



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

JAN 28 2020

Siasconset Beach Preservation Fund
c/o Glenn A. Wood, Esq.
Rubin & Rudman LLP
53 State Street
Boston, Massachusetts 02109

RE: NANTUCKET—Wetlands
DEP File No. SE 48-3115
Superseding Order of Conditions
59-119 Baxter Road

Dear Attorney Wood:

Following an in-depth review of the above-referenced file and in accordance with Massachusetts General Laws, Chapter 131, Section 40, the Department of Environmental Protection has issued the enclosed Superseding Order of Conditions (SOC). This Order approves the proposed northern extension to the existing Geotube and a portion of the southern extension subject to certain conditions. The Department has determined that the project area is significant to the statutory interests of flood control, storm damage prevention and the protection of wildlife habitat.

The Notice of Intent (NOI) was jointly filed by the Siasconset Beach Preservation Fund (SBPF) and the Town of Nantucket. The Town owns the beach in the project area. The project proposes an approximately 767 linear foot Geotube extension to the north and an approximately 1,916 linear foot Geotube extension to the south, smaller geotextile returns, planting of vegetation on the face of the coastal bank, and ongoing mitigation (beach nourishment) and monitoring of project performance. As shown on the referenced plans, the proposed design incorporates 4 tiers of Geotubes. The project area currently contains three to four tiers of Geotubes with a total length of approximately 947 feet. The Department has determined that the coastal bank (Sconset Bluff) acts both as a sediment source and as a vertical buffer to elevated storm waters.

The Wetland Regulations at 310 CMR 10.30(3) provides, in part, that a coastal engineering structure “shall be permitted” when required to protect buildings constructed prior to 1978 from storm damage. The expanded project would protect 13 pre-1978 homes in the southern extension and 3 pre-1978 homes in the northern extension. All of the homes on the ocean-side of Baxter Road in the project area are pre-1978 buildings. The project area also includes 2 (vacant) gap lots at 85 and 107/107A Baxter Road. In the Department’s judgment, the applicant has demonstrated the need to provide a contiguous Geotube system across the gap lots that can effectively protect pre-1978 homes in the area, including pre-1978 homes on the landward side of Baxter Road. As a

result, the Department has determined that the proposed Geotubes between Lots 115 and 63 meets the above-noted performance standard for Coastal Banks.

The enclosed SOC denies the proposed installation of Geotubes at the southern end (Lots 61, 59, and 55) of the approximately 1,916 linear foot southern Geotube extension. The coastal bank is more stable in the area south of lot 63 with extensive vegetation on the face of the coastal bank compared to areas to the north. In addition, the homes on Lots 61 and 59 do not meet the applicant's proposed "imminent" danger criteria that dwellings within 40 feet of the top of the coastal bank need immediate protection from storm damage as discussed in the Notice of Project Change filed with MEPA. In fact, the homes on Lots 61 and 59 are 68 and 65 feet back from the top of the coastal bank, respectively. Further, it is not clear that the homes on Lots 61, 59, and 55 couldn't be relocated to the landward side of Baxter Road and away from the coastal bank. As a result, the Department has determined that the proposed Geotubes on Lots 61, 59 and 55 do not meet the performance standards for Coastal Banks at 310 CMR 10.30 (3). Specifically, the Department has determined that the proposed Geotubes are not required to prevent storm damage at this time and there may be feasible alternatives to a coastal engineering structure. In the case of Lots 61 and 59, relocation of homes to the landward side of Baxter Road may be a feasible alternative to a coastal engineering structure.

The enclosed SOC also denies the proposed installation of Geotubes along the southern end of the proposed project area where a coastal dune fronts the toe of the coastal bank. In the area of Lots 55, 53, 51B and 51A, the coastal dune serves to protect the toe of the coastal bank from erosion, resulting in a dense vegetative cover on the face of the coastal bank. The applicant proposed the installation of Geotubes if and when the coastal dune erodes away and exposes the coastal bank to erosion. In the Department's opinion, the proposed Geotubes on Lots 55, 53, 51B and 51A are not required to prevent storm damage to homes at this time. As a result, the Department has determined that the proposed Geotubes in this area do not meet the performance standards for Coastal Banks at 310 CMR 10.30(3). In addition, the Department has determined that there may be feasible alternatives to a coastal engineering structure, such as building relocation to the landward side of Baxter Road.

Please be advised that any future NOI must demonstrate that there are no feasible alternatives to the Geotubes such as relocation of threatened buildings, that the buildings are at risk of storm damage at the time of the application and that the Geotubes or an alternative coastal structure are necessary to prevent storm damage to pre-1978 buildings.

The MEPA Certificate (EEA#15240) issued on September 20, 2019 by the Secretary of Energy and Environmental Affairs, directed the Department to address concerns with proposed changes to the applicant's mitigation plan and monitoring frequency. The applicant's revised mitigation plan is an adaptive sand mitigation plan that would change the fixed rate of 22 cubic yard per linear foot a year to a flexible rate of 8.8 cy/lf a year or a volume to fill a 22 cy/lf template, whichever is greater. Due to the apparent success of the current mitigation plan in maintaining a walkable beach seaward of the existing Geotubes and the substantial increase in project length, the Department's SOC will require the current mitigation volume of 22 cy/lf a year to remain for the expanded project. In addition, the applicant's revised monitoring plan would change the shoreline change analysis (beach profile) to semi-annual from the current quarterly requirement. Although the Department's Guide to Best Management Practices for

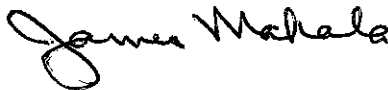
Beach Nourishment Projects recommends semi-annual monitoring, the Department believes that due to the substantial increase in project length and unique circumstances of the project, the current monitoring plan of quarterly shoreline change analysis will remain for the expanded project. Following 3 years of implementing the required mitigation and monitoring plans, the applicants may request the Department to re-assess these plans in accordance with the enclosed SOC.

The Department is aware of recent enforcement action taken by the Nantucket Conservation Commission regarding the use of non-beach compatible nourishment material and the failure to submit beach monitoring reports. The Department supports the Commission's enforcement actions. Failure to provide clean, compatible sediment as mitigation and failure to submit timely quarterly monitoring reports could result in further enforcement action and constitute project failure in accordance with criteria in the enclosed SOC.

In the opinion of the Department the reasons given here are sufficient to justify this SOC. However, the Department reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

If you have any questions concerning this matter please contact Nate Corcoran at (508) 946-2723.

Very truly yours,



James Mahala, Chief
Wetlands and Waterways Program

JM/nc
Enclosure
CERTIFIED MAIL # 7017 1450 0000 0281 4220

cc: Nantucket Conservation Commission

Nantucket Board of Selectmen



WPA Form 5 – Superseding Order of Conditions
Massachusetts Department of Environmental Protection
 Bureau of Resource Protection – Wetlands
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

SE 48-3115

A. General Information

1. From: Massachusetts Department of Environmental Protection
Issuing Authority

2. This issuance is for (check one):
 a. Superseding Order of Conditions
 b. Amended Superseding Order of Conditions

3. To: Applicant:

Josh Posner
 a. First Name b. Last Name
Siasconset Beach Preservation Fund (SBPF)
 c. Organization
P.O. Box 2279
 d. Mailing Address Line 1
Nantucket MA 02584
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):

See Attached List
 a. First Name b. Last Name
 c. Organization
 d. Mailing Address Line 1
 e. City/Town f. State g. Zip Code

5. Project Location:

59-119 Baxter Road Nantucket
 a. Street Address b. City/Town
 c. Assessors Map/Plat Number d. Parcel/Lot Number

Latitude and Longitude, if known:

41°16'36.748"N 69°57'40.559"W
 e. Latitude f. Longitude



WPA Form 5 – Superseding Order of Conditions
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A. General Information (cont'd)

6. Property recorded at the Registry of Deeds (attach additional information if more than one parcel):

Nantucket See attached list
 a. County b. Certificate (if registered land)

 c. Book d. Page

7. Dates: 01/05/2018 8/29/2019 6/20/2019
 a. Date NOI Filed b. Date of Site Visit c. Date of Issuance of Local Order

8. Final Approved Plans and Other Documents (attach additional plans or document references):

Expanded Baxter Road and Sconset Bluff Storm Damage Prevention Project Permit Drawings
 a. Plan Title
Baird W.F. Baird & Associates Ltd. Gordon G. Thomson, P.E.
 b. Prepared By c. Signed and Stamped By
10/29/2019
 d. Final Revision Date e. Scale

 f. Additional Plan or Document Title g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act - Following the review of the above-referenced Notice of Intent and based on the information provided in this application, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- a. Public Water Supply
- b. Land Containing Shellfish
- c. Prevention of Pollution
- d. Private Water Supply
- e. Fisheries
- f. Protection of Wildlife Habitat
- g. Groundwater Supply
- h. Storm Damage Prevention
- i. Flood Control

2. This Department hereby finds the project, as proposed, is (check one):

Approved subject to:

- a. the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. The Department orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



B. Findings (cont'd)

Denied because:

- b. the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. A description of the performance standards which the proposed work cannot meet is attached to this Order.
- c. the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order.**

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

- 3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available) _____ a. linear feet

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	_____ a. linear feet	_____ b. linear feet	_____ c. linear feet	_____ d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
	_____ e. c/y dredged	_____ f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding Cubic Feet Flood Storage	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet
	_____ e. cubic feet	_____ f. cubic feet	_____ g. cubic feet	_____ h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding Cubic Feet Flood Storage	_____ a. square feet	_____ b. square feet		
	_____ c. cubic feet	_____ d. cubic feet	_____ e. cubic feet	_____ f. cubic feet
9. <input type="checkbox"/> Riverfront area				
Sq feet within 100 feet	_____ a. total sq. feet	_____ b. total sq. feet		
	_____ c. square feet	_____ d. square feet	_____ e. square feet	_____ f. square feet
Sq feet between 100-200 feet	_____ g. square feet	_____ h. square feet	_____ i. square feet	_____ j. square feet



B. Findings (cont'd)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

10. Designated Port Areas - Indicate size under Land Under the Ocean, below

Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
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11. Land Under the Ocean

_____	_____
a. square feet	b. square feet
_____	_____
c. c/y dredged	d. c/y dredged

12. Barrier Beaches - Indicate size under Coastal Beaches and/or Coastal Dunes below.

13. Coastal Beaches

104,860	94,680	_____	_____
a. square feet	b. square feet	c. c/y nourish.	d. c/y

14. Coastal Dunes

_____	_____	_____	_____
a. square feet	b. square feet	c. c/y nourish.	d. c/y

15. Coastal Banks

2,730	2,465
a. linear feet	b. linear feet

16. Rocky Intertidal Shores

_____	_____
a. square feet	b. square feet

17. Salt Marshes

_____	_____	_____	_____
a. square feet	b. square feet	c. square feet	d. square feet

18. Land Under Salt Ponds

_____	_____
a. square feet	b. square feet
_____	_____
c. c/y dredged	d. c/y dredged

19. Land Containing Shellfish

_____	_____	_____	_____
a. square feet	b. square feet	c. square feet	d. square feet

20. Fish Runs - Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above

_____	_____
a. c/y dredged	b. c/y dredged
104,860	94,680
a. square feet	b. square feet

21. Land Subject to Coastal Storm Flowage



C. General Conditions Under Massachusetts Wetlands Protection Act

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Department on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,
"Massachusetts Department of Environmental Protection" [or, "MA DEP"]
"File Number SE48-3115"



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Department in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Department.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. **The work associated with this Order (the “Project”) is (1) is not (2) subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**
 - a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i.* all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii.* as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii.* any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
 - iv.* all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
 - v.* any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement) for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMPs Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, and acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Brief Project Description: The installation of an approximately 767 linear foot Geotube extension to the North and an approximately 1,916 linear foot Geotube extension to the South of the existing Geotube, smaller geotextile returns, planting of vegetation on the face of the bluff, and ongoing mitigation and monitoring of project performance.

Special Conditions (See attached sheet(s) for additional Special Conditions numbered 1 through 22.

D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.



WPA Form 5 – Superseding Order of Conditions
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

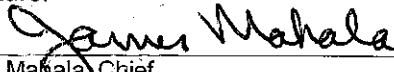
SE 48-3115

E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions 4 or 6.

Issued by: **Massachusetts Department of Environmental Protection:**

Signature:


James Mahala, Chief
Wetlands & Waterways Program

This Order is issued to the applicant as follows:

by Hand delivery on:

_____ Date

by certified mail on:

JAN 28 2020

_____ Certified Mail #7017 1450 0000 0281 4220



F. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 10 of this form shall be submitted to the Department.

Massachusetts Department of Environmental Protection – Southeast Region
 Issuing Authority

To: Massachusetts Department of Environmental Protection – Southeast Region
 Issuing Authority

Please be advised that the Order of Conditions for the Project at:

59-119 Baxter Road, Nantucket

Project Address – Street & Town

SE48-3115

DEP File Number

Has been recorded at the Registry of Deeds of:

Nantucket

County

Book

Page

For:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

JM/nc



G. Appeal Rights and Time Limits

The applicant, the landowner, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

MassDEP
20 Riverside Drive
Lakeville, MA 02347

In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- (c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that led to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;



WPA Form 5 – Superseding Order of Conditions
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

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- (f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- (g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- (i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04, a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP 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, Massachusetts 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, 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.

Special Conditions:

1. This Superseding Order of Conditions (SOC) permits installation of an approximately 767 linear foot Geotube extension to the north and a portion of the approximately 1,916 linear foot proposed Geotube extension to the south in order to prevent storm damage to pre-1978 homes, installation of smaller geotextile returns on the ends of the Geotubes to prevent flanking and minimize end effects, planting of vegetation on the face of the coastal bank, and ongoing mitigation (beach nourishment) and monitoring. The proposed southern Geotube extension and smaller geotextile returns shall terminate at the southern boundary of Lot 63. Coir fiber roll returns may be installed on Lot 61 as needed. This SOC denies the proposed installation of Geotubes at the southern end (Lots 61, 59, and 55) of the approximately 1,916 linear foot southern Geotube extension. The Department has determined that the proposed Geotubes on Lots 61, 59 and 55 do not meet the performance standards for Coastal Banks at 310 CMR 10.30 (3). Specifically, the Department has determined that the proposed Geotubes are not required to prevent storm damage at this time, and there may be feasible alternatives to a coastal engineering structure. The SOC also denies the proposed installation of Geotubes along the southern end of the proposed project area where a coastal dune fronts the toe of the coastal bank (Lots 55, 53, 51B, and 51A). The Department has determined that the proposed Geotubes on Lots 55, 53, 51B, and 51A do not meet the performance standards for Coastal Banks at 310 CMR 10.30 (3). Specifically, the Department has determined that the proposed Geotubes are not required to prevent storm damage at this time, and there may be feasible alternatives to a coastal engineering structure.
2. Notice of work commencement shall be given to the Nantucket Conservation Commission (NCC) and the Department at least 48 hours prior to the commencement of work.
3. Prior to installation of the Geotube extensions on lots 63-87 and 105-119 and returns, the proponents shall ascertain the width of the beach seaward of the existing Geotubes to determine whether there is sufficient beach width landward of mean high water (MHW) to conduct activities associated with the installation of the Geotubes and returns in accordance with the proposed construction methodology. In the event the beach is not sufficiently wide to allow Geotube installation in accordance with the proposed construction methodology, the proponents shall submit an alternative construction methodology for the Department's review and approval.
4. Prior to installation of the Geotube extensions on lots 63-87 and 105-119 and returns, the proponents shall mark the MHW line with surveyed stakes, obtain Global Positioning System (GPS) coordinates along the MHW line and shall maintain the stakes throughout the duration of construction. GPS coordinates shall be submitted to the Department and the NCC within 2 weeks of collection.
5. The staked position of the MHW line shall serve as a limit of work throughout the duration of construction. No work is allowed seaward of the MHW line under this SOC.
6. Access to the beach shall be from Hoick's Hollow north of the project area. A gate or similar structure shall be installed to control vehicular access to the beach at the Hoick's Hollow access point.
7. All sand used to fill and cover the Geotubes shall be imported from an off-site source and shall be clean sediment compatible in terms of grain size with the existing beach sediments. The Department reserves the right to request the grain size analysis of sediments used for beach nourishment.
8. As proposed, the smaller geotextile returns shall be installed in a manner to form closure between the existing Geotubes and the adjacent bluff without excavation into the coastal bank. All beach sand excavated to install the returns shall remain on the beach and shall be used to restore the beach following construction.
9. The ongoing beach monitoring/survey program currently conducted by the Woods Hole Group shall continue. The monitoring program shall be conducted on a **quarterly basis for the first 3 years** in order to timely identify beach impacts that may be attributable to the Geotubes and to assess whether the mitigation program is adequate. Beach profiles shall be taken on a quarterly basis along the 24 proposed profile lines. Beach profiles shall be taken from the toe of the coastal bank, coastal dune or Geotube seaward to the -5 foot MLW contour.

Beach profile data and analysis shall be submitted to the Department and the NCC within 30 days of completion of the quarterly survey. Following 3 years of quarterly surveys, the proponents may request the Department to re-assess the need for quarterly beach profiles. Such a request shall be accompanied with a report that provides reasonable justification for a reduced survey schedule. The final decision on any changes to the monitoring program rests with the Department.

10. As proposed, offshore (bathymetric) profiles shall be taken on an annual basis. Offshore profiles shall be taken out to the -25 foot to -35 foot MLW92 contour or 2,000 to 3,000 feet offshore, whichever is less. The bathymetric survey transects shall overlap the beach profiles (no gaps) and the tide gage used during the survey shall be surveyed into the same datum as the beach profiles. Bathymetry profile data and analysis shall be submitted to the Department and NCC within 30 days of completion of the survey.
11. An annual assessment report summarizing the beach and bathymetric profile monitoring program shall be submitted to the Department and the NCC each year. This report shall, at a minimum, provide an analysis of beach changes including volumetric changes between surveyed transects, assess location of the top of coastal bank and estimate bank retreat over the previous 12 months and calculate bank volume loss in the project area and 300 feet to the north and south. In addition, the report shall recommend any necessary changes to the beach nourishment program for the Department's review and approval.
12. Post-Storm monitoring reports shall be submitted following all significant storms. A storm will be considered "significant" if there are sustained winds over 40 mph over at least a 6 hour period according to NOAA's National Climate Data Center, Nantucket Memorial Airport station. The post-storm monitoring report shall include, at a minimum, photo-documentation of the condition of the Geotubes and nourishment sand within the project area, estimate of the volume of sand lost from the sand template, estimate of the beach level in front of the Geotubes to determine if replenishment is needed, estimate of volume of sand (if necessary) and schedule for delivery, identification of the location of any exposed geotextile or of any repair required to the geotextile, and visual observation of the ends of the Geotubes to determine if flanking is occurring. Such reports shall be submitted to the Department and the NCC as soon as possible following all significant storms but no later than 7 days from the end of the storm.
13. Sand mitigation shall be at a rate of 22 cubic yards per linear foot (cy/lf) per year in accordance with the following schedule for the first 3 years:
 - a. Provide initial cover of 22 cy/lf during and/or immediately following construction of the Geotube extensions and returns.
 - b. Annually in April: Provide additional sand and/or adjust the existing template to obtain a minimum two foot cover over the Geotubes to protect them from UV degradation. The volume of any sand placed in April shall be recorded and counted towards the annual 22 cy/lf requirement.
 - c. Annually in September-November: Place an additional volume of sand, to ensure a substantial portion of the sand template volume (10-15 cy/lf) is available at the onset of the winter storm season. Throughout the winter, place additional sand on an as-needed basis, in accordance with the replenishment trigger in the Milone & MacBroom's November 12, 2013 letter (i.e., if half the vertical height of the lowest Geotube is exposed, place a minimum of 2 cy/lf). If the balance of the 22 cy/lf volume is not placed in its entirety before March 1, the balance of the sand will be placed by March 31.
 - d. Delivery tickets from sand supplier shall be provided annually to the Department and the NCC to document the total volume of sand provided on a yearly basis.
 - e. Following 3 years of mitigation at a rate of 22 cubic yards per linear foot per year, the proponents may request the Department to re-assess the rate of sand mitigation. Such a request shall be accompanied with a report that provides reasonable justification for a modified mitigation rate. The final decision on any changes to the monitoring program rests with the Department.

14. If there is not adequate space to provide the entire mitigation volume within the project area footprint, then any remaining sand shall be placed in a berm at the toe of the coastal bank or dune and landward of MHW within 300 feet of the ends of the Geotubes. Any additional sand placed outside of the project area shall be equally distributed to the areas north and south of the project area.
15. Failure of the Siasconset Beach Preservation Fund (SBPF) to conduct the actions set out in subsections (a) to (e) herein shall constitute a project failure ("failure criteria") if not performed within the stipulated timeframes or within such other reasonable periods of time as determined by the Department in the event of a delay in performance outside the control of SBPF, or if there are unmitigated adverse impacts from the project. The "failure criteria" include:
 - a. Failure to provide the sand mitigation as required in Special Conditions #s 7, 13, and 14.
 - b. Failure to conduct the shoreline monitoring and post-storm monitoring as required in Special Conditions #s 9 through 12.
 - c. Failure to repair and/or replace damaged geotextile tubes in a timely manner. If repair or replacement cannot be accomplished within 30 days from the date of the damage, SBPF shall notify the Department and the NCC before 30 days have elapsed and provide a repair schedule for Department review and approval.
 - d. Excessive loss in updrift or downdrift beach cross section that can be attributed to the project. If the quarterly monitoring program identifies excessive loss to the adjacent shoreline (compared to historical data) that may be attributable to the project, then SBPF shall contact the Department and the NCC within 30 days of the completion of the quarterly survey. Upon notice, the Department shall commence an information gathering and consultation process to evaluate whether the shoreline loss is a result of the project. Following the conclusion of the evaluation the Department shall determine an appropriate course of action to address the beach loss associated with the project which may include, but is not limited to, changes to the placement of the sand template, an increase in the volume of sand mitigation, or project removal if impacts cannot be effectively mitigated. SBPF shall implement the Department's required mitigation within 30 days of receipt of written notification from the Department.
 - e. Failure to maintain adequate beach width in front of the Geotubes. If the beach in the project area erodes so that the position of MHW migrates landward to the seaward edge of the second tier of geotextile tubes for any two consecutive quarterly surveys, then within 30 days of completion of the second quarterly survey SBPF shall contact the Department and the NCC. Upon notice, the Department shall commence an information gathering and consultation process. Following the conclusion of the evaluation, the Department shall determine an appropriate course of action which may include, but is not limited to, changes to the placement of the sand template, an increase in the volume of sand mitigation, or Geotube removal if impacts cannot be effectively mitigated. SBPF shall implement the Department's required mitigation within 30 days of receipt of written notification from the Department.
16. In the event certain failure criteria have been met and the Department orders Geotube removal, then the geotextile fabric shall be cut, removed and properly disposed of. Following removal of the geotextile fabric, sand from the Geotubes shall be spread along the beach landward of MHW. SBPF and the Town shall maintain the escrow fund in place as of the date of this SOC to ensure the availability of funds to pay for the removal of the Geotubes. Lack of adequate funds in the escrow account shall not negate SBPF's requirement for Geotube removal.
17. The SBPF shall be responsible for the retrieval and proper disposal of all geotextile products associated with this project in the event wave action and erosion destroys or otherwise causes damage to the Geotube system.
18. As proposed, exposed areas on the face of the coastal bank, other than the upper 5-7 feet between lots 109 and 115 Baxter Road, may be stabilized using biodegradable erosion control blankets planted with beach grass and/or

other indigenous coastal vegetation. The erosion control blankets and plantings shall be installed with hand tools with workers repelling down the bank face.

19. All construction refuse shall be removed from the site and disposed of in compliance with all local, State, and Federal laws and regulations.
20. Upon completion of the proposed installation of the North and South Geotube extensions and returns, a partial Certificate of Compliance shall be requested in accordance with General Condition No. 11, and under the provisions of 310 CMR 10.05 (9)(d). A statement from a Professional Engineer or a Professional Land Surveyor registered in the Commonwealth of Massachusetts certifying compliance with the plans and conditions of this Order shall accompany the request for a partial Certificate of Compliance.
21. A portion of the proposed project is located within mapped *Priority and Estimated Habitat* of state-protected rare species by the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife (Division). As such, the proponent must adhere to the following conditions:
 - a. All work, including all access locations (e.g. Hoicks Hollow), located within Priority Habitat is prohibited during the period **April 1 – August 31**, unless a monitoring and protection plan for state-listed species has been approved in writing by the Division.
 - b. To reduce end scour and impacts to the Coastal Dune located within Priority Habitat, prior to the start of work, a nourishment plan that enhances or maintains Coastal Dune shall be submitted to the Division for review and written approval.
 - c. The Applicant has the responsibility of protecting breeding Piping Plovers and state-listed species of terns that may be on this section of beach. Therefore, the Applicant must allow regular monitoring for the presence of Piping Plovers and terns by a qualified shorebird monitor, as determined by the Division, during the period April 1 – August 31 and shall allow any nests, scrapes, or unfledged chicks to be protected with symbolic fencing (warning signs and twine fencing).
 - d. Within sixty (60) days of completion of work, the Applicant shall submit to the Division as-built site plans and a brief written report including photographs showing final constructed conditions with particular emphasis on demonstrating compliance with the conditions herein.
 - e. The Division authorization is valid for 5 years from the date of issuance and limited to the project described herein.
 - f. Upon filing for renewal, extension, or amendment of the Superseding Order of Condition, the applicant shall contact the Division for written response regarding impacts to Resource Area habitat of state-listed wildlife.
22. This SOC does not relieve the applicant/owner from complying with the Town of Nantucket Wetland Bylaw.

Record & Assessed Owners: 59-119 Baxter Road - 2018

Property Address	Map & Parcel	Record Title Holder	Assessed Owner	Recording Information
59 Baxter Road	49-20	Kevin F. Dale, Trustee of 59 Canopache Nominee Trust	Kevin F. Dale, Trustee of 59 Canopache Nominee Trust	C19072
61 Baxter Road	49-21	Ann R. Healey, Trustee of the Mayflower QPRT	Ann R. Healey, Trustee of the Mayflower QPRT	1325/277
63 Baxter Road	49-22	Elizabeth Singer, Trustee of the 64 Baxter Road Realty Trust	Elizabeth Singer, Trustee of the 64 Baxter Road Realty Trust	C19844
65 Baxter Road	49-23	Thomas Tuttle & Sharmila Tuttle	Thomas Tuttle & Sharmila Tuttle	1200/102
67 Baxter Road	49-24	Morning Light LLC, Margaret Hearst manager	Morning Light LLC, Margaret Hearst manager	845/269
69 Baxter Road	49-25	Richard & Marianne L. Mosciak	Richard & Marianne L. Mosciak	1294/117
71 Baxter Road	49-26-1	John C. Merson and Carol Bunevich	John C. Merson and Carol Bunevich	C21251
73 Baxter Road	49-27	Christian M. Darby	Christian M. Darby	1315/310
75 Baxter Road	49-30	Sankaty Bluff Group, LLC, John E. Osborn and Deborah P. Osborn manager	Sankaty Bluff Group, LLC, John E. Osborn and Deborah P. Osborn manager	1152/78
77 Baxter Road	49-31	Joshua Posner and Eileen Rudden	Joshua C. Posner and Eileen M. Rudden	C17538
79 Baxter Road	49-32	Helmut F. Weymar & Caroline S. Weymar	F. Helmut Weymar & Caroline S. Weymar	C12804
81 Baxter Road	49-33	William D. & Deborah Fuller Cohen	William D. & Deborah Fuller Cohen	C23689
83 Baxter Road	49-34	Marie Dostaler and Richard Touchette	Marie Dostaler and Richard Touchette	C23698
85 Baxter Road	49-35	Siasconset Preservation Fund, Inc. - Joshua Posner President	Siasconset Preservation Fund, Inc. - Joshua Posner President	C26035
87 Baxter Road	49-8	Samuel Furrow & Ann Furrow	Samuel Furrow & Ann Furrow	839/265
91 Baxter Road	49-22	Daniel L. Korengold, Trustee of D&M Baxter Road Nominee Trust	Daniel L. Korengold, Trustee of D&M Baxter Road Nominee Trust	1362/45
93 Baxter Road	48-21	Steven T. & Erin P. Freeman	Steven T. & Erin P. Freeman	1069/97
97 Baxter Road	48-19	Lawrence C. & Margaret McQuade	Lawrence C. & Margaret McQuade	C17087
99 Baxter Road	48-18	Ann B. Furrow	Ann B. Furrow	C20681
101 Baxter Road	48-17	101 Baxter Road LLC, James E. Walker and Deborah C. Walker managers	101 Baxter Road LLC, James E. Walker and Deborah C. Walker managers	D1427/0341
105 Baxter Road	48-15	Marilee B. Matteson, as Trustee of Marilee Bill Matteson Nominee Trust	Marilee B. Matteson, as Trustee of Marilee Bill Matteson Nominee Trust	C25689
107 Baxter Road	48-14-1	Whitney A. Gifford, Trustee of S.G. Nominee Trust	Hannah J. Gretz, Trustee of S.G. Nominee Trust	D1295/0217
107A Baxter Road	48-14	Whitney A. Gifford, Trustee of S.G. Nominee Trust	Whitney A. Gifford, Trustee of S.G. Nominee Trust	647/161
109 Baxter Road	48-12	Justine Mascioli Kenney, Trustee of Frederick P. Mascioli Living Trust	Justine Mascioli Kenney, Trustee of Frederick P. Mascioli Living Trust	C26169
113 Baxter Road	48-11	Loretta Yoder and Kyle L. Latschaw	Loretta Yoder and Kyle L. Latschaw	926/147
115 Baxter Rd	48-10	115 Baxter LLC, John Khawam manager	115 Baxter LLC, John Khawam manager	1513/335
117 Baxter Rd	48-9	Stephen B. Cohen	Stephen B. Cohen	575/163
119 Baxter Rd	48-7	Sconset Trust, Inc. - Elliot Gewirtz President	Sconset Trust, Inc. - Elliot Gewirtz President	C18748
Sconset Bluff	48-6	Town of Nantucket	Town of Nantucket	102/119
Sconset Bluff	48-5	Town of Nantucket	Town of Nantucket	189/52
Sconset Bluff	48-8	Town of Nantucket	Town of Nantucket	C1702
Sconset Bluff	48-5	Sconset Trust, Inc. - Elliot Gewirtz President	Sconset Trust, Inc. - Elliot Gewirtz President	



Adjudicatory Hearing Fee Transmittal Form

IMPORTANT! This form is intended for fee transmittal only. The contents of a request for an adjudicatory appeal (Notice of Claim) are established at 310 CMR 1.01(6) and the substantive statutes and regulations governing the Department's action.

A. Person/Party Making Request

1. Name and address of person or party making request:

Name - If appropriate, name group representative

Street Address

City

State

Zip Code

2. Project Information:

Street Address

City

State

Zip Code

DEP File or ID Number

\$

Amount of filing fee attached

Email Address

B. Applicant (if applicable)

1. Name and address of applicant:

Name - If appropriate, name group representative

Street Address

City

State

Zip Code

Email Address

C. Instructions

1. Send this form and check or money order of \$100.00 payable to the Commonwealth of Massachusetts to the MassDEP Lockbox at:

Department of Environmental Protection
P.O. Box 4062
Boston, MA 02211

2. Send a **copy** of this form and a **copy** of the check or money order with the Request for Adjudicatory Appeal (Notice of Claim) to:

Case Administrator
Office of Appeals and Dispute Resolution
One Winter Street
Boston, MA 02108

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.

