretchers. Windows vary by storey. First-storey windows originally contained 3/3 single-glazed sash set in brick surrounds with rectangular wooden lintels and sills bedded in the masonry. Second-storey and attic windows on the gabled north and south elevations contained 6/6 single-glazed sash set in rectangular surrounds with heads of splayed flat arches of brick; rectangular wooden sills were bedded directly in masonry, and jambs were sealed with the application of a beveled layer of lime mortar. Second-storey windows on the east and west elevations contained 6/6 single-glazed sash set in rectangular surrounds with rectangular wooden lintels and sills bedded directly in masonry; the jambs of these windows were also sealed with a bevel of lime mortar. The building is enclosed by a pitched roof. Although modified during the mid- and late twentieth century, the building retains a high proportion of its original features.

The façade (north elevation) rises from a first storey that contains no openings to a second storey with four evenly spaced windows and a gabled attic with two evenly spaced windows. As originally constructed, the first storey contained a central doorway composed of pilasters that rose to a frieze; within the opening, were double doors surmounted by a louvered fanlight. This doorway remained in position as late as 1952, after which it was removed, and its opening filled with brickwork that remains visible as a patch. The former doorway was flanked by a narrower, possibly original, single door (east) and window (west). The single door was removed between ca. 1930-1950 and its opening filled with brickwork that preserves the outline of the opening. The window appears to have been blocked prior to ca. 1930; its configuration is unknown although its size is visible from the masonry patch in its former location. Second-storey windows were rebuilt ca. 1930 at which time their original heads composed of brick flat arches backed by wooden lintels were replaced with steel lintel with brick soldier courses. At the same time, wooden sills are replaced with brick and sash was moved forward. All four windows currently exhibit damage from rust expansion of these steel lintels which are displacing and cracking adjacent bricks. In addition, sash was set further forward in window openings. The two gable windows preserve their original heads and jambs sealed with bevels of lime mortar; sills have been replaced with brick. At the head of the second storey, four evenly spaced tie-rod plates mark the locations of interior framing. At the gable, three former tie-rod plates were replaced between 1930 and 1952 with long, vertically set iron tie plates. The rake of the gable is trimmed with an unpainted rake board that extends onto the roof surface.

The west elevation preserves most its original finishes. The first storey has five window openings, unequally spaced reflecting original internal uses. Moving from north to south, the wall contains a modern brick patch near its northwest corner; the

*Continuation sheet 1*

## EXHIBIT D

### INVENTORY FORM B CONTINUATION SHEET

NANTUCKET

21 Washington Street

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

--	--

patch appears to be similar in size to original window openings but seems likely to be a later alteration. The northern three windows are currently blocked with masonry that has been rendered with mortar to create blind windows; window framing has been removed from these former openings, but wooden lintels have been left in position. The southern two windows contain modern 3/3 sash; the southernmost window has an iron lintel, while the window immediately north of it retains a wooden lintel. The second storey contains four unequally spaced windows set in alignment with the four northern windows at the first storey. Second-storey windows retain wooden lintels and sills, 6/6 sash, and recessed jambs sealed with bevels of mortar. Masonry on the west elevation has been skimmed with mortar (pre-1930?) up to the height of first-storey window sills. The wall head is built out with bricks into a projecting cornice composed of two courses of bricks laid in stretcher bond above which a single course of diagonally laid bricks project to create a saw-tooth pattern. The top of the cornice is composed of two courses of bricks laid in stretcher bond. Wooden blocking exists at the north end of the elevation's second storey; its original purpose has not been identified. Five steel tie-rod plates are evenly spaced at the head of the first storey. Each plate is rectangular with two bolts. The location of these plates may be original, but the plates are likely to be replacements from the twentieth century (ca. 1930-1950).

The rear (south) elevation faces a narrow passage and neighboring building within several feet. Its first storey contains two original window openings, the eastern of which preserves its original wooden sill and lintel, as well as 3/3 sash and partially plastered jambs. The western window has been fitted with a flat-stock wooden frame within which are an upper sash of three panes and a ventilation louver in the position of lower sash; its lintel has been rebuilt with concrete. The second storey has two windows which retain their original masonry surrounds, wooden jambs with beaded edges, heavy bevels of mortar to seal the frame, and 6/6 sash, as does the single window centered on the gable. The gable is trimmed with a rake board of flat stock that extends onto the roof plane, as do the north rake boards. At the wall's first storey, two holes have been cut in masonry near the west window for tubing and electrical conduits. A single tie-rod plate exists near the south end of the façade at the head of the first storey. Four evenly spaced tie-rod plates exist at the head of the second storey and three tie-rod plates exist in the gable in positions to secure roof framing.

The east elevation seems likely to have been nearly a mirror image of the west elevation; however, many of its details are currently concealed by a coat of cement-based render applied to the entire elevation within the last ten years (ca. 2010). In addition, the elevation was modified prior to 1930 by the addition of four brick buttresses, presumably to counteract some spreading of the structure. As the elevation currently stands, it possesses two doorways and a single paired window at the first storey and four windows and a single door at the second storey. Moving from north to south, the first storey contains a double door and portico near its north end. This doorway contains modern six-panel doors, sheltered by a pitched roof supported by square wooden posts, all which appear to date from the last twenty years. In the 1930s, this location contained a single six-light window in the only photograph that shows the east elevation. South from this doorway, it is probable that other original window openings existed but have been blocked. Toward the south end of the elevation between the third and fourth buttresses, a pair of 1/1 windows have been added beneath the staircase to a second storey deck. A single six-panel door has been added near the south corner of the elevation (ca. 2000-2010). The second storey contains four windows (6/6) between the second and fourth buttresses. Although the details of the windows surrounds have been concealed by render, a ca. 1930 photograph of this elevation shows two windows at the north end of this wall, both of which match those on the west elevation. At the south end of the elevation's second storey is a single six-panel door (ca. 2000-2010) access to which is provided by an exterior staircase constructed of pressure-treated wood (ca. 2000-2010). Beneath the south end of the staircase is a storage closet framed by plywood with grooved finish face.

The roof is entirely covered with asphalt shingles. A single chimney of modern brick rises from the roof's west slope near the south gable and ridge.

*Continuation sheet 2*

## EXHIBIT D

### INVENTORY FORM B CONTINUATION SHEET

NANTUCKET

21 Washington Street

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

--	--

---

The interior's original open floor plan has been altered by the addition of non-structural walls to create a kitchen and bathrooms on the first floor, and offices and other spaces on the second floor. The roof's timber-frame construction is visible in the attic and reveals where posts and rafters with mortise-and-tenon joints are exposed.

#### **HISTORICAL NARRATIVE**

*Discuss the history of the building. Explain its associations with local (or state) history. Include uses of the building, and the role(s) the owners/occupants played within the community.*

Built in 1837-38 as the William French & Jared Coffin Candle House, the Charles G. and Henry Coffin Warehouse is a notable example of the type of brick warehouses/candle houses built for whale oil storage and processing during the height of Nantucket's Whaling Era. Other examples include the Thomas Macy Warehouse (1846 - Straight Wharf) and the Hadwen and Barney Candle House (1847 - Broad Street). One of only six buildings in the commercial district to have survived the Great Fire of 1846, the Coffin Warehouse stands west of Commercial or Swain's Wharf on land that was subdivided in 1805 and is described in deeds as part of the "South Beach lots". The construction of Commercial Wharf between 1800 and 1820 by the firm of Zenas Coffin and Sons (Zenas Coffin 1764-1828; Charles G. Coffin 1802-1882 and Henry Coffin 1807-1900) spurred development in the area which seems to have been dominated by shops for outfitting whaling ships and buildings for the storage of whale oil.

Historical research suggests the present building was constructed in 1837 for use by the firm of Jared Coffin (1784-1860) and his son-in-law, William S. French (d. 1893). Extensive receipts for a "New Candle House" remain in the collection of Coffin's papers at the Nantucket Historical Association. These receipts record payments for large quantities of bricks, stone, sheet lead, and other materials found in the present structure. In addition, receipts record payments to workmen including Christopher Capen (the island's most prominent mason and builder of many of the brick houses on Main Street), Davis Gorham for labor laying bricks, Thomas Rayner for slating the roof of the "Candle Work", and various carpenters.

William French came to Nantucket from Providence, Rhode Island and married Jared Coffin's eldest daughter, Rebecca Coffin (1809-1856). From an early date, he had extensive business dealings with his father-in-law, one of Nantucket's wealthiest businessmen of the era and a sixth-generation descendant of Tristram Coffin, one of the island's first settlers. Some sources suggest that Coffin's son, Benjamin F. Coffin (1813-1889) was a member of the partnership; however, his role is unclear, as he was not named on the deeds by which Jared Coffin and William French acquired and sold the property. A copy of the will of Jared Coffin dated June 23, 1859 divided his estate into sevenths to be distributed to his heirs; the portion assigned to Benjamin Coffin was placed in trust for his benefit to be distributed to his children upon his death or, lacking children, to be returned to the estate for distribution among the other legatees. This arrangement suggests that Benjamin Coffin suffered some illness or diminution of capacity. The partnership of French & Coffin occupied the candle house until the firm's disbandment in 1847 after which its principals moved away from Nantucket and seem to have rented the building to other firms until its sale in 1857.

On June 3, 1838, a large fire spread through the area around the French & Coffin Candle House destroying many candle houses, oil houses, store houses, and residences. On June 6, 1838, the *Inquirer and Mirror* enumerated the losses starting with oil and candle houses that were completely destroyed. The French & Coffin Candle House was not named on this list, nor was it called out in the reports as having stopped or survived the fire with its brick construction and slate roof. Instead, French & Coffin were listed as having suffered the loss of oil worth \$32,000. Less than ten years later, on July 13, 1846 the Great Fire of 1846 burned through the commercial core of the town destroying over three hundred buildings. An article in the *Inquirer and Mirror* on July 18, 1846 shortly after the Great Fire observed that "the desirableness of brick buildings must be evident to anyone who will cast his eye on the several points at which the fire was arrested...on the southeast by the oil works of Messrs. French & Coffin."

*Continuation sheet 3*

## EXHIBIT D

### INVENTORY FORM B CONTINUATION SHEET

NANTUCKET

21 Washington Street

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

--	--

Despite the speed with which the town's center and businesses were rebuilt after The Great Fire, the whaling economy entered a steep decline and the island began rapidly to lose population, dropping from nearly 10,000 inhabitants in the late 1840s to 4,123 in 1870 and a low of 2,800 in 1920. During the years immediately following The Great Fire, William French returned to Providence, while his father-in-law, Jared Coffin, moved to Brighton, Massachusetts immediately west of Boston.

The property remained in the ownership of French & Coffin until September 17, 1857 when William French, then of Providence, Rhode Island, sold his share containing "sundry parcels and the Store and Candle Factory and other buildings, standing thereon" to Henry A. Kelley of New York City (Nantucket Deeds Book 53, page 559). Later, on July 22, 1858, Coffin conveyed to Kelley what appears to be a confirmatory deed for his share of the property (Nantucket Deeds Book 54, page 247). Prior to this second deed, Kelley entered into an Indenture with Joseph Mitchell of Nantucket (Nantucket Deeds Book 54, page 4) by which he pledged the property as one of several parcels located in Sandwich, Nantucket, and New Bedford against repayment of loans. The deed described the Nantucket property as containing "that certain Oil factory...being the same premises which the said Henry A. Kelley purchased from Jared Coffin..." (Nantucket Deeds Book 54, page 5). Parcels on which the "Oil factory" stood were assembled by Jared Coffin in several purchases in the early 1830s, including the acquisition of a tract of land near the Commercial Wharf from Reuben Macy on January 25, 1834 (Nantucket Deeds Book 34, page 208). These purchases contained no references to existing buildings.

Henry Kelley subsequently sold the property to Matthew Crosby, Benjamin Coffin's father-in-law. The 1858 Map of Nantucket drawn by Henry Walling notes the building as "G. Coffin Store House." It seems likely that Charles G. Coffin rented the structure for his business, as the property subsequently descended through members of the Swain and Barney family until it came into the ownership of Joseph Barney whose father, Nathaniel Barney (1792- 1869), was a founding partner of the firm of Hadwen-Barney, a successful whale-oil company co-founded with William Hadwen (1758-1862). In 1905, Joseph Hadwen died intestate after which his property was divided among his heirs, including his wife Malinda, sons Alanson and William, and daughters Eunice and Eliza. In 1911, Malinda relinquished her share to her children (Nantucket Deeds Book 92, page 157) and in 1916 the heirs of Joseph Barney sold the property to Henry and Florence Lang of Montclair, New Jersey (Nantucket Deeds Book 97, page 14).

Henry and Florence R. Lang were among the most influential Nantucket summer residents of the early twentieth century. Florence Lang (an Ingersoll-Rand heir) and her husband were full-time residents of Montclair, New Jersey, who began summering on island in 1909. The Lang's purchased historic properties in the old historic district for restoration soon after their arrival. Florence, an artist and major art patron, is credited with promoting and rejuvenating Nantucket's art colony. Beginning in the 1910s, they purchased large tracts of land along Washington Street and the wharves where they began turning the old shanties and other commercial buildings once associated with the whale-oil industry into studios that they rented to artists at modest rates during the summer months. Florence Lang also founded the first art galleries on island for artists to display and sell their work. The Lang's art interests were national in scope, and included donations to support the construction of art museums and established art collections in Montclair and Los Angeles.

The Lang's were donors to island causes – donating the bell at the North Church, and purchasing children's playground equipment for the park at Jetties Beach. In addition, they supported commercial development to assist the island, modernizing the old Swain lumber, coal and ice company into the Island Service Company at Commercial Wharf. Under the Lang ownership this firm became the largest mercantile business on island, and was later acquired as part of Marine Lumber Company.

In 1928, the Lang's deeded the Charles G. and Henry Coffin Warehouse to the Byron L. Sylvaro American Legion Post #82, formed in 1919 and named to honor a World War I fallen islander. The gift was subject to two conditions: that the American Legion Post #82 have at least five enrolled members in good standing; and that the property be used for business and social purposes of said Post. In the event these conditions were not satisfied the property would pass to the Old People's Home

*Continuation sheet 4*

**EXHIBIT D**

**INVENTORY FORM B CONTINUATION SHEET**

NANTUCKET

21 Washington Street

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

--	--

---

Association of Nantucket and to the Nantucket Cottage Hospital, in equal shares. Following the death of Florence Lang (who survived her husband), both organizations released all rights to the property. Today the building remains an active post and is used for post social functions and other community events.

**BIBLIOGRAPHY and/or REFERENCES**

Nantucket Registry of Deeds.

Nantucket Registry of Probate records.

Nantucket Historical Association Archives. Coffin Family Collection 150, Folder 70 "Coffin Family – Jared (1784-1860).

Walling, Henry. *Map of the Town of Nantucket*. 1858

## EXHIBIT E

### RESTRICTION GUIDELINES

The purpose of these Restriction Guidelines is to clarify the terms of this Historic Preservation Restriction that deal with maintenance and alteration to the Building, Property, and the Patio Structure. Under Paragraph 3, prior permission from the Nantucket Preservation Trust (NPT) is required for any Minor Maintenance that is reasonably expected to materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance and for any Major Maintenance. Minor Maintenance that is part of ordinary maintenance and repair and does not materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance does not require NPT review and approval.

In an effort to explain what constitutes Minor Maintenance and Major Maintenance, the following list is provided. The list is by no means comprehensive. It is a sampling of common structural alterations.

#### **PAINT**

Minor: Exterior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major: Painting or fully stripping decorative surfaces or distinctive stylistic features, including murals, stenciling, ornamental woodwork, stone, and decorative or significant original plaster.

#### **WINDOWS AND DOORS**

Minor: Regular maintenance including caulking, painting, and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major: Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

#### **EXTERIOR**

Minor: Spot repair of existing cladding and roofing including in-kind replacement of clapboard, shingles, slates, etc. In-kind replacement of cloth roofing at the Patio Structure.

Major: Large scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot or full re-pointing of masonry. Replacement of the Patio Structure's metal roof frame or alteration of its

impermanent cloth roof. Structural stabilization of the property is also considered a major alteration.

### **LANDSCAPING/OUTBUILDINGS**

Minor: Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair. In-kind repair of concrete paving at the Patio Structure.

Major: Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, and ground disturbances affecting archaeological resources. Replacement of concrete paving at the Patio Structure.

### **WALLS/PARTITIONS**

Minor: Making fully reversible, temporary exterior changes (i.e. sealing off doors *in situ*, leaving doors and door openings fully exposed). Repairing half walls of the Patio Structure with matching materials.

Major: Creating new openings in exterior walls or permanently sealing off existing openings. Changing the materials, wall height, or footprint of the Patio Structure.

### **HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS**

Minor: Repair of existing systems.

Major: Installing or upgrading systems which will result in major exterior appearance changes (i.e. exterior ducts, piping, ventilators, HVAC units); the removal of substantial quantities of original materials in the course of construction.

Changes classified as Major Maintenance are not necessarily unacceptable. Under the Historic Preservation Restriction such changes must be reviewed by the NPT in order to assess their impact on the historic integrity of the Property, Building, and Patio Structure.

It is the responsibility of the Grantor to notify NPT in writing when any Minor Maintenance that is reasonably expected to materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance or any Major Maintenance is contemplated. Substantial alterations identified as Major Maintenance may necessitate review of plans and specifications.

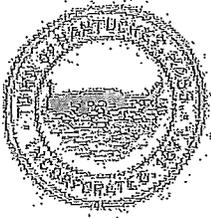
The intent of this Historic Preservation Restriction is to enable the NPT to review proposed alterations and assess their impact on the integrity of the Property, the Building, and Patio Structure, not to preclude future change. NPT staff will attempt to work with the Grantor to develop mutually satisfactory solutions which are in the best interests of the Property.

**EXHIBIT F**

**2016 Annual Nantucket Town Meeting, Article 30**

EXHIBIT F

Town of Nantucket



♦♦♦♦♦

OFFICE OF THE  
TOWN & COUNTY  
CLERK

16 Broad Street  
NANTUCKET, MASSACHUSETTS 02554-3590

Catherine Flanagan Stover, MMC, CMMC  
Town & County Clerk

(508) 228-7216  
FAX (508) 325-5313  
Home: (508) 228-7841

Email: [cstover@nantucket-ma.gov](mailto:cstover@nantucket-ma.gov)  
[flanaganstover@yahoo.com](mailto:flanaganstover@yahoo.com)  
[townclerk@nantucket-ma.gov](mailto:townclerk@nantucket-ma.gov)

WEBSITE: <http://www.nantucket-ma.gov>

♦♦♦♦♦

April 6, 2016

TO WHOM IT MAY CONCERN:

I, Catherine Flanagan Stover, duly elected Clerk of the Town and County of Nantucket, hereby certify that the April 2, 2016 ANNUAL TOWN MEETING adopted **Article 30: "Appropriation: FY 2017 Community Preservation Committee"** at the April 2, 2016 adjourned session when "...the adoption of all articles not heretofore acted upon as recommended by the Finance Committee, or as recommended by the Planning Board, was duly motioned, seconded, and voted in accordance with the motions recommended by the Finance Committee or, in the absence of a Finance Committee motion, then in accordance with the motions as recommended by the Planning Board, as printed in the Finance Committee Report, with technical amendments brought forward during the course of the meeting..."

TECHNICAL CORRECTION VIA THE MODERATOR:

Replace the words "Preservation Institute Nantucket" with "Nantucket Preservation Trust with Preservation Institute Nantucket"

VOTE: The vote on the motion pursuant to Article 30 as recommended by the Finance Committee with a Technical Correction brought forward through the Moderator, was by Unanimous Voice Vote. The motion was adopted.

A handwritten signature in cursive script, appearing to read "Catherine Flanagan Stover".

Catherine Flanagan Stover, MMC, CMMC  
Town and County Clerk

**ARTICLE 30**

**(Appropriation: FY 2017 Community Preservation Committee)**

To see if the Town will vote to act on the report of the Community Preservation Committee on the Fiscal Year 2017 Community Preservation Budget and to appropriate or reserve for later appropriation monies from the Community Preservation Fund annual revenues or available funds for the administrative and operating expenses of the Community Preservation Committee, the undertaking of Community Preservation Projects and all other necessary and proper expenses for the year.

<b>Purpose</b>	<b>Amount</b>
<b>Historic Preservation</b>	
<b>South Church Preservation Fund</b> Restoration of the lighting of the Unitarian Meeting House	\$93,068
<b>First Congregational Church of Nantucket</b> Restoration of the front and the tower of the Summer Church	\$371,905
<b>Nantucket Historical Association</b> Restoration of Quaker Meeting house	\$40,000
<b>Museum of African American History</b> Fourth phase of restoration of foundations and out buildings contingent on access to the archeological data uncovered	\$307,246
<b>Hospital Thrift Shop</b> Second phase of restoration of structural frame, central chimney, and drainage systems	\$78,700
<b>Preservation Institute Nantucket</b> Envision Nantucket, 3D Laser scanning of heritage resources, Phase 3 contingent on public access through GIS	\$107,800
<b>American Legion Post 82</b> First phase of conservation and restoration of exterior brick walls contingent on review by Preservation expert and plan to complete total project before funding	\$64,300
<b>Town of Nantucket Natural Resources Department</b> Second phase of restoration of the Brant Point shellfish hatchery	\$200,000
<b>Sub-total</b>	<b>\$1,263,019</b>
<b>All of the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>Community Housing</b>	
<b>Nantucket Interfaith Council</b> Housing and rental assistance program	\$130,000

Habitat for Humanity Nantucket Inc. Construct additional houses at Sachem's Path	\$250,000
Housing Nantucket Phase two of four community rental housing units at Surfside Road	\$261,000
Housing Nantucket House recycling project to create two units of affordable rental Housing, funding for one half of proposed project	\$157,500
Town of Nantucket Funds to pay the interest and principal in the first year of the Bond authorized at the 2015 Nantucket Town Meeting for the balance of the infrastructure at the Sachem's Path affordable housing complex	\$112,000
<b>Sub-total</b>	<b>\$910,500</b>
<b>\$150,000 of the funds utilized for this category is from the Reserve for Community Housing with the balance of the funds to be used in this category from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>Open Space Conservation/Recreation</b>	
Town of Nantucket Funds to pay the interest and principal of the Bond authorized at the 2012 Nantucket Town Meeting for the creation of an artificial turf playing field at Nobadeer Farm Road.	\$125,000
The Nantucket Pond Coalition Funds to eradicate phragmites on White Goose cove, Long Pond subject to approval of the project by the Nantucket Conservation Commission	\$24,900
Designated Reserves for Open Space Allocation to Open Space Reserves for future use	\$106,100
<b>Sub-total</b>	<b>\$256,000</b>
<b>All of the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds.</b>	
Community Preservation Committee Undesignated reserves Balance of funds available for FY 2017 for future use	\$10,481
<b>All of the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>Administrative</b>	
<b>Community Preservation Committee</b>	

Administrative and operating expenses	\$120,000
<b>Sub-total</b>	<b>\$120,000</b>
All of the funds to be used in this category from the Community Preservation surcharge and the State matching funds.	
<b>TOTAL</b>	<b>\$2,560,000</b>

All amounts to be appropriated from the following sources:

<b>SOURCES</b>	<b>AMOUNT</b>
Raised and appropriated from FY 2017 Community Preservation Surcharge	\$1,914,000
From State matching funds for FY 2016, to be received in 2017	\$ 486,000
From Interest	\$ 10,000
From Designated Reserves for Community Housing	\$ 150,000
<b>Total Revenues</b>	<b>\$2,560,000</b>

For fiscal year 2017 Community Preservation Purposes with each item considered a separate appropriation to be spent by the Community Preservation Committee.

Provided however, that the above expenditures may be conditional on the recording of appropriate historic preservation restrictions for historic resources, open space restrictions for open space resources, recreational restrictions for recreational resources and for affordable housing restrictions for community housing; running in favor of an entity authorized by the Commonwealth to hold such restrictions for such expenditures; meeting the requirements of Chapter 184 of the General Laws pursuant to Section 12 of the Community Preservation Act.

*(Kenneth Beauprand, et al)*

**FINANCE COMMITTEE MOTION:** Moved that the following sums be appropriated or reserved for later appropriation from the Community Preservation Fund Fiscal Year 2017 revenues or other available funds as indicated herein, for the administrative and operating expenses of the Community Preservation Committee, the undertaking of community preservation projects and all other necessary and proper expenses, for Fiscal Year 2017 community preservation purposes as set forth herein, with each item considered a separate appropriation to be spent by the Community Preservation Committee, as shown below with any strikeouts indicating deletions from the Community Preservation Committee article and any highlighted text indicated additions/modifications:

Purpose	Amount

<b>Historic Preservation</b>	
South Church Preservation Fund Restoration of the lighting of the Unitarian Meeting House	\$93,068
First Congregational Church of Nantucket Restoration of the front and the tower of the Summer Church	\$371,905
Nantucket Historical Association Restoration of Quaker Meeting house	\$40,000
Museum of African American History Fourth phase of restoration of foundations and out buildings contingent on access to the archeological data uncovered	\$307,246
Hospital Thrift Shop Second phase of restoration of structural frame, central chimney, and drainage systems	\$78,700
Preservation Institute Nantucket Envision Nantucket, 3D Laser scanning of heritage resources, Phase 3 contingent on public access through GIS	\$107,800
American Legion Post 82 First phase of conservation and restoration of exterior brick walls contingent on review by Preservation expert and plan to complete total project before funding	\$64,300
Town of Nantucket Natural Resources Department Second phase of restoration of the Brant Point shellfish hatchery	\$200,000
<b>Sub-total</b>	<b>\$1,263,019</b>
All of the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds.	
<b>Community Housing</b>	
Nantucket Interfaith Council Housing and rental assistance program	\$130,000
Habitat for Humanity Nantucket Inc. Construct additional houses at Sachem's Path	\$250,000
Housing Nantucket Phase two of four community rental housing units at Surfside Road	\$261,000
Housing Nantucket House recycling project to create two units of affordable rental Housing, funding for one half of proposed project	\$157,500
Town of Nantucket Funds to pay the interest and principal in the first year of the Bond authorized at the 2015 Nantucket Town Meeting for the balance of the infrastructure at the Sachem's Path affordable housing complex	\$112,000

<b>Sub-total</b>	<b>\$910,500</b>
<b>\$150,000 of the funds utilized for this category is from the Reserve for Community Housing with the balance of the funds to be used in this category from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>Open Space Conservation/Recreation</b>	
<b>Town of Nantucket</b> Funds to pay the interest and principal of the Bond authorized at the 2012 Nantucket Town Meeting for the creation of an artificial turf playing field at Nobadeer Farm Road.	<b>\$125,000</b>
<b>The Nantucket Pond Coalition</b> Funds to eradicate phragmites on White Goose cove, Long Pond subject to approval of the project by the Nantucket Conservation Commission	<b>\$24,900</b>
<b>Designated Reserves for Open Space</b> Allocation to Open Space Reserves for future use	<b>\$106,100</b>
<b>Sub-total</b>	<b>\$256,000</b>
<b>All of the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>Community Preservation Committee Undesignated reserves*</b> Balance of funds available for FY 2017 for future use	<b>\$10,481</b>
<b>All of the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>Administrative</b>	
<b>Community Preservation Committee</b> Administrative and operating expenses	<b>\$120,000</b>
<b>Sub-total</b>	<b>\$120,000</b>
<b>All of the funds to be used in this category from the Community Preservation surcharge and the State matching funds.</b>	
<b>TOTAL</b>	<b>\$2,560,000</b>
<b>All amounts to be appropriated from the following sources:</b>	
<b>SOURCES</b>	<b>AMOUNT</b>

Raised and appropriated from FY 2017 Community Preservation Surcharge	\$1,914,000
From State matching funds for FY 2016, to be received in 2017	\$ 486,000
From Interest	\$ 10,000
From Designated Reserves for Community Housing	\$ 150,000
<b>Total Revenues</b>	<b>\$2,560,000</b>

For fiscal year 2017 Community Preservation Purposes with each item considered a separate appropriation to be spent by the Community Preservation Committee.

Provided however, that the above expenditures may be conditional on the recording of appropriate historic preservation restrictions for historic resources, open space restrictions for open space resources, recreational restrictions for recreational resources and for affordable housing restrictions for community housing; running in favor of an entity authorized by the Commonwealth to hold such restrictions for such expenditures; meeting the requirements of Chapter 184 of the General Laws pursuant to Section 12 of the Community Preservation Act.

February 7, 2020

**Vicki S. Marsh**  
vmarsh@k-plaw.com

Hon. Dawn E. Hill Holdgate and  
Members of the Select Board  
Town & County Building  
16 Broad Street  
Nantucket, MA 02554

Re: Conservation Restriction - Hawthorne Park

Dear Members of the Select Board:

You have requested that I render an opinion as to whether the Select Board may hold a conservation restriction on the Community Lot for the Hawthorne Park development (the "Development"), as shown on a plan of land entitled "Conservation Restriction Plan of Land in Nantucket, MA Prepared for Hawthorne Park LLC," dated December 30, 2019, prepared by Blackwell & Associates, Inc., a copy of which is available at the Town offices. The Development is a flex development as defined in the Nantucket Zoning By-law (the "By-law"), Section 139-8. Section 139-8.A (1) (b) [1][d], requires that the open space created in a flex development be subject to a permanent conservation restriction pursuant to G.L. c. 184, ss. 31-33. This statute requires that a conservation restriction be held by a governmental body or charitable corporation or trust whose purposes include the conservation of land or water areas. In this case, Hawthorne Park, LLC, and (the Owner") the owner of the Development has sought to find a qualified nonprofit organization willing to hold the conservation restriction on the Community Lot. Despite the Owner, in my opinion, using good faith and diligent efforts, it has been unable to find such an entity, which is willing to hold the conservation restriction. Therefore, in an attempt to comply with the By-law, the Owner requests that the Select Board of the Town of Nantucket be the holder of the conservation restriction. It is my opinion, that pursuant to G.L. c. 40, s. 3, the Select Board may hold real estate or an interest therein for the benefit of the Town. Therefore, since a conservation restriction is an interest in real property, the Select Board may hold such an interest.

Furthermore, the Special Permit Decision by the Nantucket Planning Board dated January 9, 2017, filed with the Nantucket Registry District of the Land Court as Document No. 156034 (the "Decision") also imposes the requirement in Item No. 8 that a permanent conservation restriction, as provided in G.L. c. 184, s. 31-33, shall be granted on the Community Lot to an appropriate qualified holder...; provided however, that the failure of or refusal of an appropriate qualified holder to accept such conservation restriction shall not affect the intent of findings of this Decision, the Applicant's ability to proceed under the other provisions of this Decision,... if the Planning Board finds that the Applicant has sought such a holder in good faith and with all due diligence." It appears that the Planning Board did not wish to prevent this Development

Hon. Dawn E. Hill Holdgate and  
Members of the Select Board  
February 7, 2020  
Page 2

from proceeding in the event that the Owner is unable to find a qualified holder for the conservation restriction if it has made a diligent good faith effort to do so. I am not aware of whether the Planning Board has rendered an opinion as to whether the Owner has used good faith, diligent efforts to find a qualified entity to hold the conservation restriction; however, the Owner has presented copies of correspondence from numerous potential entities rejecting the Owner's request to hold the restriction. In the event that the Select Board votes to hold the conservation restriction on the Community Lot, I recommend that the conservation restriction be in a form acceptable to Town Counsel and the State. Please note that I have not reviewed any proposed conservation restriction on the Community Lot.

Pursuant to G.L. c. 184, s.32, the conservation restriction must be approved by the secretary of energy and environmental affairs. In order for the conservation restriction to receive state approval, the conservation restriction must be submitted to the Division of Conservation Services for its review and approval in accordance with its procedures. In the event that the conservation restriction is not approved by the State as the land in question fails to meet its requirements for the preservation of open space, I recommend that the Planning Board consider requiring a restriction in the Deed of the Community Lot from the Owner to the Homeowners Association that the Community Lot be preserved as open space in perpetuity with the improvements as shown on the Plan, and with the Select Board having the authority to enforce the restriction. Item No. 7 of the Decision already requires that the Owner convey the Community Lot to the Homeowners Association who shall maintain the Community Lot and improvements, and that its use comply with the By-law and permit the community pool, cabana and field house. The Deed and any amendments to the Home Owners Association should be in a form approved by Town Counsel. Although this deed restriction does not strictly comply with the requirements of the By-law, this restriction, in my opinion, attempts to satisfy the underlying intent of the By-law, to ensure that the Community Lot, except for the Building Envelope shown on the Plan, remains as open space in perpetuity and such restriction is enforceable by the Town.

In addition, the Select Board may wish to consider amending this By-law by deleting the requirement to have a conservation restriction placed on the open space in the flex developments. In my experience, it is becoming increasingly difficult to find a qualified entity to hold a conservation restriction, which is granted on a homeowners association open space parcel. These open space parcels in developments are generally owned and maintained by the homeowners associations themselves and their maintenance is funded by the lot owners. Perhaps the solution for the enforcement of restrictions on the open space lot is to have a Town board be the named enforcing agent for these homeowners association open space parcels.



Hon. Dawn E. Hill Holdgate and  
Members of the Select Board  
February 7, 2020  
Page 3

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Vicki S. Marsh".

Vicki S. Marsh

VSM/dmm  
cc: Town Manager

710901/NANT/19713/0001



## Agenda Item Summary

Agenda Item #	VIII. 3.
Date	2/08/ 2020

### Staff

Ken Beaugrand, Real Estate Specialist

### Subject

Approval of request for the Town to hold a Conservation Restriction for Hawthorne Park open space pursuant to Planning Board Flex Development Special Permit.

### Executive Summary

The Planning Board introduced a new concept in the development for multi-dwelling parcels for open space as a part of their Flex Development Special Permit when it eliminated the cluster subdivision provisions. This is the first of two new submissions created under this provision to request the Conservation Restriction ("CR") required. Hawthorne Park has been unable to get any of the organizations that hold such restrictions to agree to act in these circumstances and so the request has been put forth for the Town to hold the CR. Town Counsel has reviewed the documentation and indicated that the Select Board can agree to hold the CR and delegate its enforcement to a Town administrative area such as PLUS. The issue is whether the Select Board chooses to take on this responsibility.

### Staff Recommendation

As there is a Homeowners Association tasked with the responsibility to monitor the CR and Town Counsel has indicated that the Select Board can hold the CR and delegate the oversight to an administrative agency in the Town, I recommend that the Select Board agree to this request to allow the applicant to fulfill the obligations under the Flex Development Special Permit and have Town Counsel review the documentation prior to execution. As suggested by Town Counsel, the Select Board may also want to have the Planning Board review a suggested change to this Bylaw.

### Background/Discussion

The easement is designed to preserve the open space component of the property. No public access is required under the terms of the Flex Development Special Permit as similarly was the case with the Cluster provision previously. The benefit with respect to this location from the Town's point of view was the significant reduction in the density, protected open space and reduced number of driveways. To be noted is that there is a Homeowners Association that has the responsibility of monitoring the CR as well. In this instance had the applicant opted to provide public access it would have provide for an increase if an additional ten percent or one more buildable lot.



**Impact: Environmental**     **Fiscal**     **Community**     **Other**

Provides for developed land that will add to the tax base, open space for aesthetics and a reduced density in structures on island.

**Board/Commission Recommendation**

n/a

**Public Outreach**

Award approved after public hearings before Planning Board.

**Connection to Existing Applicable Plan (i.e. Strategic Plan, Master Plan, etc.)**

Consistent with Strategic Plan as to Housing density

**Attachments**

Town Counsel opinion; Letter from Sarah Alger; Planning Board Special Permit; rejection letters; DCR CR chart; Hawthorne Park CR; site plan



SARAH F. ALGER, P.C.

ATTORNEYS AT LAW

FOUR NORTH WATER STREET • NANTUCKET, MASSACHUSETTS • 02554

TELEPHONE: 508-228-1118 FACSIMILE: 508-228-8004

SARAH F. ALGER  
sfa@sfapc.com

JENNIFER E. CAREY  
jec@sfapc.com

FIVE PARKER ROAD • POST OFFICE BOX 449  
OSTERVILLE • MASSACHUSETTS • 02655  
TELEPHONE: 508-428-8594 FACSIMILE: 508-420-3162

JOHN R. ALGER  
1931-2007

January 29, 2020

**BY EMAIL**

Dawn Hill Holdgate, Chair  
Nantucket Select Board  
16 Broad Street  
Nantucket, Massachusetts 02554

Re: Hawthorne Park  
Flex Development Special Permit  
Planning Board File No. 61-16

Dear Ms. Hill Holdgate:

As you may know, in accordance with Nantucket Zoning By-Law (the "By-law") §139-8.A.(1)(b)[1][d], it is a condition of the Hawthorne Park Flex Development Special Permit issued by the Nantucket Planning Board that the Community Lot be subjected to a permanent conservation restriction (the "CR"), as provided in Mass. Gen. Laws c. 184, §§31 through 33, and owned in common by the Homeowners Association to be formed pursuant to By-law §139-8.A.(1)(a)[4]. This requirement was first introduced in the By-law when the cluster subdivision provisions were eliminated in favor of flex development.

Despite a good faith, diligent effort, the applicant, Hawthorne Park, LLC, has been unable to find an organization willing or able to hold the CR. The organizations approached include the Nantucket Conservation Commission, the Nantucket Land Council, the Nantucket Land Bank, the Nantucket Conservation Foundation, Massachusetts Audubon, the Nature Conservancy, the Trust for Public Land, the Association to Preserve Cape Cod, and the United States Fish & Wildlife Services. As you will see from the attached correspondence, the reasons for denial are varied.

Over the past year or so, we have explored alternatives and have discussed the situation with the Planning Director. We have concluded that, under the circumstances, it would be appropriate for a Town entity to hold this CR. To that end, I have prepared and am attaching a proposed CR using the model provided by the

SARAH F. ALGER, P.C.

Dawn Hill Holdgate, Chair  
Nantucket Select Board  
January 29, 2020  
Page 2

Division of Conservation Services (the "DCS"), which is within the Commonwealth's Executive Office of Energy and Environmental Affairs, the state agency that ultimately must approve the CR. I am also attaching the DSC chart that outlines the basic approval process.

It had been our hope that the Planning Board would be able to hold the CR, but a question has been raised as to whether the Planning Board has the power to do so. No such question exists as to the Select Board. While we are waiting for Town Counsel to opine on this issue, we want to start the discussion with the Select Board so as to not lose any further time.

At this time, I am asking that this matter be placed on the Board's agenda for discussion at the next appropriate meeting. If the Board is amenable to holding the CR, then I will start the process of obtaining approval for local signatures from the DCS. Once that approval is obtained, I would bring the CR back to the Board for signature.

Please let me know when this matter can come before the Board for discussion.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SFA', is written over the word 'Sincerely,'.

SFA/

cc: Hawthorne Park LLC

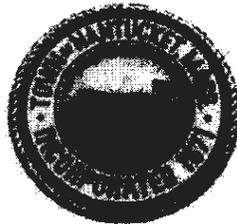
Andrew Vorce, Planning Director

LAND COURT, BOSTON. The Land herein described will be shown on our approved plan to follow as

*As Shown*

AUG 21 2017

Plan 14973<sup>P</sup> Lot 5 65<sup>through 80</sup>  
(EXAMINED AS DESCRIPTION ONLY)  
TCP CHIEF SURVEYOR (T16)



2017 00156034

Cert: 26056 Doc: SP  
Registered: 08/29/2017 11:18 AM

2017 MAR 15 PM 1:48  
 NANTUCKET  
 TOWN CLERK

## Nantucket Planning Board

### APPROVAL OF A FLEX DEVELOPMENT SPECIAL PERMIT

#### HAWTHORNE PARK

Planning Board File #61-16

Applicant: Hawthorne Park LLC and David L. Ratner and Andrew B. Law  
 Owner: Hawthorne Park LLC, David L. Ratner and Andrew B. Law, and Marsali Baker (now Hawthorne Park LLC)  
 4, 6, & 8 Hawthorne Lane, and 39, 49 (portion), & 55 (portion) Hummock Pond Road  
 Nantucket Tax Assessors Map 56, Parcels 215, 216, 220, 214, 5, and 4, respectively  
 Lots 32, 31, 30, and 46, Land Court Plan No. 14973-F; Lot 1 (portion), Land Court Plan 14973-B  
 and Lot 56, Land Court Plan No. 14973-K, respectively  
 Certificates of Title Nos. 25132, 26056, 26090, and 26345

January 9, 2017

#### PROPOSAL

The Nantucket Planning Board at its December 6, 2016 and January 9, 2017 meetings considered the Application of Hawthorne Park LLC for a Flex Development Special Permit pursuant to Nantucket Zoning By-law (the "By-law") §139-8.A and the *Rules and Regulations Governing the Subdivision of Land in Nantucket*.

The Applicant is proposing an eighteen (18) lot Flex Development (seventeen (17) building lots and one (1) community lot (the "Community Lot")) on an approximately 6.523 acre tract of land located at the corner of Hawthorne Lane and Hummock Pond Road. The site, with the exception of a small area of the Community Lot, is located in the Town Overlay District ("TOD"), and the entire site is located in a Residential 20 ("R20") zoning district, which requires, for a conventional subdivision, minimum lot size of twenty thousand (20,000) square feet, minimum frontage of seventy-five (75) feet, minimum required front yard setback of thirty (30) feet, minimum side and rear yard setback of ten (10) feet, and maximum ground cover of twelve and one-half percent (12.5%).

Flex Developments are allowed in the TOD, and in the R20 zoning district, the site must conform to following dimensional requirements: minimum tract area of 3 acres, minimum open space of fifty percent (50%) of the total tract area, minimum lot size of seven thousand five hundred (7,500) square feet, minimum frontage of twenty (20) feet, minimum required front yard setback of five (5) feet, minimum side and rear yard setback of five (5) feet, and maximum ground cover of thirty percent (30%).

Under By-law §139-8.A.(3)(a)[1], the Planning Board is the sole permit granting authority for relief for Flex Development.

Under By-law §139-8.A, the primary purposes of the Flex Development option are as follows:

- (a) *To allow for greater flexibility and creativity in the design of residential developments.*
- (b) *To encourage a more efficient form of development that consumes less open land.*
- (c) *To reduce infrastructure and site disturbance through the creation of compact development.*
- (d) *To encourage the permanent preservation of open space.*

The site is served by municipal water, is in the Town sewer district, and will be served by municipal sewer, which the Applicant proposes to install in Hawthorne Lane. Hawthorne Lane will be paved to a width of sixteen (16) feet from its intersection with Hummock Pond Road to a point just past the last project driveway curbcut, and the Hummock Pond Road intersection will be realigned within the Hawthorne Road layout.

As required under By-law §139-8.A.(1)(a)[5], as part of the approval process, the Applicant submitted a dimensioned lotting plan showing fourteen (14) conforming Approval Under the Subdivision Control Law Not Required ("ANR") lots. The purpose of the dimensioned lotting plan was to illustrate that the project site could accommodate a conventional subdivision with the same number of lots as requested in the Flex Development subdivision proposal, exclusive of any bonus lots under Bylaw §139-8.A.(2). As required under By-law §139-8.A.(1)(a)[5], all lots shown on the proof plan meet the dimensional requirements for a conventional subdivision pursuant to Nantucket Zoning Bylaw section 139-16.

The project is entitled to a total of three (3) bonus building lots under By-law §139-8.A.(2)(a), for a total of seventeen (17) building lots, calculated (with fractions equal to or greater than 0.51 being rounded to the next highest whole number) as follows:

Conventional Lots:	14
By-law §139-8.A.(2)(a)[1] 10% increase (14 + 1.4)	15.4
By-law §139-8.A.(2)(a)[3] increase 1% of 10% (15.4 + 1.555)	17
By-law §139-8.A.(2)(a)[4] Total increase not more than 30% or 18.2	

In accordance with the Bylaw, the project will preserve more than fifty percent (50%) of the 6.523 acre property as open space in the form of the Community Lot, for which a Homeowners Association will be created to maintain ownership and management responsibility. The Community Lot is intended to serve as a functional park and passive and active recreation area for the homeowners and their guests and will contain a community swimming pool, a 412 square foot cabaña, a 763 square foot field house, a total of eight (8) community parking spaces, including one (1) that will be ADA compliant, and a twelve (12) foot wide gravel community driveway that will be one-way from Hummock Pond Road to Hawthorne Road. The remaining area of the Community Lot will be architecturally landscaped. In accordance with By-law §139-8.A.(1)(b)[1][d], the Community Lot will be subject to a permanent conservation restriction, as provided in Mass. Gen. Laws c. 184, §§31 through 33, and owned in common by the Homeowners Association to be formed pursuant to By-law §139-8.A.(1)(a)[4].

## **BASIS OF THE FINDINGS**

The Board's findings and decision refer to the following:

- An Application to the Planning Board dated October 17, 2016, filed with the Town Clerk on October 19, 2017.
- Plans entitled "Flex Development Plan Hawthorne Park" sheets 1 through 12, prepared by Green Seal Environmental, Inc., dated January 5, 2017, subject to minor changes as required by this Decision.

- Representation and testimony received in connection with the public hearings held December 6, 2016 and January 9, 2017. Minutes of these meetings are on file with the Planning Board; and
- Other assorted documents that are on file with the Planning Board.

## FINDINGS

The Board finds that:

- The proposed flex development is in harmony with the general purpose and intent of the Bylaw.
- Traffic flow and safety in the proposed development, the neighborhood, and adjacent public and private ways will not be significantly impacted in comparison with other development options.
- The quality of the site design, building design, and landscaping enhances the area in comparison with other development options.
- The provision of open land and associated landscaping is appropriate for the scale and location of the development as determined by the Planning Board.
- That utilities and services, including, but not limited to, municipal water and sewer service, are adequate for the proposed development.

In making its findings, the Planning Board considered the following development and design criteria:

- The proposed landscaping features, utilizing both natural and man-made materials, include effective screening, planting of street trees, and the preservation of existing mature vegetation.
- Walking paths throughout the site encourage pedestrian activity.
- Vehicular access is consolidated in a small number of widely spaced access points, and an interior community driveway provided in the Community Lot will improve traffic flow and promote safety.
- The project utilizes common driveways and shared parking areas, resulting in three (3) curbcuts on each of Hawthorne Lane and Hummock Pond Road.

## DECISION

The Planning Board is required to render its Decision on the Application based upon By-law §139-8(A), which applies to Flex Developments, and the *Rules and Regulations Governing the Subdivision of Land in Nantucket* (as amended through December 20, 1999).

The Nantucket Planning Board, upon a UNANIMOUS vote (5-0), hereby **APPROVES** this proposal, **GRANTS** a Special Permit for a Flex Development pursuant to By-law §139-8.A, finding that the Application, as modified by the following conditions, is in harmony with the general purpose and intent of the Bylaw, and votes to **ENDORSE** this Decision.

The Planning Board's approval is conditioned upon compliance with the "Proposal" and "Findings" set forth in this Decision and the plans referenced herein and upon the following additional requirements and agreements:

1. The following waivers from the *Rules and Regulations Governing the Subdivision of Land* are hereby granted:

2.06a(11)

Submission Requirements

Waiver Granted – As the application materials contain sufficient information to negate the need for a stand-alone site analysis report, the requirement for such a report is waived.

- 4.03a(1) Streets  
Waiver Granted – To retain the rural character of the neighborhood, a waiver is granted to allow Hawthorne Lane to be paved to a width of sixteen (16) feet.
- 4.03e Minimum Design Standards  
Waiver Granted – A waiver is granted to allow Hawthorne Lane to be paved to a width of sixteen (16) feet.
- 4.05a(3) Street Construction  
Waiver Granted – In keeping with the rural character of the neighborhood, a waiver is granted to allow Hawthorne Lane to be paved to a width of sixteen (16) feet.
- 4.09 Shoulders  
Waiver Granted.
- 4.17.1 Fire Alarms and Emergency Water Supply  
Waiver Granted – the site is connected to municipal water, and fire alarm boxes are not necessary in this area.
- 4.18 Sidewalks  
Waiver Granted – To retain the rural character of the neighborhood, the requirement to construct sidewalks is waived.
- 4.19 Bicycle Paths  
Waiver Granted – The scale and location of the proposed subdivision does not necessitate the need for bike paths; however, the applicant has voluntarily agreed to contribute \$34,000.00 (\$2,000 per lot) toward the future extension, maintenance, or improvement of the Hummock Pond Road Bike Path.
- 4.20 Street Lights  
Waiver Granted – To retain the rural character of the neighborhood the requirement to provide street lights is waived.
- 4.22 Curbing and Berms  
Waiver Granted – As the proposed roadway is designed as a “Rural Road” alternative, the requirement to construct curbing and berms is waived.
- 5.06 Drainage System  
Waiver Granted

2. An ANR plan creating the eighteen (18) lots (seventeen (17) building lots and one (1) community lot), accompanied by a completed, executed Form A application, shall be submitted to the Planning Board for endorsement within six (6) months from the date of this Decision (January 9, 2017).
3. The final plan set for the flex development shall be submitted to the Planning Board for approval within six (6) months from the date of this Decision (January 9, 2017). The

landscaping, specifications for the realignment of the intersection of Hawthorne Lane and Hummock Pond Road within the layout of Hawthorne Lane, the paving of Hawthorne Lane, the location of fire hydrants, and the installation of municipal sewer in Hawthorne Lane, with appropriate stubs being left for the properties on the north side of the portion of Hawthorne Lane to be paved, shall be included in such final plan set and reviewed and approved by the Planning Board's engineer, Pesce Engineering & Associates, and as appropriate, the Nantucket Department of Public Works and Nantucket Fire Department, prior to approval and construction, and certain technical modifications may be required as part of such review and approval. A final sign-off shall be obtained from Pesce Engineering & Associates prior to approval of the plans by the Planning Board.

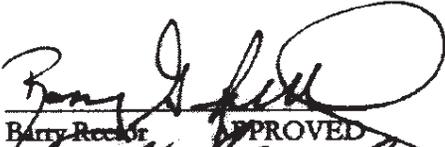
4. The paving and realignment of Hawthorne Lane and the installation of all municipal services shall be completed in accordance with the final plan set, the applicable sections of the *Rules and Regulations Governing the Subdivision of Land*, or as directed by the Planning Board and/or its engineer, Pesce Engineering & Associates, within two (2) years of the date of approval of the final plan set.
5. Recorded copies of all legal documents (this Decision, Covenant, Homeowners Association, Grant of Right of Enforcement, Road Maintenance and Endowment Agreement, and all restrictions and easements, including those set forth in this Decision, with the exception of the conservation restriction on the Community Lot shall be presented to the Planning Board prior to the release of the fifth (5<sup>th</sup>) building lot and within six (6) months from the date of this Decision (January 9, 2017).
6. The Homeowners Association shall be established for the maintenance of all required improvements, including the paved section of Hawthorne Lane, drainage, utilities, landscaping, and the Community Lot and amenities. The Homeowners Association shall be initially endowed by the Applicant at the rate of \$1,000 per lot (\$17,000.00 total). This fund shall be administered by the Homeowners Association with the Planning Board named as a third party enforcing agent.
7. Documentation that the Community Lot has been conveyed to the Homeowners Association, with enforcement granted to the Planning Board pursuant to Zoning By-law §139-8.A(1)(b)[1], shall be presented to the Planning Board prior to the sale of any lot and in no event later than two (2) years of the date of endorsement of the final plan set. Ownership of the Community Lot shall be maintained by the Homeowners Association. Uses permitted on the Community Lot shall comply with the uses specified in Bylaw §139-8.A(1)(b)[1] and those uses specified in MGL c. 184, sections 31 and 32 and may include the proposed community swimming pool, cabaña, and field house to be used by the members of the Homeowners Association and their guests for passive and active recreation, and the proposed community parking spaces and community driveway along the perimeter of the Community Lot.
8. A permanent conservation restriction, as provided in Mass. Gen. Laws c. 184, §§31 through 33, shall be granted on the Community Lot to an appropriate, qualified holder prior to the sale of any building lot and in no event later than two (2) years from the date of approval of the final plan set; provided, however, that the failure or refusal of an appropriate, qualified holder to accept such conservation restriction shall not affect the intent or findings of this Decision, the applicant's ability to proceed under the other provisions of this Decision, or the special permits, approvals, endorsements, and waivers granted in or pursuant to this decision; if the Planning

Board finds that the Applicant has sought such a holder in good faith and with all due diligence. Such finding shall not require a public hearing.

9. Five (5) lots (four (4) building lots and the Community Lot) shall be released from the Covenant as of the date of this Decision. The remaining thirteen (13) building lots shall remain subject to the Covenant and, upon the request of the Applicant, may be released by the Planning Board, at its discretion, without a public hearing, as the work permitted hereunder progresses.
10. All lots shall be restricted against further subdivision. Minor lot line adjustments which do not result in the creation of any additional buildable lots shall be permitted through the ANR process.
11. All lots shall be restricted against secondary and tertiary dwellings. Subject to available ground cover, lots may contain sheds, garages, studios, and other accessory structures in addition to a primary dwelling.
12. Landscaping or other appropriate demarcation shall be installed along the rear boundary line of the building lots, between the building lots and the Community Lot, to prevent individual homeowners from encroaching on the Community Lot and to facilitate enforcement.
13. All driveways shall contain a driveway apron, be subject to an appropriate easement providing for maintenance, repair, and reconstruction, and otherwise be in compliance with the requirements of By-law section 139-20.1.
14. The landscaping shall be completed substantially in conformity with the final plan set, and the maintenance of it shall be the ongoing responsibility of the Homeowners Association, with enforcement granted to the Planning Board.
15. All lots shall be connected to municipal water and sewer services.
16. The following intensity regulations shall apply:
  - Ground Cover Ratio – 30%
  - Front Setback – 5 feet
  - Side/Rear Setback – 5 feet with a waiver to 0 feet from the Community Lot
  - Minimum Lot Size – 7,500 square feet
  - Frontage – 20 feet
17. The extension of any deadline set forth in this Decision may be granted without the benefit of a public hearing.
18. A pre-construction meeting shall be scheduled with planning staff and conducted prior to any paving, utility, or other construction.

**RECORD OF VOTE**

On January 9, 2017 a motion was made and duly seconded to close the public hearing, and the Planning Board voted UNANIMOUSLY (5-0) to **ENDORSE** this Decision, **APPROVE** the Application for a Flex Development Special Permit as proposed, and **GRANT** a Special Permit for a Flex Development pursuant to By-law §139-8.A.

  
Barry Reeder APPROVED

  
John Trudel, III APPROVED

  
Nathaniel Lowell APPROVED

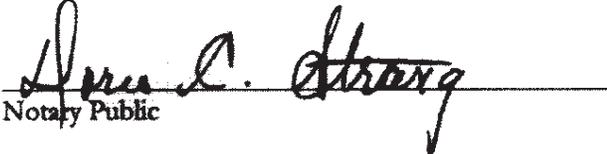
  
Carl Borchert APPROVED

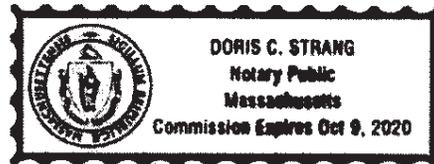
Stephen Welch APPROVED

**COMMONWEALTH OF MASSACHUSETTS**

Nantucket, ss.

On the 9 day of March, 2017, before me, the undersigned notary public, personally appeared Carl Borchert, one of the above-named members of the Planning Board of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that he signed the foregoing instrument voluntarily, as his free act and deed, for the purposes therein expressed.

  
Notary Public



October 9, 2020  
My Commission Expires

APR 25 2017

I CERTIFY THAT 20 DAYS HAVE ELAPSED AFTER THE DECISION WAS FILED IN THE OFFICE OF THE TOWN CLERK, AND THAT NO APPEAL HAS BEEN FILED, PURSUANT TO GENERAL LAWS 40A, SECTION 11

 TOWN CLERK

ATTEST: A TRUE COPY

  
NANTUCKET TOWN CLERK

DOC No: 00156034

NANTUCKET COUNTY LAND COURT  
REGISTRY DISTRICT

\*\* RECEIVED FOR REGISTRATION \*\*

On: Aug 29, 2017 at 11:18A

Document Fee: 300.00 Rec Total: \$3,225.

CERTIFICATE No: 26056

also noted on Certs 26090  
26345 + 26517

TOWN CLERK  
THE PETITIONER TO GENERAL LAWS SECTION II  
TOWN CLERK AND THAT NO APPEAL HAS BEEN  
THE DECISION WAS FILED IN THE OFFICE OF THE  
COURT BY THE 30 DAYS HAVE ELAPSED AFTER

AUG 29 2017



Terry Sanford <ts@blueflagdev.com>

---

## Nantucket Conservation Restriction

**Andrew Gottlieb** <agottlieb@apcc.org>  
To: Terry Sanford <ts@blueflagdev.com>  
Cc: "mark@thecompact.net" <mark@thecompact.net>

Mon, Oct 16, 2017 at 12:27 PM

Terry- This is not something that falls within our mission, but I am referring you to Mark Robinson who knows all things and people related to CRs and should be able to help you find an appropriate holder of the CR.

Andrew Gottlieb, Executive Director

Association to Preserve Cape Cod

508-619-3185

[www.apcc.org](http://www.apcc.org)

---

**From:** Terry Sanford <ts@blueflagdev.com>  
**Sent:** Monday, October 16, 2017 11:53:05 AM  
**To:** Andrew Gottlieb  
**Subject:** Nantucket Conservation Restriction

[Quoted text hidden]



Terry Sanford <ts@blueflagdev.com>

---

## Hawthorne Park FLEX Subdivision

---

**Jeff Carlson** <JCarlson@nantucket-ma.gov>  
To: Terry Sanford <ts@blueflagdev.com>

Mon, Oct 16, 2017 at 6:25 AM

Good morning,  
The Conservation Commission is not interested in holding this Conservation Restriction. As a regulatory board they do not feel that it is appropriate for them to hold this restriction.

Thanks,  
Jeff Carlson  
Natural Resources Coordinator  
Town of Nantucket  
[2 Bathing Beach Road](#)  
Nantucket, MA 02554  
508-228-7230

---

**From:** Terry Sanford [[ts@blueflagdev.com](mailto:ts@blueflagdev.com)]  
**Sent:** Friday, October 13, 2017 12:13 PM  
[Quoted text hidden]

[Quoted text hidden]



Terry Sanford &lt;ts@blueflagdev.com&gt;

---

## Nantucket Conservation Restriction

---

**Jim Lentowski** <jlentowski@nantucketconservation.org>  
To: Terry Sanford <ts@blueflagdev.com>

Fri, Nov 3, 2017 at 1:52 PM

Terry:

Sorry for the delayed response – we've been shorthanded at a busy end-of-season time.

Evaluating a proposed area's conservation values, negotiating the details of property-specific restrictions, taking the required documents through required local and state approval process, monitoring and enforcing a Conservation Restriction on private property in perpetuity are elements of a specialized land conservation process that the Foundation as the owner/manager of large, contiguous, publically accessible open spaces is not setup to do.

As I'm sure know, on Nantucket CRs have largely been the province of the Land Council working with its legal and environmental advisors. Others, including the Tuckernuck Land Trust, Sconset Trust and Madaket have occasionally done so, but limit their involvement to their area of operation.

I'm not sure what the positions of qualified town agencies are with regard to negotiating/monitoring/enforcing CRs.

Best wishes,

Jim

**From:** Terry Sanford [mailto:ts@blueflagdev.com]  
**Sent:** Thursday, October 26, 2017 12:32 PM  
**To:** Jim Lentowski <jlentowski@nantucketconservation.org>  
**Subject:** Re: Nantucket Conservation Restriction

[Quoted text hidden]



October 12, 2017

Terry Sanford  
Hawthorne Park Partners  
105 Newbury Street  
Boston, MA 02116

Re: Request to Hold Conservation Restriction for the Hawthorne Park FLEX Subdivision

Dear Mr. Sanford:

At its last meeting held on October 10, 2017, the Nantucket Islands Land Bank Commission ("Land Bank") considered your request for the Land Bank to hold a conservation restriction on the "community lot" in the Hawthorne Park subdivision, a condition of the Planning Board's special permit which approved this FLEX development. It is the Land Bank's understanding that this lot will include a swimming pool, cabana, and field house which are to be used only by members of the Homeowner's Association and their guests for passive and active recreation; and further, that residential parking spaces and a shared driveway for the subdivision will also be located on the lot. Finally, the permit indicates that the remainder of the community lot will be architecturally landscaped.

In short, given the lack of any public open space value, the Land Bank Commission denied the request to be a qualified holder of the restriction.

Sincerely,

A handwritten signature in blue ink that reads "Eric Savetsky". The signature is fluid and cursive.

Eric Savetsky  
Executive Director



## Nantucket Land Council, Inc.

Six Ash Lane  
Post Office Box 502  
Nantucket, Massachusetts 02554  
508 228-2818  
Fax 508 228-6456  
nlc@nantucketlandcouncil.org  
www.nantucketlandcouncil.org

### Board of Directors

Lucy S. Dillon  
*President*

Paul A. Bennett  
*Vice President*

William Willet  
*Vice President*

Howard N. Blitman  
*Treasurer*

Sara P. Congdon  
*Assistant Treasurer*

Susan E. Robinson  
*Clerk*

Larry Breakiron

William S. Brenizer

Karen K. Clark

Christine Donelan

Josh Eldridge

Robert Friedman

Nancy Gillespie

Nathanael Greene

Mary Heller

Charles A. Kilvert III

Laurel Ried Langworthy

Matthew B. Liddle

Peter McCausland

Fritz McClure

Eileen P. McGrath

Paul P. Moran

Carl H. Sjolund

H. Brooks Smith

James W. Sutherland, Ph.D.

David Troast

Peter Watrous

Jon Wisentaner

### Honorary Directors

William M. Crozier, Jr.

Jean Haffenreffer

### Staff

Cormac Collier  
*Executive Director*

Emily Molden  
*Resource Ecologist*

Amy Zielinski  
*Development Director*

August 21, 2017

Terry Sanford  
Blue Flag Development  
105 Newbury Street  
4th Floor  
Boston, MA 02116

Dear Terry,

Thank you for your interest in the Nantucket Land Council's Conservation Restriction Program. The Nantucket Land Council has decided to not hold the proposed conservation restriction at the Hawthorne Lane Flex (Cluster) Subdivision.

Among other things, the Board felt that the design and layout of the subdivision could have been drastically improved so that the public benefits of the open space were better taken into account. The buildings and lots could have been clustered in a more appropriate manner protecting a more intact area rather than one that is fragmented and marginalized. Further, the Board felt that the access road and parking for the private clubhouse and pool should never have been included as part of the required open space percentage in the subdivision permit. Thus, the Board was concerned that the conservation restriction would have a hard time securing the necessary approval from the Board of Selectmen and the Massachusetts Executive Office of Energy and Environmental Affairs.

For future Flex developments, the Board expressed an interest to be part of the design phase so that these matters can be handled prior to the permitting stage so as not to leave a Flex (Cluster) subdivision without an interested holder of the conservation restriction.

Sincerely,

Cormac Collier  
Executive Director





---

**Nantucket Conservation Restriction**

**Ernie Steinauer** <esteinauer@massaudubon.org>  
To: Terry Sanford <ts@blueflagdev.com>

Wed, Sep 20, 2017 at 5:55 AM

Terry, Here are the reasons that Mass Audubon is not interested in holding the conservation Restriction (CR):

The CR is imbedded in residential development with no connection to other open space.

The area is small with a high edge to interior ratio. This provides more opportunities for invasive species and issues with abutters.

The CR will be held by a homeowners assoc. which means that there will be many people to satisfy and those people will likely change over time.

The site is a former dump and auto junk yard so the soil is likely compacted and polluted.

The major value of the CR is to reduce development density which is not one of our major concerns.

Ernie Steinauer

Mass Audubon Sanctuary Director

508-560-0057

**From:** Terry Sanford [mailto:ts@blueflagdev.com]  
**Sent:** Tuesday, September 19, 2017 9:46 AM  
**To:** Ernie Steinauer <esteinauer@massaudubon.org>  
**Subject:** Re: Nantucket Conservation Restriction

[Quoted text hidden]



---

## Nantucket Conservation Restriction

Marea Gabriel <mgabriel@tnc.org>  
To: "ts@blueflagdev.com" <ts@blueflagdev.com>

Thu, Oct 19, 2017 at 8:22 AM

Hi Terry,

Thank you for contacting The Nature Conservancy regarding a conservation restriction on land on Nantucket. Although Nantucket hosts unique and important ecosystems, TNC does not hold much land on the island and we aren't likely to pursue protection in this area. As you likely know, conservation resources are finite for land protection and its long-term stewardship, so we must devote our attention to areas most critical in fulfilling our mission – 'to conserve the lands and waters on which all life depends'. We do this by concentrating our work in several pre-selected areas throughout the state - in areas chosen based on their ecological value, long-term resilience, attention (or lack thereof) from other conservation organizations, and other factors.

The property is likely of greater significance from a more local perspective, so if you have not done so already, I would suggest contacting the **Nantucket Conservation Foundation** (contact below), as they work in the area and may be able to provide you with some guidance. Another option might be the **Nantucket Land Council** (contact below). Additionally, a great resource is the **Massachusetts Land Trust Coalition's** website, at <http://massland.org>, which provides a wealth of information about conserving land in Massachusetts.

### Nantucket Conservation Foundation Inc

PO Box 13

Nantucket, MA 02554-0013

508-228-2884

[www.nantucketconservation.org](http://www.nantucketconservation.org)

### Nantucket Land Council, Inc.

6 Ash Lane, PO Box 502

Nantucket, MA 02554

Phone: 508.228.2818

[www.nantucketlandcouncil.org](http://www.nantucketlandcouncil.org)

Thank you, and please let me know if you have any questions.

Marea

Please consider the environment before printing this email.

---

Marea Gabriel  
Conservation Projects Manager  
[mgabriel@tnc.org](mailto:mgabriel@tnc.org)

(617) 532 8392 (Phone)

(617) 532 8400 (Fax)

[nature.org](http://nature.org)

The Nature Conservancy  
Boston

99 Bedford Street, 5th floor

Boston MA 02111



---

**From:** Terry Sanford <ts@blueflagdev.com>  
**Sent:** Monday, October 16, 2017 11:53 AM  
**To:** massachusetts  
**Subject:** Nantucket Conservation Restriction

[Quoted text hidden]



---

**Fwd: Nantucket Conservation Restriction**

**Kelly Boling** <kelly.boling@tpl.org>  
To: "ts@blueflagdev.com" <ts@blueflagdev.com>

Mon, Oct 16, 2017 at 5:07 PM

Hi, Terry.

The Trust for Public Land relies on local partners to hold and steward the conservation property interests arising from our land protection work. We're accordingly not equipped to hold the conservation restriction you describe.

Following are some local land trusts that service Nantucket. You might try reaching out to one of them—or to the public agency requiring the regulatory open space set aside.

LOCAL  
Nantucket Conservation Foundation

Nantucket Land Council, Inc.

Sconset Trust, Inc.  
Tuckernuck Land Trust

STATEWIDE  
Massachusetts Audubon Society  
The Trustees of Reservations

Best,

-Kelly

**Kelly Boling** | Parks for People Program Director  
The Trust for Public Land  
6 Beacon Street, Suite 615  
Boston, MA 02108  
617.371.0558 | [kelly.boling@tpl.org](mailto:kelly.boling@tpl.org) | [www.tpl.org](http://www.tpl.org)

Begin forwarded message:

**From:** Terry Sanford <ts@blueflagdev.com>  
**Date:** October 16, 2017 at 11:53:44 AM EDT  
**To:** [massachusetts@tpl.org](mailto:massachusetts@tpl.org)  
**Subject:** Nantucket Conservation Restriction

To whom it may concern -

I am overseeing the development of a residential subdivision in Nantucket, MA under the local FLEX subdivision regulations. These call for a large portion of the property to be set aside as open space and encumbered with a conservation restriction. I am looking for an entity that might like to hold the conservation restriction and am wondering if the Trust for Public Land might have any interest. My contact info is below.

Best,  
Terry

--

**Terry Sanford**

Blue Flag Development  
105 Newbury Street  
4th Floor  
Boston, MA 02116

O: (617) 314-9003  
M: (508) 257-1225

[www.BlueFlagDevelopment.com](http://www.BlueFlagDevelopment.com)

---

 **Hummock Pond Road Open Space Plan.pdf**  
426K



---

**Nantucket Conservation Restriction**

---

**Eagle, Tom** <tom\_eagle@fws.gov>  
To: ts@blueflagdev.com

Wed, Oct 18, 2017 at 1:26 PM

Terry

The USFWS doe sat time acquire and hold conservation easements on habitat but generally not as open space for a development. You should contact the Nantucket Land Bank, Nantucket Conservation Foundation or the Town of Nantucket

----- Forwarded message -----

From: **Steven Pageau** <steven\_pageau@fws.gov>  
Date: Wed, Oct 18, 2017 at 1:04 PM  
Subject: FW: Nantucket Conservation Restriction  
To: Tom Eagle <tom\_eagle@fws.gov>

Hi Tom,

This was sent to our common mailbox. Not sure if it requires any action.

Steve

**From:** Terry Sanford [mailto:ts@blueflagdev.com]  
**Sent:** Monday, October 16, 2017 11:54 AM  
**To:** fw5rw\_emnwr@fws.gov  
**Subject:** Nantucket Conservation Restriction

[Quoted text hidden]

--

**Tom Eagle**

Deputy Wildlife Refuge Manager  
Eastern MA NWR Complex  
73 Weir Hill Rd.  
Sudbury, MA 01776

Office: 978-579-4027

Cell: 978-580-0183

email: tom\_eagle@fws.gov

---

 **Hummock Pond Road Open Space Plan.pdf**  
426K

## Working with the Division of Conservation Services on Conservation Restrictions

This chart outlines the basic process through which a conservation restriction is submitted to the Division of Conservation Services (within the Commonwealth’s Executive Office of Energy and Environmental Affairs), reviewed, and completed. Please visit the DCS website for the CR application form, model conservation restriction, and other relevant information - <https://www.mass.gov/service-details/conservation-restriction-review-program>

Step	CR Applicant	DCS
<b>1</b>	Mails CR Application form to DCS	Requests supporting material via e-mail
<b>2</b>	E-mails supporting material (e.g., Word version of CR, exhibits, maps, etc. – see application form)	Once all documents are received, e-mails acknowledgement receipt, assigning CR # and Reference #
<b>3</b>		Provides review of CR using MS Word’s ‘track changes’ and ‘comments’ features
<b>4</b>	Revises CR per DCS review, e-mails revised CR to DCS, confirming that Grantor and Grantee agree on revised CR, or providing further comments/changes	Provides further review or, if CR is ready, advances to EOEEA legal for final review
<b>5</b>		Provides final review from EOEEA legal
<b>6</b>	Revises CR, if necessary, after receiving EOEEA legal review	After EOEEA legal review has been addressed, e-mails letter acknowledging that the CR is ‘approved for local signatures’
<b>7</b>	Collects signatures of Grantor, Grantee, municipality, and any other required signatures.	
<b>8</b>	Mails one (1) <u>copy</u> of a fully executed CR to DCS, along with a return envelope or FedEx shipping label	Advances CR to the Secretary of EOEEA
<b>9</b>		Mails signed CR back to CR Applicant
<b>10</b>	Records CR and e-mails PDF of recorded CR to DCS	Closes out and archives CR file in DCS database; shares recorded CR with GIS department

**For general inquiries regarding conservation restrictions, contact Denise Pires, Program Coordinator, at [Denise.Pires@mass.gov](mailto:Denise.Pires@mass.gov), or 617-626-1011**

**GRANTOR:** Hawthorne Park LLC  
**GRANTEE:** The Town of Nantucket, acting by and through its Board of Selectmen  
**ADDRESS OF PREMISES:** 8C Hawthorne Lane  
**FOR GRANTOR’S TITLE SEE:** Certificates of Title Nos. 26517, 26345, 26056, and 26090

## **CONSERVATION RESTRICTION**

Hawthorne Park LLC, having a mailing address in care of Alfred Sanford, Manager, 105 Newbury Street, 4th Floor, Boston, Massachusetts 02116, being the sole owner, for its successors and assigns (the “Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants with QUITCLAIM COVENANTS to the Town of Nantucket, acting by and through its Board of Selectmen, having an office located at 16 Broad Street, Nantucket, Massachusetts 02554, and its permitted successors and assigns (the “Grantee”), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in Nantucket, Nantucket County, Massachusetts, being an approximately 3.32 acre (144,511±square feet) property, now known and numbered as 8C Hawthorne Lane, being Lot 82 on Land Court Plan No. 14973-P ( the “Premises”), which Premises is shown as the “Community Lot” on the plan entitled, “Conservation Restriction Plan,” drawn by Blackwell & Associates, Inc., dated December 30, 2019, recorded with Nantucket Deeds as Plan No. \_\_\_\_\_, a copy of which is incorporated herein and attached hereto as Exhibit A (the “Plan”).

### **I. PURPOSES.**

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (the “Conservation Values”).

This Conservation Restriction is required by that certain Flex Development Special Permit issued by the Nantucket Planning Board (the “Planning Board”) in File No. 61-16, dated January 9, 2017, registered with Nantucket Registry District as Document No. 156034, as amended by Amendment

#1 to a Previously Granted Flex Development Special Permit issued by the Planning Board in File No. 80-17, dated November 17, 2017, registered with Nantucket Registry District as Document No. 158692 (the “Special Permit”).

The conservation values include the following:

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of the Hummock Pond Road area of Nantucket, and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is close to land already conserved, including, but not limited to, Burnt Swamp and the Prospect Hill Cemetery.
- Flood Plain Protection. The entire Premises lies within the 100-year floodplain of Nantucket Sound. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events.
- Soils. The Premises includes of Prime Farmland and Prime Forest Land of Local Importance.
- Protection of Wildlife Habitat. The Premises consists entirely of land designated as “Natural Communities” as defined by the Massachusetts Natural Heritage Program, the protection of which aligns with NHESP’s wildlife and habitat protection objectives.
- BioMap2. The Premises is close to Core Habitat as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. BioMap2 is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. The nearby Forest Core is an example of large, intact forests that are least impacted by roads and development and that provide critical "forest interior" habitat for numerous woodland species, Preservation of the Premises will support this Forest Core.
- Water Quality Protection. The Premises is the location of a former junkyard, which has been cleaned up and repurposed by the Grantor. Protection of the Premises in its current state will help maintain water quality for public drinking water in Nantucket, which has been identified as a sole source aquifer.
- Consistency with Clearly Delineated Local Governmental Conservation Policy. Protection of the Premises advances the flex development objectives set forth in the Nantucket Zoning By-law (the “By-law”) by allowing for greater flexibility and creativity in the design of the residential development, encouraging a more efficient form of development that consuming less open land, reducing infrastructure and site disturbance through the creation of compact development, and encouraging the permanent preservation of open space.

- Historical Purposes. The Premises is located in a Historic District overseen by the Nantucket Historic District Commission. Preservation of the Premises will protect historically open land and provide scenic vistas and preserve the sense of open space.
- Water Supply Protection. The Premises is located in Zone B of the Hummock Pond Watershed Protection Zone. Preservation of the Premises will advance the objectives of the Nantucket Board of Health in creating Zone B of the Hummock Pond Watershed Protection Zone.
- Master Plan. The Nantucket Master Plan, approved by the Planning Board on March 30, 2009, and accepted by the Nantucket Annual Town Meeting on April 6, 2009, provides, in relevant part, that:

“The community should continue its efforts to acquire and manage open space for preservation of natural and wildlife habitats, passive and active recreation, and a clean and plentiful water supply.” Protection of the Premises will support the following community values established in the Nantucket. ... The town must encourage the use of tools such as conservation restrictions ... to aid its mission. ... Developers and private homeowners should be provided with incentives to incorporate land protection strategies into their projects...”

Protection of the Premises will support the following community values established in the Nantucket Master Plan:

- Protect the quality of residential districts of Nantucket.
- Protect open spaces and natural resources.
- Protect the historical integrity of the landscape.

Protection of the Premises will also advance the following stated goals of the Master Plan:

- To protect Nantucket’s native ecosystems and biodiversity.
- To provide park and recreational facilities that meet the diverse needs of residents and visitors of all ages.
- To establish and manage an island-wide network of publicly and privately held open spaces, intended to protect critical land and water resources, habitats, and scenic vistas, while affording reasonable public access, consistent with a policy of wise stewardship.

Further, protection of the Premises will promote the following policies set forth in the Master Plan:

- To establish connecting open-space corridors extending from the greenbelt into the Town Overlay District in which the Premises is located, and to preserve and establish private and public greenspace throughout the district.

- To expand recreational facilities to meet the increasing needs of residents, seasonal employees, and visitors.
- Open Space and Recreation Plan. The protection of the Premises will promote the following goals established by the Town of Nantucket 2007 Open Space and Recreation Plan, revised October 6, 2008 (“Open Space and Recreation Plan”):
  - Protect Land - It is very important for the Town of Nantucket to continue to preserve open space in order to protect the environment and provide recreational opportunities.
  - Manage Growth - It is essential to protect important sensitive areas from development and to implement wise land use planning strategies that will ensure a balanced growth that does not exceed the island’s carrying capacity while also providing affordable housing for the island's residents.
  - Protect Water Resources - It is essential to protect ground and surface water resources in order to provide a pollution-free environment for both the human and natural environments.
  - Preserve the Town's Unique Character - It is very important to protect the unique appearance and character of Nantucket in order to maintain and improve the environment the economy and the overall quality of life that attracts and keeps people here.
  - Provide Ample and Accessible Recreational Opportunities - It is important to provide present and future residents of Nantucket with the opportunity to enjoy the recreational, open space and natural resources in and around the Town.
  - Protect and Manage Resources Sustainably - Open space and recreation areas are considered to be one of the most important assets of the town and should be protected and managed as vital natural and cultural resources.

The protection of the Premises will also promote the following objectives of the Open Space and Recreation Plan:

- The town should encourage the use of creative regulatory and non-regulatory land protection tools such as conservation restrictions.
- The town should encourage the development and use of incentives given to private homeowners and developers in order to incorporate land protection strategies into development proposals.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by the Grantee with the cooperation of the Grantor, consisting of the Plan and maps, photographs, and other documents on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by the Grantor and the Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein.

Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES.**

### **A. Prohibited Acts and Uses.**

Subject to the exceptions set forth herein and, in particular, in Paragraph II.B, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises.
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area.
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks, except propane tanks.
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation.
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation.
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired.
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and except as allowed by the Special Permit no portion of the Premises may be used towards building or development requirements on this or any other parcel.
- (8) The use of the Premises for business, residential, or industrial use, or for more than *de minimis* commercial recreation.

- (9) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

**B. Reserved Rights and Exceptions.**

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, woods, roads, fence lines, trails, and meadows, and mowing, weeding, landscaping, and generally maintaining the paths and lawns and including seasonal maintenance of the highland meadow grasses and tick control.
- (2) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
- (3) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season.
- (4) Wildlife Habitat Improvement. With the prior written approval of the Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species.
- (5) Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
- (6) Trails, Paths, Driveway, and Parking. The marking, clearing and maintenance of trails and walking paths as well as installation, use, maintenance, improvement, replacement, and relocation of the existing gravel Community Driveway, about eighteen (18) feet wide, which may be used for access to the land within the Hawthorne Park subdivision, being Lots 65 through 82, inclusive, on Land Court Plan No. 14973-P (“Hawthorne Park”), including but not limited to, emergency vehicle access, and the eight (8) space, Community

parking area, all as shown on the Plan. The Community Driveway and Community Parking Area contain about 13,968 square feet and serve only Hawthorne Park.

- (7) Signs. The erection, maintenance, and replacement of signs with respect to trespass, access to the Premises and its amenities, identity and address of the occupants and the Hawthorne Park, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, the Reserved Rights, and the protected conservation values.
- (8) Passive Recreational Activities. Hiking, walking, horseback riding, dog walking, running, bike riding, swimming, other outdoor exercise, such as tai chi, yoga, and Pilates, nature study, picnicking, cross-country skiing, and other non-motorized outdoor recreational activities (provided, however, that electric bicycles shall be allowed) that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities.
- (9) Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest forest products (as such term may be defined from time to time in General Laws, Ch. 61, Sec. 1, or successor law) and the establishment of new woods roads in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (General Laws, Ch. 132, or its successor) and carried out pursuant to a Forest Management Plan.

Before any harvest of forest products occurs on the Premises, the Grantor shall submit a Forest Management Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Management Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the "Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans" and such statutes, regulations and directions in effect at the time of the approval of said Management Plan. The Management Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Management Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester.

- (10) Preservation. Preservation of important natural features the Premises as shown in the Baseline Report.
- (11) Active recreation.

- (12) Utilities. The installation, maintenance, upgrade, repair, and replacement of surface and subsurface utilities including, but not limited to, mailboxes, sewer lines, storm water management structures such as catch basins, irrigation wells, lines, and controls, low voltage landscaping lights, propane tanks, electric lines, hand holes, transformers, and the like, meters, and panels.
- (13) Accessory Structures. Construction, use, maintenance, repair, and replacement of Structures, with associated utilities, accessory to the use of the open space and/or Hawthorne Park, which may include, but are not limited to, duck walks, landings, agricultural outbuildings, structures, including, but not limited to, tents in accordance with the Nantucket Zoning By-law, associated with recreational uses, socializing, and homeowner events and meetings, benches, and gazebos. The following accessory structures are allowed, but their ground cover is prohibited from inclusion in the minimum open space requirement: residential swimming pool(s) and/or hot tub(s)/spa(s) and their associated decks and/or patios, outbuildings that are cabanas, clubhouses, fieldhouses, fitness studios, offices, and/or game courts. As shown on the Plan, the Premises are currently improved by a field house, a cabana, an inground pool, a hot tub, a deck, a stone patio, and a fence, all of which are located in the “Building Envelope” of about 28,728 square feet shown on the Plan, are for the use of the homeowners within Hawthorne Park and their guests and invitees, and are permitted under the Special Permit.
- (14) Water Features. Water features consistent with the purposes described above.
- (15) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II.B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph II.B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (16) Permits, Regulations, Laws. The exercise of any right reserved by the Grantor under this Paragraph II.B shall be in compliance with the Special Permit, zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.
- (17) Best Management Practices. The exercise of any right reserved by the Grantor under this Paragraph II.B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

### **C. Notice and Approval.**

Whenever notice to or approval by the Grantee is required, the Grantor shall notify the Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date the Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where the Grantee's approval is required, the Grantee shall grant or withhold approval in writing within 60 days of receipt of the Grantor's request. The Grantee's approval shall not be unreasonably withheld but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of the Grantee to respond in writing within 60 days shall be deemed to constitute approval by the Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

### **III. LEGAL REMEDIES OF THE GRANTEE.**

#### **A. Legal and Injunctive Relief.**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. The Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided the Grantor ceases objectionable actions and the Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

The Grantee shall have the right to delegate any and all rights to enforce this Conservation Restriction to any department, commission, agency, board or employee of the Town of Nantucket.

Grantor covenants and agrees to reimburse to the Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by the Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, the Grantor shall pay for a survey and to have the boundaries permanently marked.

#### **B. Non-Waiver.**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

**C. Disclaimer of Liability.**

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

**D. Acts Beyond the Grantor's Control.**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and the Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

**IV. ACCESS.**

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

**V. EXTINGUISHMENT.**

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V.B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. The Grantor and the Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee in accordance with Paragraph V.B above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VI. DURATION & ASSIGNABILITY.**

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and that the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VII. SUBSEQUENT TRANSFERS.**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. The Grantor and the Grantee acknowledge that it is the Grantor's intent to transfer the Premises to the then Trustee of the Hawthorne Park Homeowners Association Trust as required under the Special Permit following approval and registration of this Conservation Restriction, and no notice shall be required as to such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after its ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

#### **VIII. ESTOPPEL CERTIFICATES.**

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

#### **IX. NON-MERGER.**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

#### **X. AMENDMENT.**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, the Grantor and the Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of the Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent

with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be registered with the Nantucket Registry District.

**XI. EFFECTIVE DATE.**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been registered in a timely manner registered with the Nantucket Registry District.

**XII. NOTICES.**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Hawthorne Park LLC  
in care of Alfred Sanford, Manager,  
105 Newbury Street, 4th Floor,  
Boston, Massachusetts 02116

To Grantee: Nantucket Select Board  
Town of Nantucket  
16 Broad Street  
Nantucket, Massachusetts 02554

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

**XIII. GENERAL PROVISIONS.**

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

#### XIV. MISCELLANEOUS

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Homestead. The Grantor attests that there is no residence on or abutting the Premises (including exclusions) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the Grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.

C. Subordination. The Grantor shall register with the Nantucket Registry District simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

**Or**

The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

D. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor

~~Grantee~~-Acceptance and

Approval by Select Board

Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Plan of Premises

Executed and sealed on \_\_\_\_\_, 2020,

Hathorne Park LLC

By:

\_\_\_\_\_  
Alfred Terry Sanford, Manager

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared Alfred Terry Sanford, as Manager of Hawthorne Park LLC and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily, as his free act and deed for its stated purpose on behalf of Hawthorne Park LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE OF GRANT  
AND  
APPROVAL OF BOARD OF SELECTMEN**

We, the undersigned, being a majority of the Board of Selectmen of the Town of Nantucket, hereby certify that, at a public meeting duly held on \_\_\_\_\_, 2020, the Board of Selectmen voted to approve and accept in the public interest the foregoing Conservation Restriction from Hawthorne Park LLC pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8(C) of the General Laws of Massachusetts.

SELECT BOARD:

By:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Nantucket, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from Hawthorne Park LLC to the Town of Nantucket, acting by and through its Planning Board, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
KATHLEEN A. THEOHARIDES  
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

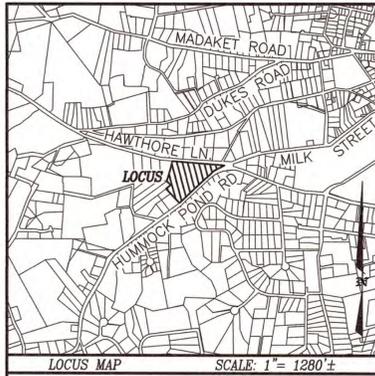
On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily, as her free act and deed, for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT A**

[Reduced Copy of Plan of Premises

For official full-size plan see Nantucket Registry of Deeds Plan No. \_\_\_\_\_.



COMMUNITY PARKING AREA DIMENSION TABLE:

C1: R= 557.50' L=174.96'  
Δ=17°58'52"

L1: 35.34' S80°11'01"W  
L2: 86.42' S09°48'59"E  
L3: 31.17' N80°11'01"E

AREA TABLE

LOT 82: 144,511± S.F.  
BUILDING ENVELOPE: 28,728± S.F.  
18' WIDE DRIVEWAY & PARKING AREA: 13,968± S.F.

NANTUCKET REGISTRY OF DEEDS

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Plan No.: \_\_\_\_\_

Attest: Register

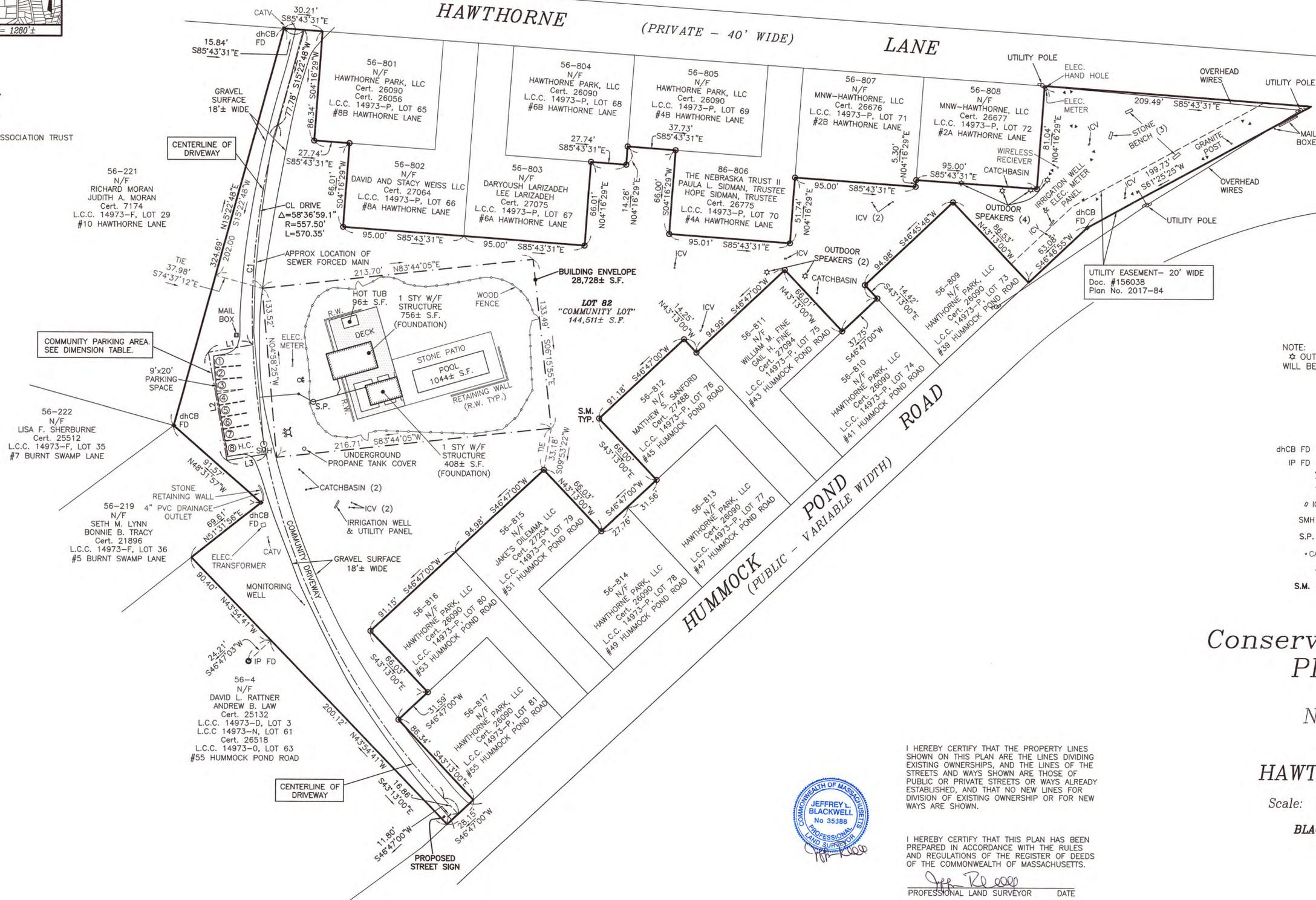
SHEET 1 OF 1

RESERVED FOR REGISTRY USE

**OWNER INFORMATION**

HAWTHORNE PARK LLC  
Cert. 26056, 26090, 26345, 26517  
L.C.C. 14973-P, LOT 82  
ASSESSOR'S MAP 56, PARCEL 800  
#8C HAWTHORNE LANE

HAWTHORNE PARK HOMEOWNERS ASSOCIATION TRUST  
Doc. #15640



NOTE:  
☆ OUTDOOR SEPAKERS AND ◊ WIRELESS RECIEVER WILL BE REMOVED FROM LOT 82.

**LEGEND**

- dhCB FD ■ DENOTES CONCRETE BOUND WITH DRILLHOLE FOUND
- IP FD ● DENOTES IRON PIPE FOUND
- ⊕ DENOTES FIRE HYDRANT
- ⊗ DENOTES WATER METER
- ◊ ICV DENOTES IRRIGATION CONTROL VALVE ACCESS COVER
- SMH ○ DENOTES SEWER MAN HOLE
- S.P. ○ DENOTES SEWER GRINDER PUMP
- \* CATV DENOTES CATV PEDESTAL
- ◆ DENOTES GROUND LIGHTING
- S.M. ○ DENOTES SURVEY MONUMENT TO BE INTSALLED

Conservation Restriction  
Plan of Land  
in  
Nantucket, MA  
Prepared for  
**HAWTHORNE PARK LLC**

Scale: 1" = 40' December 30, 2019

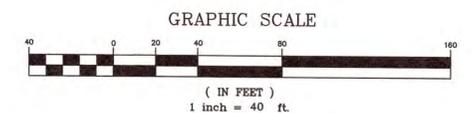
**BLACKWELL & ASSOCIATES, Inc.**  
Professional Land Surveyors  
20 TEASDALE CIRCLE  
NANTUCKET, MASS. 02554  
(508) 228-9026

I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.



I HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

Jeffrey L. Blackwell  
PROFESSIONAL LAND SURVEYOR DATE





Town of Nantucket Sewer Department  
**WASTEWATER MANAGEMENT**

David C Gray Sr  
Sewer Director  
81 S.Shore Rd  
Nantucket, Ma 02554

Town Direct 508-228-7200 Ext 7800  
Cell 401-413-8370  
[dgray@nantucket-ma.gov](mailto:dgray@nantucket-ma.gov)

02/09/2020

**ATM 20 SEWER ARTICLES REVIEW COVER SHEET**

The review group of Andrew Vorce, Roberto Santamaria and David Gray have met and discussed all the Articles in the ATM 20 warrant. Attached is the Maps, Review Sheet and Sewer Criteria check lists completed.

We are all in agreement with the reviews and recommendations provided with some conditions. We are happy to discuss any of the recommendations provided.

Sincerely,

Sewer Review Group

David C Gray Sr.  
Director of Sewer Department

Andrew Vorce  
Director of Planning

Roberto Santamaria  
Director of Health

## ARTICLE 82

### (Bylaw Amendment: Board of Sewer Commissioners/Siasconset Sewer District Map Change - 320R Milestone Road)

To see if the Town will vote to amend Chapter 41 (Board of Sewer Commissioners), section 41-3B (Siasconset Sewer District) of the Code of the Town of Nantucket by adding the following parcel to the Siasconset Sewer District:

MAP	LOT	NUMBER	STREET
73	55	320R	Milestone Road

**Sewer Review Committee:** This Article was brought forward by the Town; this property is adjacent to an existing sewer district and is located within Zone II of a public drinking water supply wellhead. Furthermore, this article was also reviewed by Mark Willett Director Wannacomet water, this property and the recently added parcels that were added at prior ATM's were on the DEP's watch list for upstream potential contamination sources. All the properties surrounding this parcel as well as all the properties across the street and immediately adjacent to the Siasconset well fields. This entire area is within the prevue of the Sconset CWMP which is currently being performed by Weston and Sampson, they were contacted about this large parcel and were also in agreement that this parcel be added as it is the only parcel not in the contiguous parcels that surround this parcel. Recommend adding to Sewer District.

## ARTICLE 83

### (Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 154R Cliff Road)

To see if the Town will vote to: Amend the sewer district map to include 154R Cliff Road, identified as Nantucket Tax Accessor's Map 41, Parcel 73.1, which is currently outside the core sewer district.

**Sewer Review Committee:** This Article has been pulled.

## ARTICLE 84

### (Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 18 Kimball Avenue)

To see if the Town will vote to: Amend the sewer district map to include 18 Kimball Avenue, identified as Nantucket Tax Accessor's Map 30, Parcel 109, which is currently outside the core sewer district.

**Sewer Review Committee:** This is a large parcel just outside the current Sewer District and not within a needs area, there is a 2" privately installed PVC force main in Kimball Ave adjacent to this parcel. The town has limited information on this Force Main. The owners of 17 Kimball Ave. will need to perform a Conditions assessment of the existing force main to include capacity for current and future flows as well as condition of the force main. A engineers report would be required before any sewer permits could be issued, if line does not have capacity they would be required to replace and properly size the force main to the town's main. Recommend adding to Sewer District with above conditions.

**ARTICLE 85**

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 11 Milestone Crossing)**

To see if the Town will vote to amend Chapter 41 (Board of Sewer Commissioners), section 41-3A (Town Sewer District) of the Code of the Town of Nantucket by adding 11 Milestone Crossing shown on Map 68 as Parcel 455 to the Town Sewer District.

**Sewer Review Committee: This parcel is in the zone II wellhead protection area, is adjacent to lot 13 which was added to the sewer district at an earlier ATM. This parcel is adjacent to a TON sanitary sewer line in Hinsdale Rd which has capacity for added flows. Recommend Adding to Sewer District.**

**ARTICLE 86**

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 1 West Chester Street Ext.)**

To see if the Town will vote to amend the Nantucket Sewer District under Nantucket Code, §41-3.A, by including in the Nantucket Sewer District and the map referenced therein the land situated at and known as 1 West Chester Street Extension, shown upon Nantucket Assessor’s Map 41 as Parcel 180;

**Sewer Review Committee: This parcel is adjacent to NHESP priority habitat and is surrounded by wetlands, parcel is adjacent to the Town Sewer District. The property owners will need to perform a Conditions assessment of the existing force main to include capacity for current and future flows as well as condition of the force main. An engineers report would be required before any sewer permits could be issued, if line does not have capacity they would be required to replace and properly size the force main to the town’s gravity line near #’s 82-84 W. Chester. Recommend adding to Sewer District with above conditions.**

**ARTICLE 87**

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Changes - Hummock Pond Road and Millbrook Road)**

To see if the Town will vote to amend Chapter 41 (Board of Sewer Commissioners), section 41-3A (Town Sewer District) of the Code of the Town of Nantucket by adding the following parcels located within the “Hummock North” sewer needs area designated within the Comprehensive Wastewater Management Plan:

Map	Parcel	Number	Street
56		101	Hummock Pond Road
56		103	Hummock Pond Road
56		5	Millbrook Road

**Sewer Review Committee: This parcel is within the Hummock Pond Watershed Protection Zone B and is adjacent to the Town Sewer District added at a recent ATM. The property owners will need to perform a Conditions assessment of the existing force main in Hummock Pond Road to include capacity for current and future flows as well as condition of the force main. An engineer’s report would be required before any sewer permits could be issued, if line does not have capacity they would be required to replace and properly size the force main to the town’s gravity line at Aurora Way. Recommend adding to Sewer District with above conditions.**

## ARTICLE 88

### (Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Changes - Correia Lane and Marilyn Drive)

To see if the Town will vote to amend Chapter 41 (Board of Sewer Commissioners), section 41-3A (Town Sewer District) of the Code of the Town of Nantucket by adding the following parcels located within the "Miacomet" sewer needs area designated within the Comprehensive Wastewater Management Plan:

**Sewer Review Committee:** This parcel is within the 2014 CWMP Miacomet needs area is NOT adjacent to the Town Sewer District. The property owners would need to design a LPSFM for approval for a Sanitary Sewer Extension to include capacity for current and all future flows for each lot extension runs adjacent to down to the town's gravity line at Sherburne Commons. Any work needed to connect to existing Town sewer would require crossing the Towns 2 force mains from Sea St. The committee is split on including the parcels identified at this time because some feel that all needs areas should be included. We all agree that timing of infrastructure improvements should be properly scheduled but adding language about expectations has occurred in past sewer articles (ex. 3M and Madaket). We encourage discussion by the Board on this topic.

Map	Parcel	Number	Street
80	54	16	Correia Lane
80	55	17	Correia Lane
80	56	15	Correia Lane
80	57	13	Correia Lane
80	58	9	Correia Lane
80	58.1	11	Correia Lane
80	59	12	Correia Lane
80	60	8	Correia Lane
80	61	4	Correia Lane
80	63	3	Correia Lane
80	326	3	Marilyn Drive

There shall be no paid parking allowed at the Washington Street Town Parking Lot without the approval of Town Meeting. No more than seven parking spaces in said lot may be reserved for official Town vehicle use.

And further to authorize the Town Clerk, after consultation with the Town Manager, to insert the bylaw in the appropriate section of the Town Code in accordance with § 1-9 of the Town Code;

Or to take any other action relative thereto.

*(Robert R. DeCosta, et al)*

#### ARTICLE 82

**(Bylaw Amendment: Board of Sewer Commissioners/Siasconset Sewer District Map Change - 320R Milestone Road)**

To see if the Town will vote to amend Chapter 41 (Board of Sewer Commissioners), section 41-3B (Siasconset Sewer District) of the Code of the Town of Nantucket by adding the following parcel to the Siasconset Sewer District:

MAP	LOT	NUMBER	STREET
73	55	320R	Milestone Road

Or to take any other action related thereto.

*(Select Board acting as the Board of Sewer Commissioners)*

#### ARTICLE 83

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 154R Cliff Road)**

To see if the Town will vote to: Amend the sewer district map to include 154R Cliff Road, identified as Nantucket Tax Accessor's Map 41, Parcel 73.1, which is currently outside the core sewer district.

; or otherwise act thereon.

*(Bryan Swain, et al)*

#### ARTICLE 84

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 18 Kimball Avenue)**

To see if the Town will vote to: Amend the sewer district map to include 18 Kimball Avenue, identified as Nantucket Tax Accessor's Map 30, Parcel 109, which is currently outside the core sewer district.

; or otherwise act thereon.

*(Bryan Swain, et al)*

**ARTICLE 85**

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 11 Milestone Crossing)**

To see if the Town will vote to amend Chapter 41 (Board of Sewer Commissioners), section 41-3A (Town Sewer District) of the Code of the Town of Nantucket by adding 11 Milestone Crossing shown on Map 68 as Parcel 455 to the Town Sewer District.

*(Joyce Karyotakis, et al)*

**ARTICLE 86**

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 1 West Chester Street Ext.)**

To see if the Town will vote to amend the Nantucket Sewer District under Nantucket Code, §41-3.A, by including in the Nantucket Sewer District and the map referenced therein the land situated at and known as 1 West Chester Street Extension, shown upon Nantucket Assessor’s Map 41 as Parcel 180;

or take other action with regard thereto.

*(Arthur I. Reade, Jr., et al)*

**ARTICLE 87**

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Changes - Hummock Pond Road and Millbrook Road)**

To see if the Town will vote to amend Chapter 41 (Board of Sewer Commissioners), section 41-3A (Town Sewer District) of the Code of the Town of Nantucket by adding the following parcels located within the “Hummock North” sewer needs area designated within the Comprehensive Wastewater Management Plan:

Map	Parcel	Number	Street
56		101	Hummock Pond Road
56		103	Hummock Pond Road
56		5	Millbrook Road

Or to take any other action related thereto.

*(Allen Reinhard, et al)*

**ARTICLE 88**

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Changes - Correia Lane and Marilyn Drive)**

To see if the Town will vote to amend Chapter 41 (Board of Sewer Commissioners), section 41-3A (Town Sewer District) of the Code of the Town of Nantucket by adding the following parcels located within the “Miacomet” sewer needs area designated within the Comprehensive Wastewater Management Plan:

Map	Parcel	Number	Street
80	54	16	Correia Lane
80	55	17	Correia Lane
80	56	15	Correia Lane
80	57	13	Correia Lane
80	58	9	Correia Lane
80	58.1	11	Correia Lane
80	59	12	Correia Lane
80	60	8	Correia Lane
80	61	4	Correia Lane
80	63	3	Correia Lane
80	326	3	Marylin Drive

Or to take any other action related thereto.

*(Linda Williams, et al)*

**ARTICLE 89**

**(Acceptance of Massachusetts General Law: Sewer User Charge Deferrals for Eligible Citizens)**

To see if the Town will accept the provisions of Massachusetts General Laws Chapter 83, Section 16G which allows the Town to enter into agreements with eligible individuals who meet certain income criteria to defer sewer user charges; or take any other action related thereto.

*(Select Board)*

**ARTICLE 90**

**(Acceptance of Massachusetts General Law: Property Revaluation Services Contracts)**

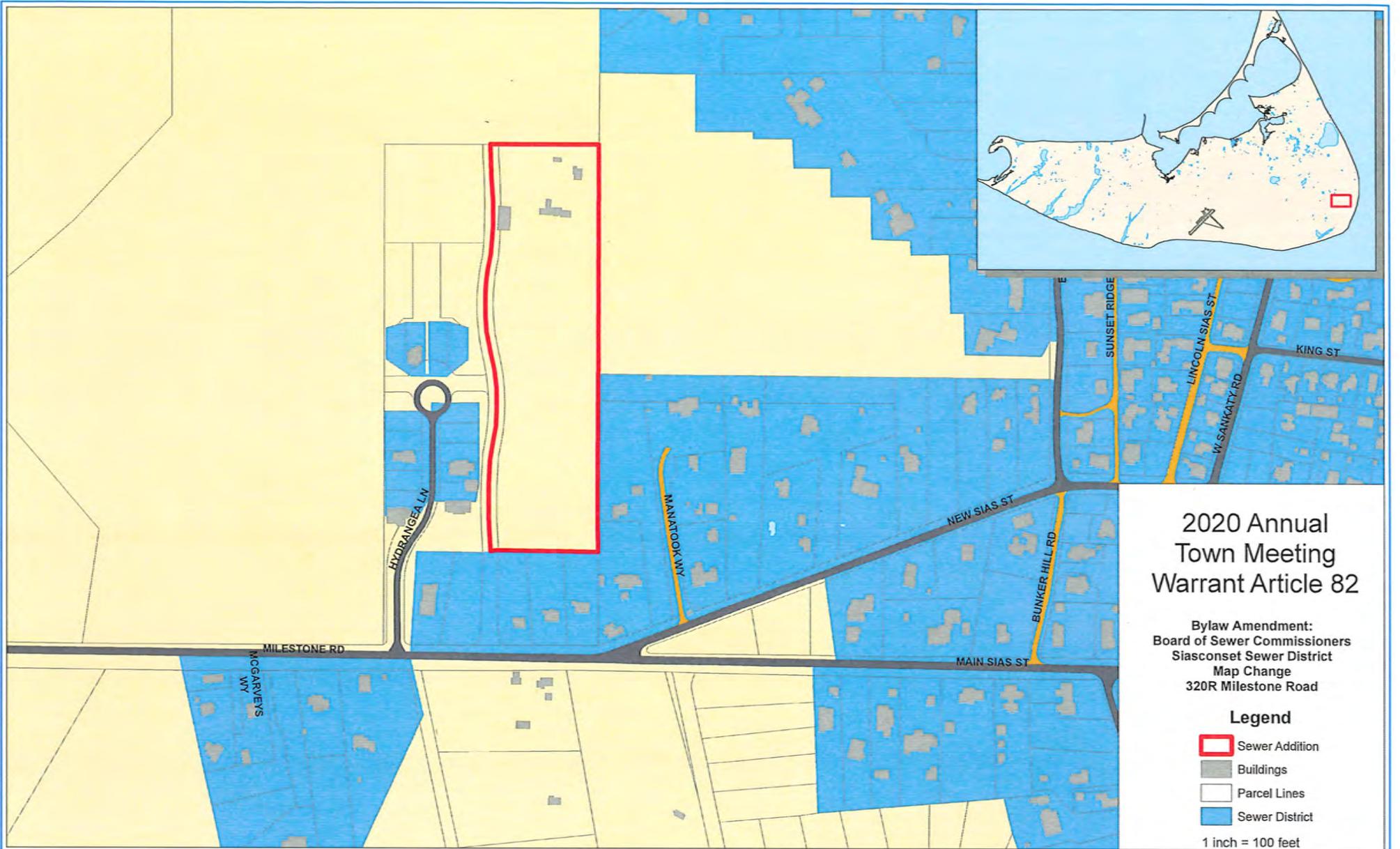
To see if the Town will vote, pursuant to the provisions of Massachusetts General Laws Chapter 30B, Section 12, to authorize the Chief Procurement Officer of the Town to award contracts for a term of up to five (5) years, including any renewal, extension or option period, for property revaluation services; or take any other action related thereto.

*(Select Board)*

**ARTICLE 91**

**(Acceptance of Massachusetts General Law: Part-time Building Inspector)**

To see if the Town will vote to accept the provisions of Massachusetts General Laws, Chapter 143, Section 3Z which provides for part-time building inspectors to practice for hire or engage in the business for which he is certified, licensed or registered under the building code while serving as such inspector; provided, however, that within the area over which he has jurisdiction as an inspector, he shall not exercise any of his powers and duties as such inspector, including those of enforcement officer of the state building code for construction, reconstruction, alteration, repair, demolition or removal work done by himself, his employer, employee or one employed with him.



## 2020 Annual Town Meeting Warrant Article 82

Bylaw Amendment:  
Board of Sewer Commissioners  
Siasconset Sewer District  
Map Change  
320R Milestone Road

- Legend**
- Sewer Addition
  - Buildings
  - Parcel Lines
  - Sewer District
- 1 inch = 100 feet

**Data Sources:**  
The geographic data on this mapsheet is based primarily upon information of April, 2013 aerial photography. It was compiled to meet the ASPRS Standard for Class 1 Map Accuracy for 1"=100' scale maps.

The data on this mapsheet represents the efforts of the Town of Nantucket and other cooperating organizations to record and compile pertinent geographical and related information utilizing the capabilities of the Nantucket Geographic Information System (GIS). The GIS staff maintains a ongoing program to record and disseminate in these data that are brought to its attention. The Town of Nantucket makes no claim as to the absolute validity or reliability of these data or their fitness for any particular use.



# Town of Nantucket - GIS Mapsheet



Municipal government agencies will not necessarily approve applications based solely on GIS data. Applicants are permitted to request a review of the information for applicable requirements. The presence of information on this mapsheet does not necessarily imply public ownership or the right of public access.

Please send identification of any errors and corresponding corrections to:

GIS Coordinator  
Town of Nantucket  
2 Fairgrounds Road  
Nantucket, MA 02554

January, 2020

# ***CHECKLIST***

## **CRITERIA TO EVALUATE NON-NEEDS AREA PROPERTIES FOR ENTRY INTO THE SEWER DISTRICT**

Property Address to be added to the Sewer District: **ARTICLE #82 (Bylaw Amendment: Board of Sewer Commissioners/Siasconset Sewer District Map Change – 320R Milestone Road)**

### **1. Capacity:**

- Yes ○ No Is there adequate capacity in the sewer system pipes/pump stations, etc?
- Yes ○ No Is there adequate capacity in the WWTP?

### **2. Septic System Criteria:**

- Yes ● No Is the system hydraulically failed according to the Local Board of Health Regulations?
- Yes ● No Is the system technically failed according to the Local Board of Health Regulations?
- Yes ● No A septic system conforming to Local Board of Health Regulations cannot be installed on the property? (Correct = yes)
- Yes ○ No Are soil structure/ground water elevations problematic?
- Yes ○ No Is the existing or proposed septic system within 100 feet of a resource area?  
**(Well Head Protection Zone II Siasconset)**
- Yes ○ No Is an alternative septic system is required?

### **3. Zoning and Land Use:**

- Yes ● No Does the property comply with the 2009 Master Plan?
- Yes ● No Is this an affordable housing project under Chapter 40B or 40R?
- Yes ● No Is the Lot size less than 40,000 sq ft?
- Yes ○ No Is the property within one of the following Overlay districts: Well head, Nantucket Harbor, Town, Madaket Harbor, Hummock Pond watershed (Miacomet watershed may be added after pond study)

### **4. Sewer system:**

- Yes ○ No Is the property location contiguous to the existing sewer district?
- Yes ○ No Does the number of properties which would be served by the extension exceed 5?
- Yes ○ No Does this sewer extension have potential for future extension of the sewer collection system?

**5. Financial:**

- Yes ○ No Is the sewer being extended to the Town's specifications?
- Yes ● No Will the maintenance of the new infrastructure be private?
- Yes ○ No Will the proponent be providing alternative public access to the public sewer such as through easements or the construction of pump stations or mains sized for additional connections?

**TOTAL YES Answers** (must equal or exceed 9 for a positive recommendation): 11

**parcel does exceed the 9 required for a positive recommendation this parcel is very large and has a potential for multiple large structures and or is sub dividable. Current parcel is within a wellhead protection Zone II Siasconset and is adjacent to current Sewer District.**

**Recommend Parcel be added to the sewer district, parcel will have numerous conditions as to designing sanitary sewers to connect to the Siasconset Wastewater Facility and providing access, easements etc. to operate and maintain sanitary sewers. Proponent will be required to enter into a Sewer Dedication Agreement with the Town of Nantucket.**

**DCG-NSD-02-09-2020 Review**



**2020 Annual  
Town Meeting  
Warrant Article 83**  
Bylaw Amendment:  
Board of Sewer Commissioners  
Sewer District Map Change  
152R Cliff Road

- Legend**
- Sewer Addition
  - Buildings
  - Parcel Lines
  - Sewer District

1 inch = 75 feet

**Data Sources:**  
The geographic data on this mapsheet is based primarily upon information of April, 2019 aerial photography. It was compiled to meet the ASPRS standard for Class 1 Map Accuracy for 1"=100' scale maps.  
The parcel boundaries are based primarily upon the Tax Assessor's data through December, 2019.

The data on this mapsheet represents the efforts of the Town of Nantucket and other cooperating organizations to record and compile geospatial and related information using the capabilities of the Nantucket Geographic Information System (GIS). The GIS staff maintains an ongoing program to record and correct errors in these data that are brought to its attention. The Town of Nantucket makes no claim as to the absolute validity or reliability of these data or their fitness for any particular use.



**Town of Nantucket - GIS Mapsheet**



Nantucket governmental agencies will not necessarily approve applications based solely on GIS data. Applicants for permits and licenses must acquire the relevant agency for applicable requirements. The presence of information on this mapsheet does not necessarily imply public right-of-way or the right of public access.

Please send identification of any errors and corresponding corrections to:

GIS Coordinator  
Town of Nantucket  
2 Fairgrounds Road  
Nantucket, MA 02554

January, 2020

# CHECKLIST

## CRITERIA TO EVALUATE NON-NEEDS AREA PROPERTIES FOR ENTRY INTO THE SEWER DISTRICT

Property Address to be added to the Sewer District: **ARTICLE 83**

**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 154R Cliff Road)**

### 1. Capacity:

Yes  No Is there adequate capacity in the sewer system pipes/pump stations, etc.? **This parcel is not within the 2014 CWMP listed needs areas any flows from this parcel or adjacent parcels were not calculated in the 2004 or 2014 CWMP and would take away other already accounted flow capacities from those CWMP's. Recommend NOT Adding to Sewer District.**

Yes  No Is there adequate capacity in the WWTP?

### 2. Septic System Criteria:

Yes  No Is the system hydraulically failed according to the Local Board of Health Regulations?

Yes  No Is the system technically failed according to the Local Board of Health Regulations?

Yes  No A septic system conforming to Local Board of Health Regulations cannot be installed on the property? (Correct = yes)

Yes  No Are soil structure/ground water elevations problematic?

Yes  No Is the existing or proposed septic system within 100 feet of a resource area?

Yes  No Is an alternative septic system is required?

### 3. Zoning and Land Use:

Yes  No Does the property comply with the 2009 Master Plan?

Yes  No Is this an affordable housing project under Chapter 40B or 40R?

Yes  No Is the Lot size less than 40,000 sq ft?

Yes  No Is the property within one of the following Overlay districts: Well head, Nantucket Harbor, Town, Madaket Harbor, Hummock Pond watershed (Miacomet watershed may be added after pond study)

### 4. Sewer system:

Yes  No Is the property location contiguous to the existing sewer district?

Yes  No Does the number of properties which would be served by the extension exceed 5?

● Yes ○ No Does this sewer extension have potential for future extension of the sewer collection system?

**5. Financial:**

● Yes ○ No Is the sewer being extended to the Town's specifications?

● Yes ○ No Will the proponent be providing alternative public access to the public sewer such as through easements or the construction of pump stations or mains sized for additional connections?

**TOTAL YES Answers** (must equal or exceed 9 for a positive recommendation):   5  

**Parcel is NOT within a listed Needs Area, but Parcel is adjacent to existing town sewer districts.**

**This Article has possibly been pulled or may be getting pulled by the Proponent**

**DCG-NSD- Review 02-09-2020**



## 2020 Annual Town Meeting Warrant Article 84

Bylaw Amendment:  
Board of Sewer Commissioners  
Sewer District Map Change  
18 Kimball Avenue

### Legend

- Sewer Addition
- Buildings
- Parcel Lines
- Sewer District

1 inch = 75 feet

**Data Sources:**  
The geographic data on this mapsheet is based primarily upon the reproduction of April, 2013 aerial photography. It was compiled to meet the ASPRS Standard for Class 1 Map Accuracy for 1:100 scale maps.  
The parcel boundaries are based primarily upon the Tax Assessor's data through December, 2013.

The data on this mapsheet represents the efforts of the Town of Nantucket and other cooperating organizations to record and describe the physical geographic and related information utilizing the capabilities of the Nantucket Geographic Information System (NGIS). The GIS staff maintains an ongoing program to record and correct errors in these data that are brought to its attention. The Town of Nantucket makes no claim as to the absolute validity or reliability of these data or the fitness for any particular use.



## Town of Nantucket - GIS Mapsheet



Nantucket governmental agencies will not necessarily accept a replacement based solely on GIS data. Applications for permits and licenses must require the review and sign-off of applicable requirements. The presence of information on this mapsheet does not necessarily imply public responsibility or the right of public access.

Please send identification of any errors and corresponding corrections to:

GIS Coordinator  
Town of Nantucket  
2 Fairgrounds Road  
Nantucket, MA 02554

# ***CHECKLIST***

## **CRITERIA TO EVALUATE NON-NEEDS AREA PROPERTIES FOR ENTRY INTO THE SEWER DISTRICT**

Property Address to be added to the Sewer District: **Annual Town Meeting 2020 ARTICLE # 84**  
(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 18 Kimball Avenue)

### **1. Capacity:**

- Yes ○ No Is there adequate capacity in the sewer system pipes/pump stations, etc.? **(Conditional)**  
**The owners of 18 Kimball Ave. will need to perform a Conditions assessment of the existing PVT force main to include capacity for current and future flows as well as condition of the force main. A engineer's report would be required before any sewer permits could be issued, if line does not have capacity they would be required to replace and properly size the force main to the town's gravity main.**
- Yes ○ No Is there adequate capacity in the WWTP?

### **2. Septic System Criteria:**

- Yes ○ No Is the system hydraulically failed according to the Local Board of Health Regulations?
- Yes ● No Is the system technically failed according to the Local Board of Health Regulations?
- Yes ● No A septic system conforming to Local Board of Health Regulations cannot be installed on the property? (Correct = yes)
- Yes ○ No Are soil structure/ground water elevations problematic?
- Yes ● No Is the existing or proposed septic system within 100 feet of a resource area?
- Yes ● No Is an alternative septic system is required?

### **3. Zoning and Land Use:**

- Yes ● No Does the property comply with the 2009 Master Plan?
- Yes ● No Is this an affordable housing project under Chapter 40B or 40R?
- Yes ● No Is the Lot size less than 40,000 sq ft?
- Yes ● No Is the property within one of the following Overlay districts: Well head, Nantucket Harbor, Town, Madaket Harbor, Hummock Pond watershed (Miacomet watershed may be added after pond study)

### **4. Sewer system:**

- Yes ○ No Is the property location contiguous to the existing sewer district?
- Yes ● No Does the number of properties which would be served by the extension exceed 5?

Yes  No Does this sewer extension have potential for future extension of the sewer collection system?

**5. Financial:**

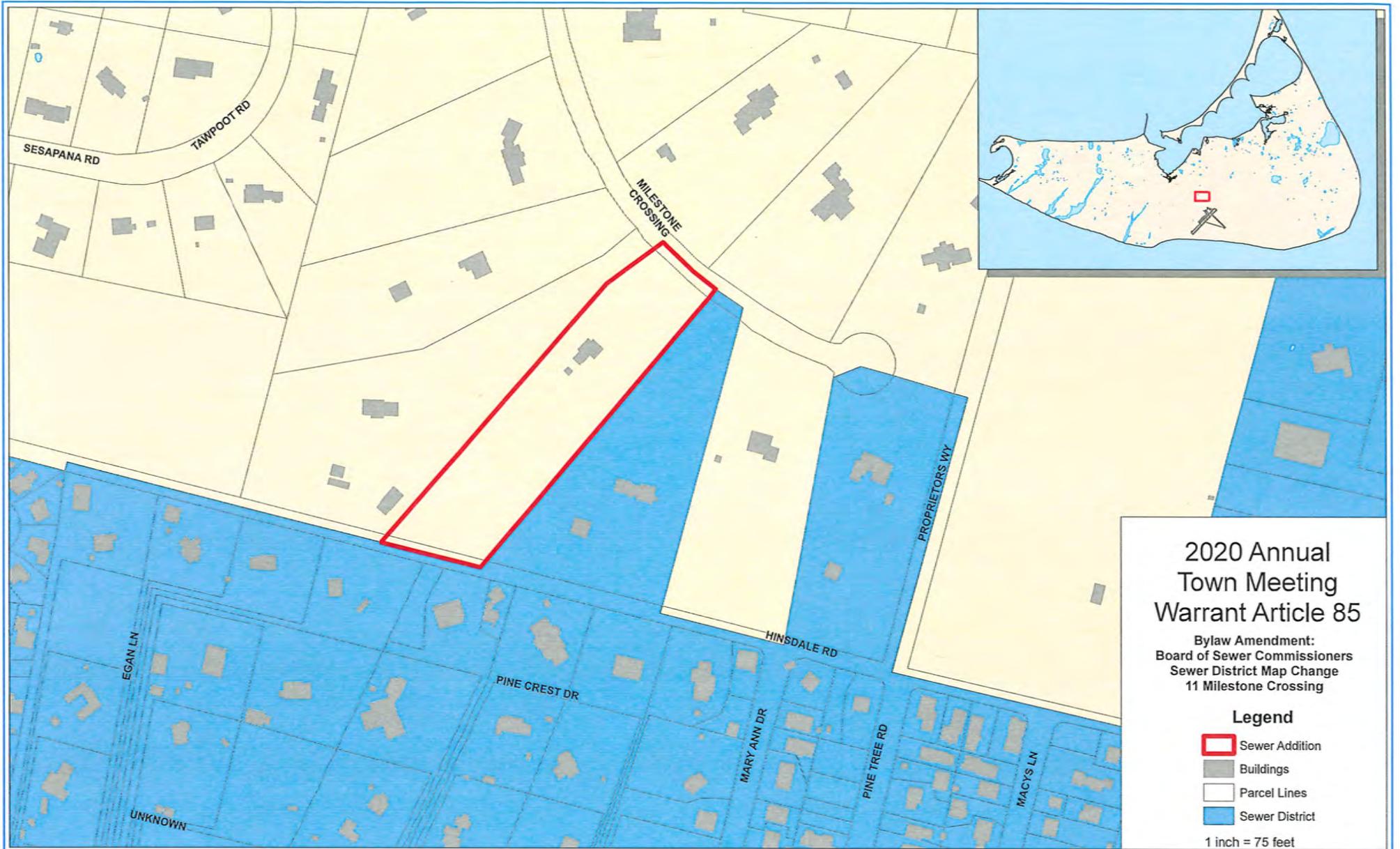
Yes  No Is the sewer being extended to the Town's specifications?

Yes  No Will the proponent be providing alternative public access to the public sewer such as through easements or the construction of pump stations or mains sized for additional connections?

**TOTAL YES Answers** (must equal or exceed 9 for a positive recommendation): 7

**As this parcel does Not meet the 9 required for a positive recommendation this parcel is very large and has a potential for multiple large structures and or is sub dividable. Parcel is adjacent to existing town sewer districts.**

**DCG-NSD- Review 02-09-2020**



## 2020 Annual Town Meeting Warrant Article 85

Bylaw Amendment:  
Board of Sewer Commissioners  
Sewer District Map Change  
11 Milestone Crossing

### Legend

- Sewer Addition
- Buildings
- Parcel Lines
- Sewer District

1 inch = 75 feet

**Data Sources:**  
The geographic data on this mapsheet is based primarily upon information of April, 2013 aerial photography. It was compiled to meet the ASPRS Standard for Class 1 Map Accuracy for 1"=100' scale maps.

The data on this mapsheet represents the efforts of the Town of Nantucket and other cooperating organizations to record and compile pertinent geographical and related information utilizing the capabilities of the Nantucket Geographic Information System (NGIS). The NGIS staff maintains an ongoing program to record and correct errors in these data that are brought to its attention. The Town of Nantucket makes no claim as to the absolute validity or reliability of these data or the stresses for any particular use.



## Town of Nantucket - GIS Mapsheet



Nantucket governmental personnel will not necessarily accept applications based solely on GIS data. Applications for permits and licenses may require the review and approval of the relevant agency for applicable requirements. The presence of information on this mapsheet does not necessarily imply public ownership of the physical public assets.

Please send identification of any errors and corresponding corrections to:

GIS Coordinator  
Town of Nantucket  
2 Fairgrounds Road  
Nantucket, MA 02554

January, 2020

# ***CHECKLIST***

## **CRITERIA TO EVALUATE NON-NEEDS AREA PROPERTIES FOR ENTRY INTO THE SEWER DISTRICT**

Property Address to be added to the Sewer District: **Annual Town Meeting 2020 ARTICLE 85**  
**(Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change - 11 Milestone Crossing)**

### **1. Capacity:**

- Yes ○ No Is there adequate capacity in the sewer system pipes/pump stations, etc.?
- Yes ○ No Is there adequate capacity in the WWTP?

### **2. Septic System Criteria:**

- Yes ○ No Is the system hydraulically failed according to the Local Board of Health Regulations?
- Yes ● No Is the system technically failed according to the Local Board of Health Regulations?
- Yes ● No A septic system conforming to Local Board of Health Regulations cannot be installed on the property? (Correct = yes)
- Yes ● No Are soil structure/ground water elevations problematic?
- Yes ● No Is the existing or proposed septic system within 100 feet of a resource area?
- Yes ● No Is an alternative septic system is required?

### **3. Zoning and Land Use:**

- Yes ○ No Does the property comply with the 2009 Master Plan?
- Yes ● No Is this an affordable housing project under Chapter 40B or 40R?
- Yes ● No Is the Lot size less than 40,000 sq ft?
- Yes ○ No Is the property within one of the following Overlay districts: Well head, Nantucket Harbor, Town, Madaket Harbor, Hummock Pond watershed (Miacomet watershed may be added after pond study) **(yes Zone II Wellhead protection Zone)**

### **4. Sewer system:**

- Yes ○ No Is the property location contiguous to the existing sewer district?
- Yes ● No Does the number of properties which would be served by the extension exceed 5?
- Yes ○ No Does this sewer extension have potential for future extension of the sewer collection system?

**5. Financial:**

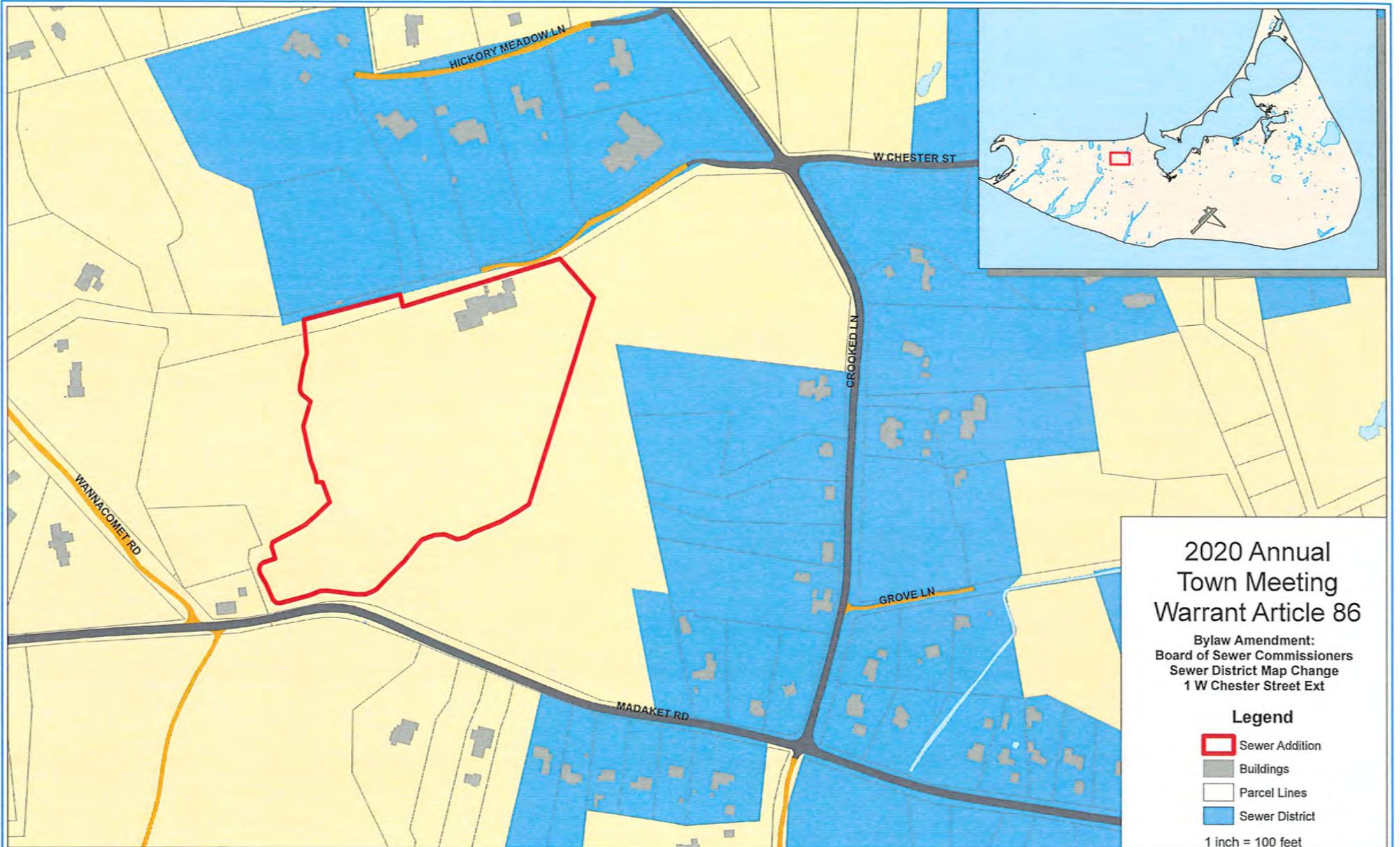
- Yes ○ No Is the sewer being extended to the Town's specifications?
- Yes ○ No Will the proponent be providing alternative public access to the public sewer such as through easements or the construction of pump stations or mains sized for additional connections?

**TOTAL YES Answers** (must equal or exceed 9 for a positive recommendation): 8

**As this parcel does Not meet the 9 required for a positive recommendation this Parcel is adjacent to existing town sewer districts and other parcels recently added at prior ATM.**

**Recommend Adding to Sewer District to protect Well Head Protection Zones**

**DCG-NSD- Review 02-09-2020**



## 2020 Annual Town Meeting Warrant Article 86

Bylaw Amendment:  
Board of Sewer Commissioners  
Sewer District Map Change  
1 W Chester Street Ext

### Legend

- Sewer Addition
- Buildings
- Parcel Lines
- Sewer District

1 inch = 100 feet

**Data Source:**  
The geographic data on this mapsheet is based primarily upon information of April, 2013 aerial photography. It was compiled to meet the AGPS Standard for Class 1 Map Accuracy for 1"=100' scale maps.  
  
The parcel boundaries are based primarily upon the Tax Assessor's data through December, 2013.

The data on this mapsheet represents the efforts of the Town of Nantucket and other cooperating organizations to record and compile pertinent geographical and related information utilizing the capabilities of the Nantucket Geographic Information System (GIS). The GIS staff maintains an ongoing program to record and correct errors in these data that are brought to its attention. The Town of Nantucket makes no claims as to the absolute validity or reliability of these data or the fitness for any particular use.



## Town of Nantucket - GIS Mapsheet



Nantucket governmental agencies will not necessarily accept or apply liability based solely on GIS data. Applications for permits and licenses must require the relevant agency for applicable requirements.  
  
The presence of information on this mapsheet does not necessarily imply public right-of-way or the right of public access.

Please send identification of any errors and corresponding corrections to:

GIS Coordinator  
Town of Nantucket  
2 Fairgrounds Road  
Nantucket, MA 02554

January, 2020

# ***CHECKLIST***

## **CRITERIA TO EVALUATE NON-NEEDS AREA PROPERTIES FOR ENTRY INTO THE SEWER DISTRICT**

Property Address to be added to the Sewer District: **Annual Town Meeting 2020 ARTICLE 86 (Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Change – 1 West Chester Street Ext.)**

### **1. Capacity:**

Yes  No Is there adequate capacity in the sewer system pipes/pump stations, etc.? **(Conditional)**  
**The owners of 1 W. Chester. will need to perform a Conditions assessment of the existing PVT force main to include capacity for current and future flows as well as condition of the force main. An engineer's report would be required before any sewer permits could be issued, if line does not have capacity they would be required to replace and properly size the force main to the town's gravity main.**

Yes  No Is there adequate capacity in the WWTP?

### **2. Septic System Criteria:**

Yes  No Is the system hydraulically failed according to the Local Board of Health Regulations?

Yes  No Is the system technically failed according to the Local Board of Health Regulations?

Yes  No A septic system conforming to Local Board of Health Regulations cannot be installed on the property? (Correct = yes)

Yes  No Are soil structure/ground water elevations problematic?

Yes  No Is the existing or proposed septic system within 100 feet of a resource area?

Yes  No Is an alternative septic system is required?

### **3. Zoning and Land Use:**

Yes  No Does the property comply with the 2009 Master Plan?

Yes  No Is this an affordable housing project under Chapter 40B or 40R?

Yes  No Is the Lot size less than 40,000 sq ft?

Yes  No Is the property within one of the following Overlay districts: Well head, Nantucket Harbor, Town, Madaket Harbor, Hummock Pond watershed (Miacomet watershed may be added after pond study)

### **4. Sewer system:**

Yes  No Is the property location contiguous to the existing sewer district?

Yes  No Does the number of properties which would be served by the extension exceed 5?

Yes  No Does this sewer extension have potential for future extension of the sewer collection system?

**5. Financial:**

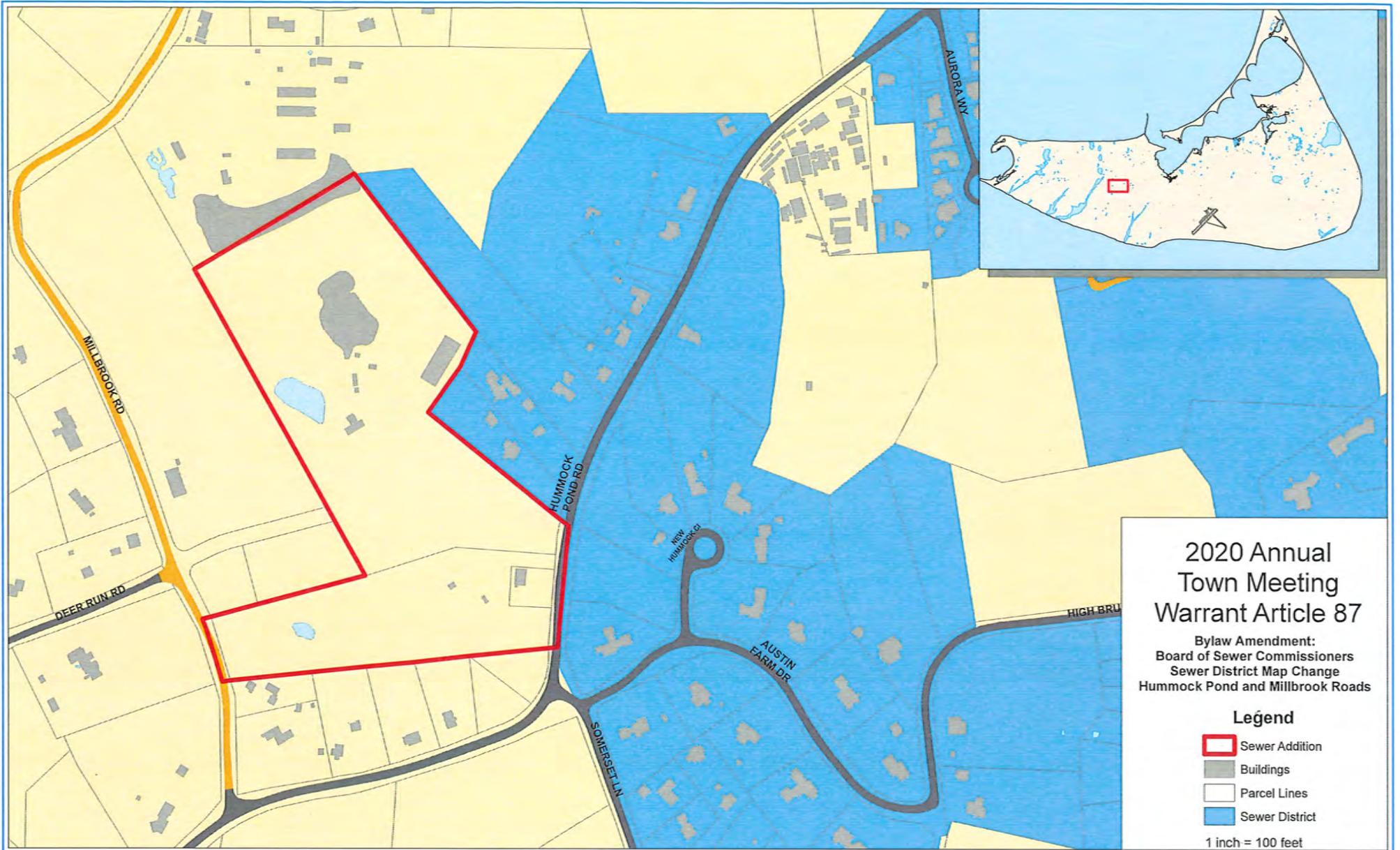
Yes  No Is the sewer being extended to the Town's specifications?

Yes  No Will the proponent be providing alternative public access to the public sewer such as through easements or the construction of pump stations or mains sized for additional connections?

**TOTAL YES Answers** (must equal or exceed 9 for a positive recommendation): 9

**As this parcel does meet the 9 required for a positive recommendation this Parcel is adjacent to existing town sewer districts and other parcels recently added at prior ATM.**

**Recommend Adding to Sewer District**



## 2020 Annual Town Meeting Warrant Article 87

Bylaw Amendment:  
Board of Sewer Commissioners  
Sewer District Map Change  
Hummock Pond and Millbrook Roads

### Legend

- Sewer Addition
- Buildings
- Parcel Lines
- Sewer District

1 inch = 100 feet

**Data Sources:**  
The geographic data on this mapsheet is based primarily upon information from April, 2013 aerial photography. It was compiled to meet the ASPRS Standard for Class 1 Map Accuracy for 1"=100' scale maps.  
The parcel boundaries are based primarily upon the Tax Assessor's data through December, 2013.

The data on this mapsheet represents the efforts of the Town of Nantucket and other cooperating organizations to record and compile pertinent geographical and related information utilizing the capabilities of the Nantucket Geographic Information System (NGIS). The NGIS staff maintains an ongoing program to record and disseminate in these data that are brought to its attention. The Town of Nantucket makes no claim as to the absolute validity or reliability of these data or the fitness for any particular use.



## Town of Nantucket - GIS Mapsheet



Nantucket governmental agencies will not necessarily accept responsibility based solely on GIS data. Applications for permits and licenses must require the submitter for applicable requirements. The provision of this information on the mapsheet does not necessarily imply public liability on the part of public services.

Please send identification of any errors and corresponding corrections to:

GIS Coordinator  
Town of Nantucket  
2 Fairgrounds Road  
Nantucket, MA 02554

January, 2020

# CHECKLIST

## CRITERIA TO EVALUATE NON-NEEDS AREA PROPERTIES FOR ENTRY INTO THE SEWER DISTRICT

Property Address to be added to the Sewer District: **ARTICLE 87 (Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Changes – Hummock Pond Road and Millbrook Road)**

### 1. Capacity:

Yes  No Is there adequate capacity in the sewer system pipes/pump stations, etc.? **This parcel is within the Hummock Pond Watershed Protection Zone B and is adjacent to the Town Sewer District added at a recent ATM. The property owners will need to perform a Conditions assessment of the existing force main in Hummock Pond Road to include capacity for current and future flows as well as condition of the force main. An engineer's report would be required before any sewer permits could be issued, if line does not have capacity they would be required to replace and properly size the force main to the town's gravity line at Aurora Way. Recommend Adding to Sewer District.**

Yes  No Is there adequate capacity in the WWTP?

### 2. Septic System Criteria:

Yes  No Is the system hydraulically failed according to the Local Board of Health Regulations?

Yes  No Is the system technically failed according to the Local Board of Health Regulations?

Yes  No A septic system conforming to Local Board of Health Regulations cannot be installed on the property? (Correct = yes)

Yes  No Are soil structure/ground water elevations problematic?

Yes  No Is the existing or proposed septic system within 100 feet of a resource area?

Yes  No Is an alternative septic system is required?

### 3. Zoning and Land Use:

Yes  No Does the property comply with the 2009 Master Plan?

Yes  No Is this an affordable housing project under Chapter 40B or 40R?

Yes  No Is the Lot size less than 40,000 sq ft?

Yes  No Is the property within one of the following Overlay districts: Well head, Nantucket Harbor, Town, Madaket Harbor, Hummock Pond watershed (Miacomet watershed may be added after pond study) (**Hummock Pond watershed**)

### 4. Sewer system:

Yes  No Is the property location contiguous to the existing sewer district?

- Yes ○ No Does the number of properties which would be served by the extension exceed 5?
- Yes ○ No Does this sewer extension have potential for future extension of the sewer collection system?

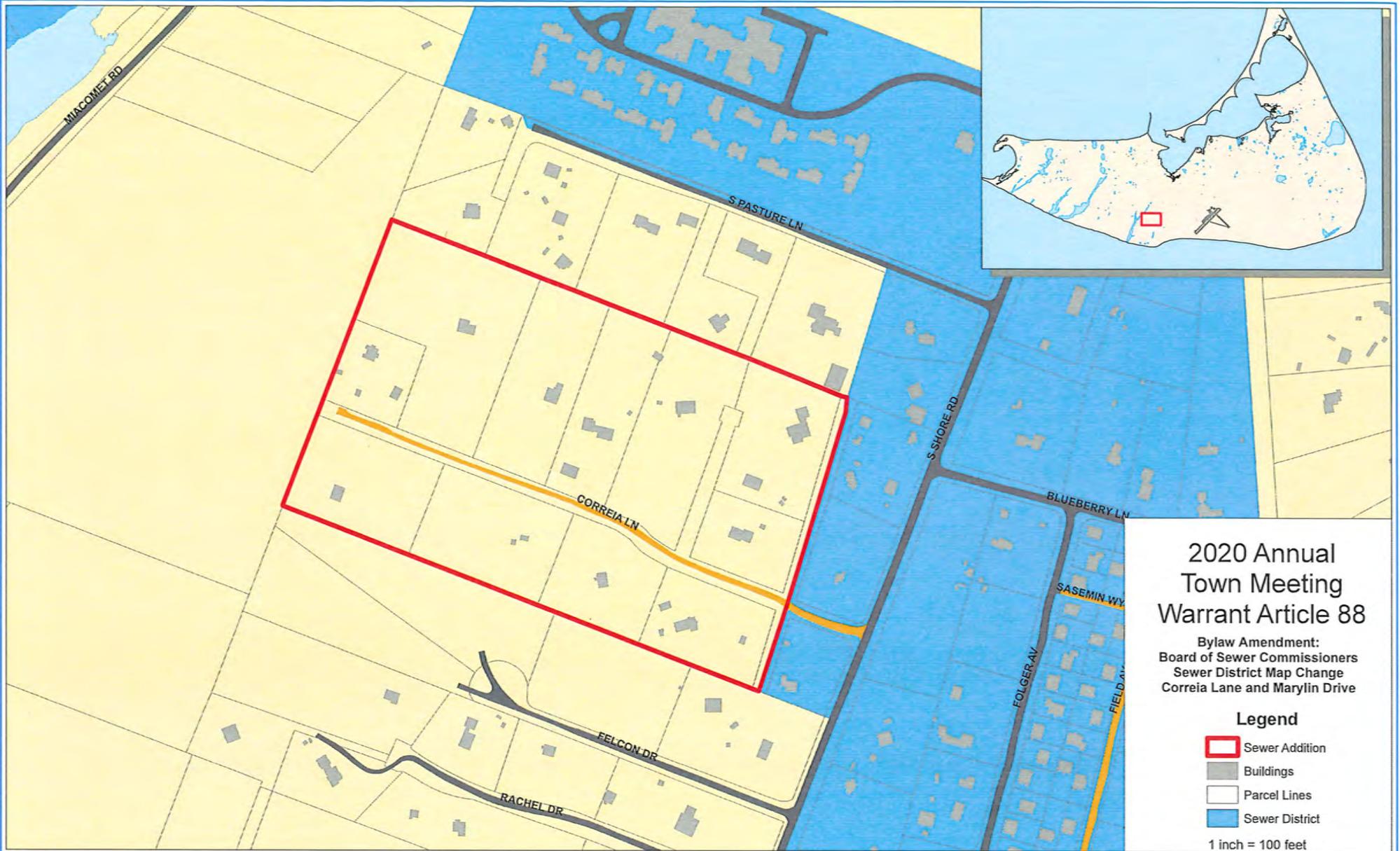
**5. Financial:**

- Yes ○ No Is the sewer being extended to the Town's specifications?
- Yes ○ No Will the proponent be providing alternative public access to the public sewer such as through easements or the construction of pump stations or mains sized for additional connections?

**TOTAL YES Answers** (must equal or exceed 9 for a positive recommendation):   9  

**Parcel is within a listed Needs Area and Parcel is adjacent to existing town sewer districts.**

**DCG-NSD- Review 02-09-2020**



## 2020 Annual Town Meeting Warrant Article 88

Bylaw Amendment:  
Board of Sewer Commissioners  
Sewer District Map Change  
Correia Lane and Marilyn Drive

### Legend

- Sewer Addition
- Buildings
- Parcel Lines
- Sewer District

1 inch = 100 feet

**Data Sources:**  
The geographic data on this mapsheet is based primarily upon interpretation of April, 2019 aerial photography. It was compiled to meet the ASPRS Standard for Class 1 Map Accuracy for 1"=100' scale maps.  
The parcel boundaries are based primarily upon the Tax Assessor's data through December, 2013.

The data on this mapsheet represents the efforts of the Town of Nantucket and other cooperating organizations to record and compile pertinent geographical and related information utilizing the capabilities of the Nantucket Geographic Information System (NGIS). The NGIS staff maintains an ongoing program to record and correct errors in these data that are brought to its attention. The Town of Nantucket makes no claim as to the absolute validity or reliability of these data or the fitness for any particular use.



## Town of Nantucket - GIS Mapsheet



Nantucket governmental agencies will not necessarily accept application based solely on GIS data. Applicants for permits and licenses must acquire the information from the relevant agency for applicable measurements.  
The presence of information on this mapsheet does not necessarily imply public ownership of the depicted public assets.

Please send identification of any errors and corresponding corrections to:

GIS Coordinator  
Town of Nantucket  
2 Fairgrounds Road  
Nantucket, MA 02554

October, 2019

# CHECKLIST

## CRITERIA TO EVALUATE NON-NEEDS AREA PROPERTIES FOR ENTRY INTO THE SEWER DISTRICT

Property Address to be added to the Sewer District: **ARTICLE 88 (Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Changes – Correia Lane and Marylin Drive)**

### 1. Capacity:

- Yes  No Is there adequate capacity in the sewer system pipes/pump stations, etc.? **This parcel is within the 2014 CWMP Miacomet needs area. The property owners would need to design a LPSFM for approval for a Sanitary Sewer Extension to include capacity for current and all future flows for each lot extension runs adjacent to down to the town's gravity line at Sherburne Commons. Any work needed to connect to Town sewer would require crossing the Towns 2 force mains from Sea St. Recommend Adding to Sewer District.**
- Yes  No Is there adequate capacity in the WWTP?

### 2. Septic System Criteria:

- Yes  No Is the system hydraulically failed according to the Local Board of Health Regulations?
- Yes  No Is the system technically failed according to the Local Board of Health Regulations?
- Yes  No A septic system conforming to Local Board of Health Regulations cannot be installed on the property? (Correct = yes)
- Yes  No Are soil structure/ground water elevations problematic?
- Yes  No Is the existing or proposed septic system within 100 feet of a resource area?
- Yes  No Is an alternative septic system is required?

### 3. Zoning and Land Use:

- Yes  No Does the property comply with the 2009 Master Plan?
- Yes  No Is this an affordable housing project under Chapter 40B or 40R?
- Yes  No Is the Lot size less than 40,000 sq ft?
- Yes  No Is the property within one of the following Overlay districts: Well head, Nantucket Harbor, Town, Madaket Harbor, Hummock Pond watershed (Miacomet watershed may be added after pond study) (**Miacomet Pond watershed**)

### 4. Sewer system:

- Yes  No Is the property location contiguous to the existing sewer district?

- Yes ○ No Does the number of properties which would be served by the extension exceed 5?
- Yes ○ No Does this sewer extension have potential for future extension of the sewer collection system?

**5. Financial:**

- Yes ○ No Is the sewer being extended to the Town's specifications?
- Yes ○ No Will the proponent be providing alternative public access to the public sewer such as through easements or the construction of pump stations or mains sized for additional connections?

**TOTAL YES Answers** (must equal or exceed 9 for a positive recommendation):   9  

**Parcel is within a listed Needs Area and Parcel is adjacent to existing town sewer districts.**

**DCG-NSD- Review 02-09-2020**

## Chapter 396 of the Acts of 2008

### AN ACT AUTHORIZING THE ESTABLISHMENT OF THE NANTUCKET SEWER COMMISSION AND SEWER DISTRICTS IN THE TOWN OF NANTUCKET.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** The town of Nantucket, acting by and through the Nantucket sewer commission described in section 3, may lay out, plan, construct, maintain and operate a system or systems of common sewers for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated sewer district under the jurisdiction and control of the sewer commission, with such capacity limitations, connections, pumping stations, treatment plants and other works, as may be allocated in such by-law to such sewer district as required for a system or systems of sewage treatment and disposal, and may construct such sewers and related works in said sewer districts defined and established by by-law as may be necessary. No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission.

**SECTION 2.** The town may make and maintain, within sewer districts defined and established as set forth in section 1 in any way therein where common sewers are constructed, such connecting sewers within the limits of such way as may be necessary to connect any estate which abuts upon the way within such district.

**SECTION 3.** Notwithstanding the provisions of chapter 169 of the acts of 1965, the town may, at any town meeting, by a two-thirds vote, vote that the board of selectmen shall act as a Nantucket sewer commission, or that there shall be a separate Nantucket sewer commission, the members of which shall be appointed by the board of selectmen or elected by popular vote for 3 year terms. The number, constitution and the choice of elected or appointed commissioners of a separate sewer commission shall also be determined by a two-thirds vote of town meeting. If a separate Nantucket sewer commission is established by town meeting, any selectman shall be eligible to serve as a member thereof. Town meeting shall be authorized to change the method of establishment of the Nantucket sewer commission described herein without any limitation on the number of times such commission may be established or re-established as the case may be, by a two-thirds vote. Whenever the phrase "Nantucket sewer commissioners" appears in this act, such phrase shall include within its meaning either the board of selectmen acting as Nantucket sewer commissioners, or the separate appointed or elected Nantucket sewer commission.

**SECTION 4.** The Nantucket sewer commission, acting for and on behalf of the town of Nantucket, shall have charge of and shall be responsible for the policies, finances, and overall goals of the sewer system, but shall be subject to the charter of the town of Nantucket as to the administration and management of the systems operation and maintenance, and shall be responsible for the good order of all sewers, pipes, pumping stations, treatment and disposal works, and the like. The operations of the Nantucket sewer commission shall be governed by, and any staff or employees shall be considered part of town administration within the meaning of, the charter of the town of Nantucket unless changed or modified pursuant to said charter.

**SECTION 5.** The board of selectmen acting for and on behalf of the town of Nantucket, after being duly authorized to do so by town meeting, may take by eminent domain pursuant to chapter 79 of the General Laws or otherwise may, utilizing the procedures described in the charter of the town of

Nantucket acquire by purchase or gift any lands, rights of way, or easements, public or private, in the town necessary for accomplishing any purpose mentioned in this act and may construct such sewers under or over any state road, any bridge, pier, tidelands, boulevards or other public way, or within the location of any state land, without the necessity for any formal filings in the registry of deeds, and may enter upon and dig up any private land or any public land or public way, for the purpose of laying such sewers and of maintaining and repairing the same, and may do any other thing proper or necessary for the purposes of this act.

**SECTION 6.** The financial operations of the sewer system shall be an Enterprise Fund within the meaning of section 53F1/2 of chapter 44 of the General Laws, except as modified herein, and any expenditure from such fund shall be only upon authorization of the Nantucket sewer commission. The town shall, by vote at town meeting, determine whether it shall pay the whole or a portion of the cost of said system or systems of sewerage and sewage disposal, and if a portion, what proportion. If the town votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system or systems, the town, acting through the Nantucket sewer commission, may avail itself of any or all of the methods permitted by the General Laws; and the provisions of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of sewer assessments or the additional methods set forth in section 8, and as to liens therefor and to interest thereon, shall apply to assessments made pursuant to this act by the Nantucket sewer commission, except that interest shall be at the rate as may be established by the Nantucket sewer commission from time to time.

At the same meeting at which town meeting determines that any portion of the cost is to be borne by the town, it may by vote determine by which of such methods the remaining portion of said cost shall be provided for.

The collector of taxes of said town shall certify the payment or payments of any such assessment or apportionments thereof to the sewer commission or to the selectmen acting as such, who shall preserve a record thereof.

**SECTION 7.** The revenues received by the fund described in section 6 of this act from sewer assessments, fees, charges, contributions from the town towards the costs of such sewer system as described in section 6, and the like as receipts or revenues, shall be applied to the payment of charges and expenses incident to the design, construction, maintenance, and operation of said system or systems of sewerage and sewage disposal or to the extensions thereof, to the payment of principal or interest upon bonds or notes issued for sewer purposes, or to the payment or redemption of such bonds or notes.

**SECTION 8.** The Nantucket sewer commission may, in its discretion, prescribe for the users of said sewer systems and disposal works such annual charges, connection fees, assessments, privilege fees, and the like, based on the benefits derived therefrom as such sewer commission may deem proper, subject however, to such by-laws as may be adopted by vote of the town, or as may be provided for in the General Laws. Notwithstanding any law to the contrary, the commission is authorized to impose and collect such charges, fees, or assessments prior to connection or operation of such system of sewers, and may enter into agreements for the payment thereof over such time as the sewer commission shall determine. In fixing the charges to be imposed for said system, the Nantucket sewer commission is authorized to make use of any fee, charge, assessment or betterment provided for by the General Laws and further may take into consideration all costs for ongoing removal of infiltration and inflow of non-wastewater into the system as part of the normal operating costs of the system; may include, in setting privilege fees, capital costs and interest charges applicable thereto; may impose late fees for unpaid billings; may assess a capacity utilization fee to new estates and properties added to a sewer district authorized by this act from outside a designated needs area in addition to any privilege fee; may charge betterments, special assessments, or any other charge to the estates and properties being served by collection system improvements and extensions to pay for all costs for sewer line extensions to serve

new connections, both within the sewer districts authorized by the act and in any areas added to such sewer district; and may impose such charges on properties within a sewer district authorized by the act whether or not such estates and properties are then connected to the sewer system.

**SECTION 9.** The Nantucket sewer commission may, from time to time, adopt and prescribe rules and regulations for the means of connection of estates and buildings with sewers and for inspection of the materials, the construction, alteration, and use of all connections entering to such sewers, but not including the expansion of districts except as provided in sections 1 and 10, and may prescribe penalties, not exceeding \$300 for the violation of any such rule or regulation. Such rules and regulations shall be available for public review at the sewer commission's designated office during regular office hours. Any changes, deletions, additions or revisions to said rules and regulations deemed necessary by the Nantucket sewer commission from time to time, shall take full effect after a notice of change has been published at least once a week for 2 successive weeks in a newspaper of general circulation in the town of Nantucket, which notice shall detail where and when such revised rules and regulations may be viewed by the general public.

**SECTION 10.** Notwithstanding any provision of law to the contrary, owners of land not within the sewer districts defined and established pursuant to section 1 of this act shall not be permitted to connect to the town's sewer system except as is set forth in this act. The territory covered by said sewer districts may be amended from time to time by the board having charge of sewers, after a public hearing conducted to consider such amendment, upon approval of the department of environmental protection if otherwise required by law and upon enactment by town meeting of a by-law defining or establishing a new or expanded sewer district. In the event that the board having charge of sewers votes not to amend the territory of any sewer district in accordance with the foregoing sentence, the amendment may nevertheless be enacted in a form of a by-law upon a two-thirds vote of town meeting. Any by-law adopted pursuant to the authority granted to the town of Nantucket by this act may include authorization to the Nantucket sewer commission without a town meeting vote to add to the sewer districts created pursuant to this act properties located within "needs areas" as defined by Nantucket's Comprehensive Wastewater Management Plan prepared by Earth Tech dated March 2004, approved by the secretary of environmental affairs on May 14, 2004, with such conditions and limitations with respect to such authorization as such by-law may provide.

**SECTION 11.** Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts.

**SECTION 12.** This act shall take effect as of July 1, 2008.

*Approved December 17, 2008*

---

**Return to:**

List of Laws passed in 2008 Session



## Agenda Item Summary

<b>Agenda Item #</b>	XI. 1.
<b>Date</b>	2/12/2020

### Staff

Town Manager

### Subject

Open Board discussion as to Goal #1 (Develop a Facilities Master Plan) of Strategic Plan Focus Area "Efficient Town Operations".

### Executive Summary

This Focus Area was added to the Board's Strategic Plan in September, 2019. Some internal staff discussion has occurred as to a first step in accomplishing this Goal to be procuring the services of an appropriation professional (engineer, architect) to help assess and evaluate the current condition of all the Town's public facilities, along with input and direction from the Board as to criteria for the Master Plan, such as: location(s) (downtown, out of town, Town land, non-Town land); coordination of departments into as few buildings as possible (for maintenance, efficiency and coordination purposes); expansion of current buildings, construction of new building(s), renovation of building(s), repurposing of buildings, temporary space issues; coastal resiliency; energy efficiency measures; cost/timing/debt service/tax impact. To name a few considerations.

### Staff Recommendation

Engage the engineering/architectural services for the condition assessment, as a first step.

### Background/Discussion

See link on website. Numerous reports, studies, workgroups have been assembled over the last 20+- years on this subject.

**Impact: Environmental**     **Fiscal**     **Community**     **Other**

Click or tap here to enter text.

### Board/Commission Recommendation

n/a at this time

### Public Outreach

n/a at this time

### Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

Strategic Plan



## Attachments

Town bylaw pertaining to location of Town offices



## Municipal Offices Links:

<https://www.nantucket-ma.gov/DocumentCenter/View/29558/20-South-Water-Reuse-Study>

<https://www.nantucket-ma.gov/DocumentCenter/View/24018/Nantucket-Town-Hall-Facility-Study-2015>

*Town of Nantucket, MA  
Thursday, February 6, 2020*

## Chapter 46. Town Property, Conveyance of

### § 46-4. Acquisition of land for Town offices.

[Added 4-14-1997 ATM by Art. 77, approved 8-5-1997]

All acquisitions by the Town of Nantucket, whether by purchase or by lease, of vacant or improved land outside the downtown core district, the acquisition of which is for the construction and/or renovation for use as Town offices, shall require a vote of the Town Meeting; no offices presently within the downtown core district shall be relocated to any site outside the downtown core district without a vote of the Town Meeting.