



CONSERVATION COMMISSION SPECIAL MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Wednesday, August 11, 2021

*This meeting was held via remote participation using ZOOM and YouTube,
Pursuant to Governor Baker's March 12, 2020 Order Regarding Open Meeting Law*

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), David LaFleur, Seth Engelbourg, Maureen Phillips, Mark Beale, and Linda Williams

Called to order and announcements at 4:06 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Golding, Engelbourg, Phillips, Beale, Williams

Absent Members: LaFleur

Town Counsel: George Pucci, K&P Law P.C.

I. PUBLIC MEETING

A. Public Comment

B. Enforcement Action Update

1. 'Sconset Beach Preservation Fund (SBPF) – 87-105Baxter Road (49&48-various) SE48-2824

Sitting: Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

Recused: None

Documentation: Supporting documents and plans. PowerPoint® presentation.

SBPF Rep: Steven Cohen, Cohen & Cohen LP

Public speakers: Mary Wawro, 3 Eat Fire Spring Road
Dennis Murphy, Legal Counsel for Greenhills, 8&16 Hoicks Hollow

Discussion: **Carlson** – Updated the Commission on the process since the June 30 Enforcement Order vote.

Pucci – Select Board wants to be on same page with ConCom on the status of the project; they don't see it as an adversarial position. The vote on June was to seek counsel in crafting the removal order of the geotube structure. The Select Board is the executive body under §3.5 of the Town Charter and have a lot of policy interests under their authority. Town Counsel policy is published and approved by the Town; our purpose is to ensure impartial and legal advice to all Town entities. He's here as Town Counsel made available by the Select Board to ConCom. He is to help ConCom reach an acceptable solution to try and bring the project back into compliance.

Erisman – We sent the Select Board a very detailed letter regarding the deficiencies of the SBPF project and asked for their input; we never received a response. Asked if the Select Board has explained their inaction.

Pucci – They are looking at what's before you and them now. There was never communication to him that they were neglecting information coming from ConCom. They are now seeking to get on top of this and made a request to SBPF to come up with a viable plan to get back into compliance.

Erisman – When a regulatory body says they have amassed a number of failure criteria, the Select Board should trust that board's opinion. Asked if the Town has looked at its own memorandum of understanding (MOU) with SBPF to ensure they are in compliance with it.

Pucci – The MOU was amended, there's a license agreement, and an agreement regarding Baxter Road. SBPF is tying their obligations of maintaining the structure to the expansion project to help them continue financially supporting the project; if they can't bring other property owners in to engage in the financial obligations, they will have to turn it over to the Town. There are long-term, good-faith contingencies built into those agreements. SBPF is taking the position that they are in compliance with the order and complying with all the Town agreements.

Golding – Asked Mr. Pucci why the Select Board is taking the part of SBPF and ignoring our regulatory/environmental situation. Asked how he can serve two masters.

Pucci – The Select Board is offering ConCom Town Counsel to confer with but not represent ConCom. He's here to provide advice. They are not taking SBPF's position; they are trying to protect the neighborhood and asking ConCom to consider a plan to bring the project into compliance.

Williams – She voted against the request for legal counsel but was not on the commission to vote on the original enforcement order; she would have voted against the enforcement order.

Engelbourg – He understands Mr. Pucci's role at this time. If there is future litigation in which Concom is a defendant to a case in an adversarial position to the Select Board, asked if that would require special counsel for ConCom.

Pucci – There is an exception under §4.2(d-10) part of which provides for a board as a defendant and Town as plaintiff to provide special counsel for the board. Right now, ConCom doesn't have that situation. The

Select Board is trying very hard to establish general Town policies and goals and not get in adversarial positions with its boards and commissions.

Engelbourg – He brought it up, so everyone knows that provision exists. Asked the status of the Town as a property owner if SBPF brings up the case.

Pucci – Would rather not answer a hypothetical.

Phillips – The issue we are struggling with is that it seems the Select Board's conduct has been to do their best to provide guidance and actions that don't help us follow the laws we are sworn to enact. SBPF had a lot of choices about filling amendments, providing information about the sand sooner than they did, putting Mr. Gregg Berman's suggestions into action; they did none of that. After much agony, years of failure to act to the regulatory standard, they decided to get the Select Board to hire a consultant to look at this stretch of coastline and get the Select Board to use the ARCADIS report to that end. They waited until we lowered the boom, and it came to the situation where we are now being asked to take back our decision. This was months of deliberations and thousands of pages of records. SBPF has admitted that they were not in compliance for years and have refused to bring the project into compliance unless we permit the extension. We have been told to look at the projects as separate. The Select Board is supporting SBPF in their quest to get us to change our mind and ignore the laws we are obligated to uphold and undo our Enforcement Order. She disagrees with Mr. Pucci's character of almost everything.

Beale – He finds it troubling; we know the Town wants us to reverse our order and that is where Select Board is trying to lead us to do that. He feels ConCom is not getting properly represented. Echoes Ms. Phillips comments about the length of time spent on the series of violations. Feels ConCom should have its own representation.

Pucci – The ARCADIS process was not generated by SBPF; they were unhappy with the Town's delays in taking over the structure. The Select Board wanted a reputable company to listen to all parties and experts and give their good-faith recommendations on short-term and long-term recommendations. He advised ARCADIS against talking to ConCom because SBPF is under your jurisdiction. It is not unprecedented to reverse a decision. You're being asked to look at the plan to see if it will bring the project into compliance.

Erisman – She appreciates the Town contracting ARCADIS to do coastal planning; but it is a separate process from the SBPF project in place. Also, ConCom has worked to resolve enforcement issues and failure criteria. Asked when failure criteria are actually failure criteria. This has gotten to the level of a project failure. We have tried to work with the applicant, but they have not worked with us. Their proposal is contingent on an expansion; if they don't get that expansion and haven't made up the deficit, it falls back on ConCom.

Pucci – You could go ahead with the Enforcement Order crafted in the form with conditions of compliance. There is nothing in bad faith being presented to ConCom.

Williams – Cited a situation where Zoning Board of Appeals was up against the Select Board and it was mediated. Feels the Town has stepped up to ownership in hiring ARCADIS. Thinks jumping to the request for removal might come at the wrong time. The Select Board has no right to tell ConCom what to do; they are asking us not to go forward with the enforcement order at this time.

Engelbourg – An Enforcement Order is required whether for removal or to bring back into compliance. We can't do either without forcing compliance. There are 3 recorded Enforcement Orders prior to this one. We have to consider how the permit holder is going to hold their good faith in the face of an Enforcement Order. It is clear the applicant is only interested in bringing this into compliance if the expansion project is approved. We need to stay our course and let SBPF come back to the table in the Fall with a different project. The current project doesn't meet the Performance Standards and is not in compliance and won't be in compliance in the near future.

Erisman – Opened to public comments; asked comments pertain to tonight's discussion only.

Wawro – Asked if KP, Law considered itself the attorney for both the Select Board and ConCom.

Pucci – We are Town Counsel in accordance with the Select Board provisions. We represent named parties as authorized by the Select Board.

Wawro – Expressed concern regarding rules of professional conduct for Massachusetts attorneys and that Mr. Pucci and KP, Law have never been lawyers for ConCom.

Pucci – He's here to follow up on the Select Board vote as articulated to ConCom; he's not going to get into professional conduct. Pointed out that ConCom can completely disregard his recommendations.

Wawro – Continued her concerns that KP, Law is not representing ConCom. SBPF has related the expansion to the existing project; the Town by joining SBPF, is taking an adversarial position to ConCom. Asked if the Enforcement Order abuses ConCom's discretion or is arbitrary and capricious.

Pucci – The Select Board is seeking to bring this into compliance.

Cohen – ConCom is considering an Enforcement Action; feels it is unprecedented to consider removal without considering an available remediation plan. It's the Commission's job to bring things into compliance with what would approve.

Murphy – There have been half-a-dozen enforcement issues connected with this project; cited those issues. This proceeding started several months ago. The commission has a regulatory role following the data and science and warned against following the politics. Because of what's happening here, we've had almost 8 ½ months with no sand mitigation going onto the project and the deficiency is growing. If the Commission chooses to reconsider its votes and new commissioners are going to participated. David Kriebel is available to

explain the effects of continued non-compliance. 310cmr 10.08 supports ConCom issuing the Enforcement Order. The one thing not discussed is the 2-year statute of limitations; if action isn't taken now, in the future, the Commission could be barred from taking enforcement action on that. Town Counsel was very clear on the current procedure, but his takeaway is that any Enforcement Order is appealable only to the court; if ConCom is a defendant, it will be provided counsel. Asked that any reconsideration of the vote should be done in public.

Erisman – Asked Mr. Carlson's recommendation

Carlson – You can make a motion to reconsider; if you do that, you could condition that reconsideration to involve the Select Board.

Erisman – We can motion to reconsider or continue and ask that an Order of Removal be drafted.

Phillips – What she feels unprecedented is that we would reconsider because "remediation options are available". Those options have been available to SBPF since the 1st report of any problem.

Williams – She agrees with the sentiment the commission should be punitive. Made a motion to reconsider; not seconded.

Engelbourg – He would entertain a continuance.

Beale – Asked if there is a time consideration having voted for the removal.

Carlson – In this case, no. We have time to craft the order and issue it out properly. He has a draft and can send it to the commissioners. If there is other information the commissioners are looking for, this is a good forum to request it.

Pucci – Suggested the new SBPF remediation proposal be looked at before adopting the removal order. In the event you look at crafting an order that brings this into compliance, he has been authorized to confer with the Commission on that.

Phillips – She has repeatedly asked where the escrow account is that was intended to pay for removal as required by the original Order of Conditions; she has seen no information on that. It is relevant for us to have.

Carlson – He will have that for the next session.

Cohen – That should have \$100,000 and is held by the Town.

Carlson – He will pull together a number of optional dates between regular meetings to choose from. If commissioners think of something they need, email him.

Continued to a date TBD

Motion

Roll-call vote

N/A

Adjournment:

Motion

Motion to Adjourn at 5:53 p.m. (made by: Beale) (seconded by:)

Roll-call vote

Carried unanimously // Beale, Engelbourg, Erisman, Golding, Phillips, and Williams

Submitted by:

Terry L. Norton



CONSERVATION COMMISSION PUBLIC MEETING

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Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), David LaFleur, Seth Engelbourg,
Maureen Phillips, Mark Beale, and Linda Williams

Called to order at 5:00 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Terry Norton, Town Minutes Taker
Attending Members: Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
Absent Members:
Late Arrivals:
Earlier Departure:

*Matter has not been heard

I. PUBLIC MEETING

- A. Announcements**
- B. Public Comment –**

II. PUBLIC HEARING

A. Rehearing Limit

1. Auburn Cottage, LLC – 46 Easton Street (42.4.1-22) SE48-3458

Sitting: Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
Documentation: Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative: Dan Bailey, Pierce Attwood
Brian Madden, LEC Environmental
Lisa Botticelli, Botticelli & Pohl
Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public: None

Discussion (5:04) **Bailey** – This is under new ownership; the new owner is submitting this application. Reviewed the prior project. The Auburn Cottage is on the State and National registries of historic structures; as such to retain its significance, it should remain in place. Reviewed the new proposal keeping the cottage in place and adding new structures outside the 100’ mean-high water. By leaving the Cottage in place, we don’t need a new Chapter 91 license. He’s met with Massachusetts Department for Environmental Protection (DEP) on this plan. If ConCom rules in the affirmative, the appeal will be withdrawn.

Phillips – Asked if we are ruling on whether or not this is different enough to allow them to move forward with the new NOI.

Erisman – Yes.

Reade – This is very different from the prior application with a different applicant. The intent is to deal with coastal resiliency. The structure will be elevated; the only other change is increasing the stairs and turning them to run east-west. The ancillary structure in the northwest corner will be moved out of the setback farther from the bordering vegetated wetland across Easton Street. The entire site is within land subject to coastal storm flowage. The new dwelling is partially within the 100’ buffer of the coastal wetlands and 50’ from the inland wetland. We will create a new coastal dune area behind the existing bulkhead.

Madden – Elevation of 1st floor will go to 11.2 with helical supports. The cottage and new dwelling will also be pier supported with break-away panels. We are eliminating the sunken concrete basement and exterior stairs. We are also proposing Japanese Knotweed management and proposing drainage runoff from the dwelling into an infiltration trench.

Motion **Motion to Accept the rehearing.** (made by: Phillips) (seconded)

Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye; Williams recused

NOI discussion **Beale** – Asked for an explanation of the special flood zones.

Madden – That is the velocity zone with the area more subject to wave action and the area just subject to flooding.

Engelbourg – Regarding delineation of the coastal dune, asked if that has been updated; we need an accurate delineation.

Madden – He looked at the coastal dune; the current flags can be reestablished for Staff to verify.

Engelbourg – Regarding elevation of the structures, asked if all structures will be on piers; there was a waiver request for 2’ separation from groundwater.

Madden – All structures aside from the main dwelling will be at elevation 8.4 with flood zone at 7. The waiver was requested because the piers will be driven to within 2’ of groundwater and for the removal of the existing foundation.

Engelbourg – In the prior application, there was discussion about the bulkhead; asked if there is any work proposed for it.

Madden – It will be left as is.

Golding – Asked if this has gone before the Historic District Commission (HDC).

Botticelli – It has not. We are trying to get all information necessary to complete the design.

Golding – He’d like the order conditioned for breakaway panels.

Phillips – Asked the additional amount of groundcover with the new buildings; this becomes a more cluttered sight and scenic view is part of our jurisdiction.

Reade – He doesn’t have the exact amount of ground cover, but they are not close to the maximum allowed. Feels there will be plenty of opportunity to see through the site; we have to provide public access under the Chapter 91 license.

Erisman – Asked the condition of the current foundation; it looks like there is a concrete floor.

Madden – It is in rough shape and subject to storm conditions.

Engelbourg – Regarding species management, asked they review some of the species proposed for revegetation and replace them with more salt-tolerant shrubs.

Golding – Considering the mass of the White Elephant, scenic view might not be the way to curtail what the applicant is asking. Asked to move the northwest structure closer to the property line; moving it more northwest would allow more of a view down the corridor. Also, the access easement should have signage, so people know it’s there.

Reade – Asked to continue to August 26.

Staff These don’t come up often; a project acted upon unfavorably can’t be resubmitted for 3 years.

Motion Continued to August 26.

Roll-call Vote N/A (Williams recused)

B. Notice of Intent

1. Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432 (**Cont. 09/09/2021**)
2. Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438 (**Cont. 09/09/2021**)
3. NISDA – 55 Wauwinet Road (14-23) SE48-3441 (**Cont. 08/26/2021**)
4. *Hayden C. Hurley – 11 Hulbert Avenue (29.2.3-2) SE48-3455

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:42) **Madden** – This is for relocating a structure from 5 Sandy Drive to 11 Hulbert Avenue.

Erisman – Assumes the move will be done at a time of year when flooding is less possible.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Williams) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

5. *Hayden C. Hurley – 5 Sandy Drive (29-74) SE48-3456

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:42) **Madden** – This lot will be loamed and seeded and left alone.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Williams) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

6. *Janice Louise O’Mara Trustee – 33 Somerset Road (56-110) NAN-135

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative David M. Haines, Haines Hydrogeologic Consulting

Public None

Discussion (5:53) **Haines** – This is to connect to Town sewer and abandon the existing septic; that will be pumped, crushed, and filled. The new line will go under the driveway. Two isolated vegetated wetlands, which appear to be man-made, are within 25’ of the driveway so asked for a waiver; that is within already-disturbed land. There is a possibility we will hit water digging the trench, so the water will be pumped into a basin.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Beale) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye;

7. *George C. & Diane D. Metcalfe – 11 Alliance Lane (39-24.1) SE48-3457
 Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:48) **Madden** – Reviewed the scope of work. There are 3 isolated vegetated wetlands, two on the property and one on the abutting northerly property; all work is outside the 50’ buffer. No waivers are proposed.
Phillips – The report talks about isolated land subject to flooding; asked for clarification.
Madden – That is an area that holds ¼ acre of at least 6” of standing water for part of the year; it’s based upon watershed draining.
Golding – Suggest we address the lack of definition for isolated flooding to our reg work.
Madden – Asked for a 2-week continuance
 Staff Waiting for Massachusetts Natural Heritage.
 Motion Continued to Aug 26.
 Roll-call Vote N/A
8. *Glenn M. & Leslie A. Shriberg Revocable Trust – 60 West Chester Street (41-374) SE48-3459
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:58) **Madden** – This is for secondary dwelling and proposed stone driveway and patio all greater than 50’ from the resource area. Asking for 2’ separation for the crawspace footing.
Golding – They are replacing a garden with a patio increasing runoff water, which would feed into the bordering vegetated wetland.
Madden – We will install sub-surface infiltration west of the patio.
Phillips – They are proposing to eliminate the knotweed with a 25% glypho-phosphate water solution; we might want to require monitoring of that in our new regulations.
Engelbourg – We could add that the herbicide must be applied in accordance with label directions.
 Staff We can add a condition that all runoff from the patio be directed into subsurface drainage on site.
 Our conditions would include photo monitoring of the invasive management area as well as recording quantity and amount of herbicide used and to be applied by a licensed applicator.
 Have everything needed to close.
 Motion **Motion to Close.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
9. *Nantucket Whales End II, LLC – 43 & 45 Squam Road (13-23 & 24) SE48-3460
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public R.J. Turcotte, Nantucket Land Council, Inc.
 Dan Mulloy, Site Design Engineering, for 37 Squam Road Nominee Trust
 Discussion (6:06) **Madden** – This is for deck and structural infills in proximity to an isolated vegetated wetland and bordering vegetated wetland associated with Squam Pond. A pool will occur partially within existing the leach field, which will be relocated west outside the 50’ buffer. We will relocate the existing gravel driveway outside the 50’ buffer. Requesting a waiver for 2’ separation from groundwater. We are waiting for Massachusetts Natural Heritage, so will be continuing; this area is mapped for rare plants.
Golding – Asked if the sunken game court will be a tennis court and what material will be used.
Madden – It is multipurpose; the surface will be impervious, but he doesn’t know the exact material.
Engelbourg – He’s confused by the plan for the pool; it looks like a corner clips the buffer and the surround is also at 15’. Also, for ancillary non-resident structures, applying the 2’ separation waiver is not appropriate
Madden – It is within 50’ of the coastal zone but outside the 100’ for the bordering vegetated wetland.
Turcotte – This is an ancillary structure in a lower coastal area; the commission should think about granting the 2’ separation waiver in view of sea-level rise and the coastal resiliency plan.
Carlson – D. Anne Atherton asked when the wetland delineation was performed. Staff has confirmed the boundaries.
Madden – The delineation was done a year ago.
Williams – We received a lengthy email from abutters; asked if ConCom responds to those letters or takes them under advisement.
Erisman – We normally take them under advisement. Those letters go into the written record.
Madden – We can provide additional information addressing questions related to ConCom resources.
Golding – The letter Ms. Williams referenced raises some valid points.
 Staff If commissioners have questions related to those letters, you can ask. We didn’t receive those comments until late today.
 Motion Continued to Aug 26.
 Roll-call Vote N/A

10. *Jeffrey Akseizer – 14 Moors End Lane (43-216) SE48-3461
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Liz Kinechi, Nantucket Engineering & Survey
 Public None
 Discussion (6:20) **Kinechi** – Reviewed the proposed activities.
 Staff We confirmed the resource area boundaries.
 Have everything needed to close.
 Motion **Motion to Close.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
11. *The Westmoor Club – 105 & 109 West Chester Street (41-805 & 806) SE48-3463
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Steven Cohen, Cohen & Cohen Law P.C.
 Adam Davis, JG Goldsmith Architecture
 Public None
 Discussion (6:22) **Santos** – This is for 2 staff dormitories, a multi-purpose court, and grading within the buffer to a bordering vegetated wetland located partially on the westerly portion of the subject property. The housing units have been approved by the HDC. Stormwater would be captured into a sub-surface infiltration system outside the 100’ buffer. The vernal pool setback doesn’t come near this proposed work. The application is subject to the Massachusetts Stormwater Act and requires associated stormwater maintenance plans. Addressed concerns presented in a letter from a number of concerned citizens. The surface will be hard.
Beale – Asked what the pickle-ball court surface is.
Davis – It’s a post-tension concrete system, which is an impervious surface.
Santos – We consider all court surfaces as impervious for drainage purposes.
Golding – The drain area 1 references keynote 10; he couldn’t find that keynote.
Santos – Explained how the drainage infiltration system will work.
Carlson – Virginia Tate of 117 West Chester Street is distressed the buildings are within the 100’ buffer; that area has never been disturbed.
Beale – Asked if there will be night-play or if there will be lighting.
Davis – There will be only a couple of bollard lights along pathways but no lighting for the pickle ball court.
Turcotte – Asked for clarification that none of the court fencing will be on or within the 50’ line.
Santos – There is no fencing or structure within the 50’ no-build zone.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Williams) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
12. *Atkinson – 82 Baxter Road (49-39) SE48-3462
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Liz Kinechi, Nantucket Engineering & Survey
 Public None
 Discussion (6:41) **Kinechi** – This is for relocating a single-family dwelling within the buffer to a bordering vegetated wetland. The existing has 25 sf within the 25’ buffer; zero proposed work will be within the 25’ buffer. The waiver is for long-term net benefit.
Phillips – She had expected this to be moved away from Baxter Road but it is moving closer to get out of the buffer.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Williams) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- B. Amended Order of Conditions**
1. Nester – 4 East Lincoln Avenue (42.4.1-49) SE48-3367
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (6:44) **Madden** – Asked to continue
 Staff None
 Motion Continued to August 26.
 Roll-call Vote N/A

III. PUBLIC MEETING

C. Minor Modifications

1. Nantucket Land Council – Nantucket Harbor (N/A) SE48-3092

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative R.J. Turcotte, Nantucket Land Council, Inc.
 Alyssa Novak, PHD, Boston University Research Assistant Professor.

Discussion (6:45) **Novak** – Update on Nantucket Harbor Eelgrass restoration using a PowerPoint presentation. There is an additional 10% loss of eelgrass in both Nantucket Harbor and Madaket since 2017 bringing the loss to 40% and 35% respectively. Explained what is causing the loss of eelgrass. Reviewed the currently used restoration method of transplanting eelgrass from a ½ acre plot in Monomoy through the harbors. Explained benefits of eelgrass and the monitoring methods. Have seen survival between 25-70% and expansion of 25-27%.
Williams – Asked what stops the new plants from being killed the same way.
Novak – Water quality improvement helps prevent the decline.
Golding – Asked if eelgrass around the world has the same DNA or is some resistant.
Novak – We’re trying to find more resilient populations but she’s leery about introducing new populations. Genetics haven’t been done for Nantucket; Nantucket’s eelgrass population has been here for 7,000 to 10,000 years.
Golding – Asked if scallops show preferences for variants.
Novak – That she doesn’t know but they do love eelgrass.
Phillips – Asked how much impact closing off an area to boating and fishing has on eelgrass recovery and would it only work in a well-flushed area. The Madaket Conservation Association is very interested in regrowing the eelgrass in the harbor.
Novak – It would be good to find areas where there might be issues with boats sitting on eelgrass beds; however, shutting off an area to boats is obviously a very political subject. Boating activity is a major problem particularly in the harbor.
Williams – Nantucket Harbor anchorage has increased over the last 20 years; asked if we should promote reducing the anchorage area to allow more area from boat traffic.
Erisman – We could suggest that; having a healthy eelgrass population helps with harbor sustainability. It would be a political fight against the large boating industry.
Golding – That raises the issue about the damage from the scalloping process. When he was younger, it seemed the eelgrass recovered from the boats. Now the greatest damage seems to be from the nutrient load and water temperature.
Novak – It is a combination. When water warms, it increases the need for more light to synthesize; adding boats is another issue which you can do something about.
Engelbourg – He implores people to bring any harbor level concerns to SHAB and Harbor Management Board. They would provide an updated Harbor Plan to the Select Board at a later date.
Turcotte – The minor modification is a request to implement other methods; new seeding methods would be more efficient for Nantucket Harbor. Explained the different seeding methods they want to try.
Engelbourg – Asked if they would have quadrants in which they could try each of the methods or would it be adaptive. He wants more specific information about what, when, and where.
Turcotte – It would all be within the approved area; we would have side-view monitoring. We would try each system in different areas; if an “act of God” ruins the process, we have the current process to fall back on. The Hessian Bag process helps protect against predators; but we will try each.

Staff Have everything needed to issue.
 Motion **Motion to Issue the Minor Modification.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

2. 36 Lily Street, LLC – 36 & 36B Lily Street (42.4.3-93& 94) SE48-3005

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Sarah Alger, Sarah F. Alger P.C.

Discussion (7:16) **Madden** – The permit is still valid; the project was redesigned allowing the Land Bank to acquire 36 Lily. This is to remove the structure on 36 Lily and allow new structures for 36B Lily. This plan allows future inclusion of a 15’ wide drain line. The reduction in new structures is about 2000sf. The project has HDC approval
Erisman – Appreciates efforts to correct this site and fix drainage and wetland issues.

Staff Have everything needed to close issue.
 Motion **Motion to Issue the Minor Modification.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips -aye; Williams recused

- 3. High Tide Partners, LLC – 8 Ackermuck Way – Lot 2 (41-618) SE48-3397
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 - Representative Mark Rits, Site Design Engineering
 - Discussion (7:22) **Rits** – This is to accommodate changes based upon HDC review; the house has turned, and structures have moved away from the resource area. We are maintaining the original drainage system for the patio; the elevation around the house going down about ½ foot.
 - Staff Have everything needed to issue.
 - Motion **Motion to Issue the Minor Modification.** (made by: Williams) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

IV. Certificates of Compliance

- 1. Seth D & Kim M. White – 41 West Chester Street (41-227.1) SE48-3117 **(Cont. 08/26/2021)**
- 2. Nantucket Islands Land Bank – Madequecham Valley Road (89-6.5) SE48-3413
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Staff For seasonal aluminum stairs; installed and functioning correctly. Recommend issue.
 - Discussion (7:25) None
 - Motion **Motion to Issue.** (made by: Golding) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 3. Brocks Court, LLC – 2 Brocks Court (42.3.4-84) SE48-3198
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Staff For restoration of a lawn area; trees are installed, and the area is full of wetland species. Recommend issue.
 - Discussion (7:26) None
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, LaFleur, Phillips, and Williams-aye; Golding abstain
- 4. Sankaty Bluff Group, LLC – 75 Baxter Road (49-30) SE48-2575
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Staff This is in compliance. Recommend issue.
 - Discussion (7:28) None
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 5. Thirty-Six Easton Corp. - 36 Easton Street (42.1.4-19) SE48-2202
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Staff For reconstruction of the bulkhead; it's in compliance. Recommend issue.
 - Discussion (7:29) None
 - Motion **Motion to Issue.** (made by: Golding) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 6. Griswold – 14 & 8 Sachus Road (30-240 & 239) SE48-2091
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Staff This is to invalidate the order.
 - Discussion (7:30) **Erisman** – No work was done.
 - Motion **Motion to invalidate this order.** (made by: Beale) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 7. Griswold – 14 Sachus Road (30-240) SE48-2738
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Staff For relocation of dwelling with site work; it is in compliance. Recommend issue.
 - Discussion (7:31) None
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 8. John T. Jr. & Bessie B Connelly – 54 Hulbert Avenue (29-59) SE48-2454
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Staff Recommend issue.
 - Discussion (7:32) None
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 9. Little Corner, LLC – 122 Wauwinet Road (11-32) SE48-3189 (Sullivan)
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 - Staff The Septic is in compliance with the Board of Health. Recommend issue.
 - Discussion (7:33) None
 - Motion **Motion to Issue.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips-aye; Williams recused

- 10. Robert K. & Lacey P. Brandt- 4 Ames Avenue (60-135) SE48-3046 (Sullivan)
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 - Staff Relocation away from a coastal bank. Recommend issue.
 - Discussion (7:34) None
 - Motion **Motion to Issue.** (made by: Beale) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

V. Orders of Condition

- 1. Middle Slip, LLC & Stone Throw, LLC – 29B & 29C Old North Wharf (42.3.1-225.1/225.2) SE48-3453
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff For maintenance dredging; included a condition requiring silt curtains and test material for contamination. Emailed the Order to commissioners for electronic signature so it can be issued tomorrow
 - Discussion (7:35) None
 - Motion **Motion to Issue as drafted.** (made by: Golding) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 2. Janice Louise O’Mara Trustee – 33 Somerset Road (56-110) NAN-135
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff For replacement of septic with line for Town sewer.
 - Discussion (7:38) None
 - Motion **Motion to Issue as drafted.** (made by: LaFleur) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 3. Hayden C. Hurley – 11 Hulbert Avenue (29.2.3-2) SE48-3455
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff No special conditions.
 - Discussion (7:39) None
 - Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 4. Hayden C. Hurley – 5 Sandy Drive (29-74) SE48-3456
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff No special conditions.
 - Discussion (7:39) None
 - Motion **Motion to Issue as drafted.** (made by: Beale) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 5. Glenn M. & Leslie A. Shriberg Revocable Trust – 60 West Chester Street (41-374) SE48-3459
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff He will add Condition 21 regarding surface runoff related to the patio. He will add Condition 22 about use of herbicide.
 - Discussion (7:40) **Engelbourg** – Wants that herbicide should be done in accordance with the label.
 - Motion **Motion to Issue as amended.** (made by: Golding) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 6. Jeffrey Akseizer – 14 Moors End Lane (43-216) SE48-3461
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff No special conditions.
 - Discussion (7:42) None
 - Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
- 7. The Westmoor Club – 105 & 109 West Chester Street (41-805 & 806) SE48-3463
 - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff The drainage plan is very good. He will add Condition 19 prohibiting court lighting
 - Discussion (7:43) **Beale** – Asked Mr. Carlson if he’s satisfied with the drainage plan.
Phillips – There wouldn’t be any lighting; asked if we could condition against lighting on the courts.
 - Motion **Motion to Issue as amended.** (made by: Engelbourg) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

8. Atkinson – 82 Baxter Road (49-39) SE48-3462

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

Documentation Draft Order of Conditions

Staff No special conditions.

Discussion (7:45) None

Motion **Motion to Issue as drafted.** (made by: Phillips) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

VI. Other Business

1. Approval of Minutes 07/22/2021:

Motion **Motion to Approve as drafted.** (made by: Williams) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

2. Monitoring Reports – Nantucket Land Council – Nantucket Harbors (N/A) SE48-3092

Discussion (7:48) See the Minor Modification application for the update and monitoring information.

3. Reports:

a. CPC, Beale

4. Commissioners Comment

a. Engelbourg – Regarding quality topsoil and clean fill, in our regulatory update, we should define what ecologically constitutes clean fill and topsoil. Often what is considered clean fill has invasive-species and/or noxious-plant seeds in it and other possible contaminates. Cited the 3 ways clean fill could be regulated.

5. Administrator/Staff Reports

a. Please keep a look out for the orders needing signatures.

b. We have job descriptions out for Ms. Dodd's position; hopefully it will be filled next month.

c. He will email potential dates for the SBPF follow up.

VII. Adjournment

Motion **Motion to Adjourn at 7:56 p.m.** (made by: Golding) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

Submitted by:

Terry L. Norton

PROPOSED