

Town and County of Nantucket
Board of Selectmen • County Commissioners

Robert R. DeCosta, Chairman
Rick Atherton
Matt Fee
Tobias Glidden
Dawn E. Hill Holdgate



16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov

C. Elizabeth Gibson
Town & County Manager

November 5, 2015

Mr. Richard A. Mason, Director of Lending
Massachusetts Housing Partnership
160 Federal Street
Boston, MA 02110

Re: Surfside Commons 40B – Project Eligibility Letter Application

Applicant: Surfside Commons LLC c/o Atlantic Development
Project: Surfside Commons in Nantucket/56 rental units on 2.5 acres
Location: 106 Surfside Road, Nantucket, MA
Subsidizing Agency: Massachusetts Housing Partnership

Dear Mr. Mason:

The Board of Selectmen (“Board”) received your October 8, 2015 correspondence regarding the August 19, 2015 application, as amended October 7, 2015, (“Application”) by Surfside Commons LLC c/o Atlantic Development (“Applicant”) to Massachusetts Housing Partnership (“MHP”) for a Project Eligibility Letter (“PEL”). The PEL would allow an application to the Nantucket Zoning Board of Appeals (“ZBA”) for a Comprehensive Permit under G.L. c.40B for a residential project to be known as Surfside Commons (“Project”), with 56 rental units (14 affordable units) on property at 106 Surfside Road (“Property”), which has 2.5 acres of land in the Limited Use General (LUG)-2 Zoning District (which requires 80,000 s.f. for a building lot) and the LUG-3 Zoning District (which requires 120,000 s.f. for a building lot). The Project proposes four residential buildings with 122 bedrooms (2 1-bedroom, 42 2-bedroom and 12 3-bedroom units), with 100 parking spaces, a pool and a clubhouse.

On November 4, 2015, for the reasons detailed below, the Board unanimously voted (5 to 0) to inform MHP that the Project is **NOT APPROPRIATE** and to urge, in the strongest possible terms, that MHP deny the Application and not issue a PEL for the Project.

In summary, the dense development proposed by the Project is so inarguably objectionable on the Property and therefore the PEL should not issue because:

- (1) The Property is not in a municipal sewer district and legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property; and sewer development costs are not addressed in the pro forma;
- (2) The Property is not served by municipal water and an on-site well would not be feasible; and water development costs are not addressed in the pro forma;
- (3) The Property is in a Wellhead Protection District and an on-site septic system would be very inappropriate and likely technically impossible;
- (4) The Project far exceeds applicable density and height limitations;
- (5) The Project design is historically and contextually inappropriate; and
- (6) The Project is inappropriate because it is wholly inconsistent with the development concepts established in the Town's 2009 Master Plan, as adopted and in active implementation by the Planning Board, Nantucket Planning & Economic Development Commission, BOS and Town Meeting.

The following exhibits are attached to assist MHP with its review of the Application:

- 1) St. 2008, c.396, special legislation that provides for creation and alteration of municipal sewer district only through legislative action;
 - 2) Nantucket Code, Chapter 41-3, which established municipal sewer districts using St. 2008, c.396 in 2010 (i.e., 2010 ATM approval of Article 31 on June 17, 2010);
 - 3) Nantucket Sewer Districts Town and Siasconset Map, as amended through April 2015, which shows the municipal sewer districts and that the Property is outside the municipal sewer districts;
 - 4) 2014 Nantucket CWMP, the Town's 20-year wastewater planning document (hardcopy not attached, please see on Town of Nantucket website at <http://www.nantucket-ma.gov/259/Wastewater-Action-Plan>);
 - 5) September 14, 2015 Memorandum of Woodard & Curran, confirming the Property is not included in the 20-year sewer plan set forth in the 2014 Nantucket CWMP; and
 - 6) Nantucket Wellhead Protection District Map, which indicates that the Property is in a wellhead protection district, making it inappropriate for the density proposed and for any on-site septic system at the Property.
- 1) **The Property is not in a municipal sewer district and legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property in a municipal sewer district.**

The Applicant's statement (Application p.32) that "municipal water and sewer are available near" the Property is disingenuous, as the Property is **not** within a municipal sewer district and legislative action would be required to include the Property in a sewer district, and the ZBA has no jurisdiction to take the necessary legislative action.

In 2008, the General Court enacted legislation (St. 2008, c.396) (See Exhibit 1) that authorized Nantucket to create municipal sewer districts through Town Meeting legislation.

In 2010, Nantucket Town Meeting used St. 2008, c.396 to adopt a by-law that created municipal sewer districts that can be altered only through Town Meeting Action (See Exhibit 2). The Property is not in a municipal sewer district. (See, Exhibit 3.)

Since the 2010 adoption of the sewer district by-law under St. 2008, c.396, Nantucket has undertaken extensive sewer planning and now has a 20-year comprehensive wastewater plan (See Exhibit 4). The careful and comprehensive planning undertaken by the Town has resulted in sewer districts that are carefully aligned with Town Overlay District properties, past 40B developments, and needs areas that were identified in the Comprehensive Wastewater Management Plan approved by the Town. The Property is not currently in a sewer district and there is no plan to extend a municipal sewer district to the Property within the next 20 years. (See, Exhibit 5.)

St. 2008, c.396, §1 expressly provides that, once Town Meeting establishes sewer districts, "No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission." (Exhibit 1.) As a result of the enactment of St. 2008, c.396 (Exhibit 1) and the establishment of municipal sewer districts by Town Meeting (Exhibit 2), the ZBA does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action that is mandated by the General Court as required in order to extend a municipal sewer district. Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35, 41 (2008)(G.L. c.40B provides no authority for the Housing Appeals Committee to override the requirement for town meeting authorization as established by the Legislature.)

Since the Property is not located in a municipal sewer district or a needs area and the ZBA does not have jurisdiction to take the legislative action necessary to include the Property within a sewer district, the Project cannot connect to municipal sewer. Since the Project proposes to site four residential buildings, a pool, a clubhouse, 100 parking spaces and access ways on 2.5 acres of land, the Property is not feasible without access to municipal sewer and the PEL should not issue.

The Applicant could seek legislative action to add the Property to a municipal sewer district; but, as noted above, Nantucket has a 20-year comprehensive wastewater plan (Exhibit 4) that does not include the Property (Exhibit 5).

Furthermore, even if the legislative action necessary to include the Property in a sewer district were to take place (which it has not and is not likely given the 2014 CWMP) the Applicant's pro forma makes no mention of the cost the Applicant would incur to extend municipal sewer

infrastructure to the Property or the resulting sewer fees (\$716,382.00) that would be required for the Applicant to connect and this is a fatal flaw in the Applicant's pro forma.

As a result, the PEL should be denied unless and until the necessary legislative action is undertaken, under St. 2008, c.396 and Nantucket Code Chapter 41-3, to include the Property in the municipal sewer district and unless and until the Applicant provides a pro forma that details the resulting sewer costs; or unless the Applicant provides a feasible plan and a feasible pro forma for an on-site septic system, which is unlikely for such a large project on such a small amount of land.

- (2) The Property is not currently served by municipal water, which would be needed for drinking water, fire protection and sanitation; and on-site water is likely not feasible given the large size of the Project and small size of the Property and the proximity of the Property to an existing residential septic system on adjacent land.**

The Property is not in a municipal water service area and a water line does not adjoin the Property. The Applicant's pro forma makes no mention of the costs involved to extend municipal water infrastructure to the Property or the resulting connection fees that would be required for the Applicant to connect and this is another fatal flaw in the Application and the PEL should be denied.

If the Applicant were to attempt to rely on an on-site drinking water well and an on-site septic system, the small size of the Property and its proposed density would render the Project unfeasible. Furthermore an on-site septic system for an abutting residential property at 108 Surfside Road is within 100 feet of the boundary line for the Property, which would affect the location of a drinking water well on the Property as an on-site well could not be located within 100 feet of adjacent septic systems.

MHP should deny the PEL application and inform the Applicant that no PEL can issue as feasible on-site septic and water plans and a feasible pro forma, as to all applicable costs, have not been provided.

- (3) The Property is in a Nantucket Wellhead Protection District; and an on-site septic system would be inappropriate.**

The Property is in a Nantucket Wellhead Protection District (Exhibit 6), and, therefore, the Property is not appropriate for the density and lot coverage proposed or for an on-site septic system and the PEL application should be denied. The number of gallons of wastewater per day based on the number of proposed bedrooms exceeds the maximum allowance of 10,000 gallons per day in an area identified by the Department Environmental Protection as a Zone II aquifer recharge area.

- (4) The Project far exceeds the applicable density and height limitations.**

The Project far exceeds the applicable density and height limitations that apply in this area and, so, the Project is wholly inappropriate and the PEL should be denied.

The Town is well aware that 40B's typically exceed local zoning standards; however, the Project is entirely out of character with the surrounding neighborhood. The Project proposes to cover the majority of the Property with buildings, parking areas, access areas, and a swimming pool (which will be unusable for the majority of the year). The application cites 30% open space, the majority of which is unusable as thin strips of ineffective buffer around the perimeter of the property or land shadowed by the bulky buildings. These factors, combined with the lack of buffers for the Project from adjacent residential properties and the massive bulk and height of the buildings proposed, render the Project completely incompatible with its setting. It's worth noting that the proposed scale of the Project, in a more appropriate location, could be acceptable with further design refinements.

The Applicant asserts (Application p. 32) that the "living space per acre" proposed by the Project is 28,921 s.f. per acre and that this density compares favorably with other "sustainable compact neighborhoods" on Nantucket, as illustrated in Exhibit F to the Application. The neighborhoods, however, that are illustrated in Exhibit F are all located within the Town Overly District and the Town Sewer District, are connected to municipal water and sewer, and are more closely situated to high-density residential and commercial areas, including the downtown and the mid-island district in the vicinity of Pleasant Street and Sparks Avenue.

The density for the LUG-2 zoning district in which the Property is primarily located requires a minimum lot size of 80,000 s.f. of area, allows up to two full-size dwellings and one accessory dwelling not exceeding 550 s.f. with a maximum ground cover ratio of 4%. Assuming full build-out of the Property under existing regulations, there would be three (3) dwelling units totaling 4,341 s.f. of ground cover containing approximately 10,853 s.f. of living space (4,341 s.f. x 2.5 stories) equal to 1,736 s.f. of "living space per acre". However, the Project proposes 56 dwelling units totaling 24,676 (22.7%) s.f. of ground cover, and containing approximately 72,303 s.f. of living space, equal to 28,921 s.f. of "living space per acre". The Project as proposed includes 53 more dwelling units, 5.68 times as much ground cover, 6.66 times as much living space, and 16.66 times as much "living space per acre" as would be allowed under existing LUG-2 regulations.

Furthermore, only 100 parking spaces are proposed for 122 bedrooms, which is insufficient; and 122 are required and needed.

The height of the buildings proposed for the Project is wholly inappropriate for a rural Nantucket setting. The Zoning Bylaw provides that no building (with limited exceptions in very specific and limited sections of Nantucket that are reserved for dense development) shall exceed 30 feet. The Project proposes three residential buildings with a height of 44 feet and a fourth building with a height of 55 feet. This is totally out of character for Nantucket, generally, and should not be allowed. With the exception of utilitarian structures such as municipal or airport or other institutional buildings, fuel tanks, radio towers, and lighthouses, the only examples of commercial or residential buildings that are similar in scale are located within the downtown and mid-island commercial areas.

(5) The Project design is historically and contextually inappropriate and inconsistent with the well established guidelines of the Historic District Commission entitled “Building with Nantucket in Mind”.

The Project design resembles a dated, oversized resort that would typically be located in a highway oriented commercial strip on the mainland, accented with an oddly located pool at the center. In fact, it is exactly the type of development that the Country Overlay District seeks to discourage and is contrary to the vision articulated throughout the Master Plan. The Project maximizes the use of three story balconies, a design feature which is unprecedented on Nantucket; and, furthermore, the balconies are located in such a way that they loom over adjacent residential properties and the Boy Scout Camp. There is no historic precedent for such a grouping of large scale buildings at an inland location.

In addition, two buildings would be within 10.6 feet of the front yard lot line and this is inappropriate in a location where the required front yard setback is 35 feet. The minimum side yard setback required is 15 feet; however, the proposed setback is as close as 5 feet and the dumpster appears to be located less than five feet from the lot line and in many places the setback from paved areas is less than five feet.

(6) The Project location is inconsistent with and contradictory to the Town and Country Overlay District concept that is included in the Zoning Bylaw and further supported in the 2009 Master Plan.

The Project is wholly inconsistent with the Town’s Zoning and 2009 Master Plan.

Nantucket’s 2009 Master Plan was adopted by the Planning Board pursuant to MGL Chapter 41 section 81D. It was accepted by the Nantucket Planning & Economic Development Commission, Board of Selectmen and Town Meeting (Article 26). The Master Plan was intended to be a 10 year document and it is actively referenced in over 100 zoning articles presented to Town Meeting over the past 6 years. There has been an effort to coordinate utilities with the zoning districts and to focus development around commercial nodes identified in Figure 15 of the 2009 Master Plan (page 46).

The Town and Country Overlay District concept was adopted by Town Meeting in 2001. In 2006 it was the subject of a survey distributed with the Annual Town Census. A total of 86% of respondents supported the creation of standards consistent with the Town and Country concepts. A non-binding 2006 ballot question was supported by 72% of the voters to “work to adopt additional standards consistent with the Town and Country concept”. In 2009, as part of the Master Plan, zoning was re-structured for consistency with these organizational principles which affect the long-term physical development of the island.

The Country Overlay District, under Section 139-12F of the Zoning Bylaw, has the following purpose:

“The purpose of the Country Overlay District is to discourage development and to preserve areas characterized by traditional and historic rural land use patterns; to discourage the spread of

disperse development patterns that promote automobile dependency, and are costly to maintain. The purpose of the Country Overlay District shall be considered by the Planning Board or Zoning Board of Appeals when determining the character and extent of site and infrastructure improvements to be required in a decision on an application for site plan approval...”

Conversely, the purpose of the Town Overlay District is to limit the spatial extent of growth by encouraging development where existing infrastructure exists or can be extended without undue expense and to create affordable housing opportunities through infill development, and to create development patterns that are conducive to alternatives to the automobile.

The Project location is wholly out of character for Nantucket, generally, and, specifically it should not be allowed at this location on such a small site (only 2.5 acres) in a rural setting within the Country Overlay District.

Although this site is not appropriate for large scale development for all the reasons contained within this letter, there are numerous examples of support by the Town and the voters at Town Meeting for housing production pursuant to the 2009 Master Plan in areas that are appropriate for additional density. A sampling of initiatives over the last 5 years include the following:

- 2009 Annual Town Meeting: Article 27. Created “apartment” allowance by-right for up to 4 dwelling units within a mixed use structure in 3 zoning districts.
- 2014 Annual Town Meeting: Article 66. Modified “apartment” provision to relax standards. Approximately 130 multi-family units in a Multi-Family Overlay District. Recent examples have been approved for construction in mixed use structures such as a market with second floor apartments and a physical therapy clinic with second floor apartments.
- 2009 Annual Town Meeting: Article 27. Expanded “secondary lot” provision.
- 2011 Annual Town Meeting: Article 63. Modified “secondary lot” provision to relax development standards.
- 2014 Annual Town Meeting: Article 63. Modified “secondary lot” provision to further relax development standards. The Planning Board has approved special permits to create 30 income restricted ownership dwelling units.
- 2009 Annual Town Meeting: Article 72. Established Affordable Housing Trust Fund.
- 2014 Annual Town Meeting: Article 79. Modified membership of Affordable Housing Trust Fund to increase productivity. Several projects are underway including a 4 unit 40B LIP at 7 Surfside Road across the street from the Nantucket High School. The underlying land with a single structure was purchased by the AHTF and later transferred to a local housing group, Housing Nantucket, for further development.

- 2010 Annual Town Meeting: Article 88. Authorized use of Town owned land on Ticcoma Way for affordable housing. One lot has been transferred to Habitat for Humanity and one lot has been transferred to the Nantucket Housing Authority.
- 2014 Annual Town Meeting: Articles 67 and 68. Created “apartment building” allowance by special permit for up to 6 dwellings on a single lot in 2 zoning districts. In 2015, the Planning Board approved a 4 structure complex including 28 rental apartment units.
- 2015 Annual Town Meeting: Article 61. Modified “accessory apartment” to relax standards, including a by-right allowance in all residential zoning districts.
- 2015 Annual Town Meeting: Article 62. Created “tertiary dwelling” allowance by-right in the R-5, R-10, R-20, R-40, LUG-1, LUG-2, and LUG-3. Following the Attorney General approval in September, 6 tertiary dwellings have been approved by the Planning Board to convert existing structures to dwelling units.
- 2015 Annual Town Meeting: Article 99. Authorized the Town to lease a portion of land at 2 Fairgrounds Road for affordable housing. A design group appointed by the Town Manager is actively investigating the potential for this site.
- On-going support of housing efforts through funds available through the Community Preservation Committee. Significant amounts were appropriated in recent years: \$1m at 2010 ATM, \$1.2m at 2011ATM, \$1.6m at 2012 ATM, \$320k at 2013 ATM, \$580k at 2014 ATM, and \$1.5m at 2015 ATM.

In conclusion, for the above reasons, the PEL should be denied. If MHP chooses to issue a PEL, which the Board strongly urges MHP not to do, any PEL should be conditioned as follows:

- The Applicant shall not apply for a comprehensive permit without first obtaining Town Meeting approval to extend a municipal sewer district to the Property.
- The Applicant shall present MHP with a detailed pro forma that includes the costs for all relevant sewer municipal infrastructure and fees or that includes the costs for on-site septic and all water infrastructure and fee costs (whether municipal or on-site) and MHP shall be required to first determine that the Project is feasible given all of these costs.
- The Applicant shall provide the ZBA with an analysis of pre and post-construction conditions and pre and post-construction drainage calculations and that a qualified professional engineer provide a report that compares and analyzes the pre and post construction conditions for the Property and all adjoining land and all relevant watershed areas.
- The Applicant shall provide full stormwater drainage calculations (pre and post construction) to the ZBA and they shall be subjected to peer review at the Applicant’s expense.

- If the Applicant proposes to use pervious pavement for walkways and parking areas, then that, of course, could mitigate stormwater runoff concerns; however, if that approach is contemplated, then the pro forma shall be revised to include adequate funding and adequate provisions for the cost of maintaining the pervious pavement, which would be a significant annual expense.
- The ZBA may withhold approval unless a suitable stormwater control design is proposed.
- The Applicant shall submit drainage information to the ZBA that shall:
 - a) be supported by adequate testing of the Property's soils, both as to percolation and permeability rates, and the location of seasonal high ground water levels;
 - b) be required to undergo peer review by a drainage consultant hired by the Town at the Applicant's expense;
 - c) be confirmed through peer review, before any approval can take place, to result in no net increase in the volume and rate of stormwater runoff from the Property, based upon drainage calculations that compare pre-construction and post-construction conditions;
 - d) be confirmed, in particular, through peer review, to not result in any increase in the rate or volume of stormwater runoff from the Property or any change in the runoff from existing adjoining properties, when pre-construction and post-construction conditions are compared;
 - e) include water control runoff from roofs of the dwellings and any accessory structures that are separate from and not combined with stormwater runoff from paved areas and not be introduced into any stormwater drainage basin;
 - f) include operation and maintenance and replacement requirements for the access ways and stormwater drainage infrastructure; and
 - g) include evidence of adequate funding to manage the resulting costs for maintaining, repair and replacing the access ways and stormwater drainage infrastructure and other infrastructure.
- The Project shall be modified to include a sidewalk to the nearest bus stop to allow safe access for residents.
- The location of the dumpster must be moved so as not to disturb any adjacent residential property. The Applicant shall include the cost of trash service within the pro forma. A detailed plan identifying frequency of pickup, dumpster locations, policies, enforcement procedures, etc. should be submitted with the final application.

- The Application shall obtain and provide a report that provides an estimate of the anticipated school aged children in the Project, so that the Town can plan ahead to serve the children.
- The buildings shall be redesigned to eliminate all balconies.
- If a connection to the water system, the Applicant shall perform all water capacity tests to verify and demonstrate that the Project will not adversely impact the public infrastructure or reduce the water pressure available to existing water users.
- The Project shall be designed and built so as to maximize energy efficiency in terms of building materials and heating and other infrastructure. This will reduce the cost to the residents and should not greatly increase the Applicant's costs to undertake the Project.
- The Project shall include internal and off-site sidewalk improvements so as to facilitate pedestrian access to nearby neighborhoods and public transportation facilities. Sidewalks should be constructed of brick, concrete or asphalt (or a combination thereof) and meet AASHTO standards where appropriate.
- The Project shall have wide enough access ways to allow access for emergency vehicles to enter and turn and adequate snow storage areas shall be provided.
- The dimension of each parking space shall be consistent with the requirements of the Zoning Bylaw.
- All units and confined spaces shall be sprinklered.
- The Applicant shall perform a traffic infrastructure study, which includes sight distance assessments, to evaluate any improvements that would be required to serve the traffic the Project proposes. This study, given the number of residents proposed to reside in the proposed development, must include an assessment of access to nearby commercial, community, and public transportation facilities. The Traffic Study must take the high tourist seasons into account and include the conflicts that arise from the high number of vehicles, pedestrians and bikers that compete for use of Nantucket's ways and the impact of proposed access points on existing residents and commercial property owners. The Applicant shall pay for traffic peer review.
- The Applicant shall provide a lighting plan, to provide safe lighting for residents, without light intrusion onto adjacent properties.

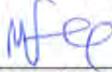
Attached to this letter is a set of comments from the Nantucket Land Council, which is a non-profit corporation dedicated to preserving the natural world and rural character of Nantucket. We urge MHP to take into consideration the comments of the Land Council and, in particular, to investigate the site control issues raised in the attached letter.

In closing the Board thanks you and MHP for consideration of the Board's comments and concerns regarding this project and strongly urges MHP to deny the PEL.

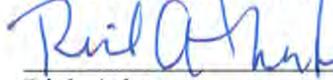
Very truly yours,



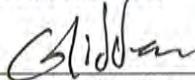
Robert R. De Costa, Chairman



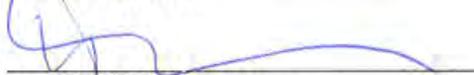
Matt Fee, Vice Chairman



Rick Atherton



Tobias Glidden



Dawn E. Hill Holdgate

Enc. Exhibits

cc: Zoning Board of Appeals
Director of Planning and Land Use Services
Town Counsel
Surfside Commons, LLC c/o Atlantic Development

534312v1A/NANT40B/0005

**Acts****2008**

Chapter 396 AN ACT AUTHORIZING THE ESTABLISHMENT OF THE NANTUCKET SEWER COMMISSION AND SEWER DISTRICTS IN THE TOWN OF NANTUCKET.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The town of Nantucket, acting by and through the Nantucket sewer commission described in section 3, may lay out, plan, construct, maintain and operate a system or systems of common sewers for a part or whole of its territory, as may be from time to time defined and established by adoption by town meeting of one or more by-laws as a designated sewer district under the jurisdiction and control of the sewer commission, with such capacity limitations, connections, pumping stations, treatment plants and other works, as may be allocated in such by-law to such sewer district as required for a system or systems of sewage treatment and disposal, and may construct such sewers and related works in said sewer districts defined and established by by-law as may be necessary. No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission.

SECTION 2. The town may make and maintain, within sewer districts defined and established as set forth in section 1 in any way therein where common sewers are constructed, such connecting sewers within the limits of such way as may be necessary to connect any estate which abuts upon the way within such district.

SECTION 3. Notwithstanding the provisions of chapter 169 of the acts of 1965, the town may, at any town meeting, by a two-thirds vote, vote that the board of selectmen shall act as a Nantucket sewer commission, or that there shall be a separate Nantucket sewer commission, the members of which shall be appointed by the board of selectmen or elected by popular vote for 3 year terms. The number, constitution and the choice of elected or appointed commissioners of a separate sewer commission shall also be determined by a two-thirds vote of town meeting. If a separate Nantucket sewer commission is established by town meeting, any selectman shall be eligible to serve as a member thereof. Town meeting shall be authorized to change the method of establishment of the Nantucket sewer commission described herein without any limitation on the number of times such commission may be established or re-established as the case may be, by a two-thirds vote. Whenever the phrase "Nantucket sewer commissioners" appears in this act, such phrase shall include within its meaning either the board of selectmen acting as Nantucket sewer commissioners, or the

separate appointed or elected Nantucket sewer commission.

SECTION 4. The Nantucket sewer commission, acting for and on behalf of the town of Nantucket, shall have charge of and shall be responsible for the policies, finances, and overall goals of the sewer system, but shall be subject to the charter of the town of Nantucket as to the administration and management of the systems operation and maintenance, and shall be responsible for the good order of all sewers, pipes, pumping stations, treatment and disposal works, and the like. The operations of the Nantucket sewer commission shall be governed by, and any staff or employees shall be considered part of town administration within the meaning of, the charter of the town of Nantucket unless changed or modified pursuant to said charter.

SECTION 5. The board of selectmen acting for and on behalf of the town of Nantucket, after being duly authorized to do so by town meeting, may take by eminent domain pursuant to chapter 79 of the General Laws or otherwise may, utilizing the procedures described in the charter of the town of Nantucket acquire by purchase or gift any lands, rights of way, or easements, public or private, in the town necessary for accomplishing any purpose mentioned in this act and may construct such sewers under or over any state road, any bridge, pier, tidelands, boulevards or other public way, or within the location of any state land, without the necessity for any formal filings in the registry of deeds, and may enter upon and dig up any private land or any public land or public way, for the purpose of laying such sewers and of maintaining and repairing the same, and may do any other thing proper or necessary for the purposes of this act.

SECTION 6. The financial operations of the sewer system shall be an Enterprise Fund within the meaning of section 53F1/2 of chapter 44 of the General Laws, except as modified herein, and any expenditure from such fund shall be only upon authorization of the Nantucket sewer commission. The town shall, by vote at town meeting, determine whether it shall pay the whole or a portion of the cost of said system or systems of sewerage and sewage disposal, and if a portion, what proportion. If the town votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system or systems, the town, acting through the Nantucket sewer commission, may avail itself of any or all of the methods permitted by the General Laws; and the provisions of the General Laws relative to the assessment, apportionment, division, reassessment, abatement and collection of sewer assessments or the additional methods set forth in section 8, and as to liens therefor and to interest thereon, shall apply to assessments made pursuant to this act by the Nantucket sewer commission, except that interest shall be at the rate as may be established by the Nantucket sewer commission from time to time.

At the same meeting at which town meeting determines that any portion of the cost is to be borne by the town, it may by vote determine by which of such methods the remaining portion

of said cost shall be provided for.

The collector of taxes of said town shall certify the payment or payments of any such assessment or apportionments thereof to the sewer commission or to the selectmen acting as such, who shall preserve a record thereof.

SECTION 7. The revenues received by the fund described in section 6 of this act from sewer assessments, fees, charges, contributions from the town towards the costs of such sewer system as described in section 6, and the like as receipts or revenues, shall be applied to the payment of charges and expenses incident to the design, construction, maintenance, and operation of said system or systems of sewerage and sewage disposal or to the extensions thereof, to the payment of principal or interest upon bonds or notes issued for sewer purposes, or to the payment or redemption of such bonds or notes.

SECTION 8. The Nantucket sewer commission may, in its discretion, prescribe for the users of said sewer systems and disposal works such annual charges, connection fees, assessments, privilege fees, and the like, based on the benefits derived therefrom as such sewer commission may deem proper, subject however, to such by-laws as may be adopted by vote of the town, or as may be provided for in the General Laws. Notwithstanding any law to the contrary, the commission is authorized to impose and collect such charges, fees, or assessments prior to connection or operation of such system of sewers, and may enter into agreements for the payment thereof over such time as the sewer commission shall determine. In fixing the charges to be imposed for said system, the Nantucket sewer commission is authorized to make use of any fee, charge, assessment or betterment provided for by the General Laws and further may take into consideration all costs for ongoing removal of infiltration and inflow of non-wastewater into the system as part of the normal operating costs of the system; may include, in setting privilege fees, capital costs and interest charges applicable thereto; may impose late fees for unpaid billings; may assess a capacity utilization fee to new estates and properties added to a sewer district authorized by this act from outside a designated needs area in addition to any privilege fee; may charge betterments, special assessments, or any other charge to the estates and properties being served by collection system improvements and extensions to pay for all costs for sewer line extensions to serve new connections, both within the sewer districts authorized by the act and in any areas added to such sewer district; and may impose such charges on properties within a sewer district authorized by the act whether or not such estates and properties are then connected to the sewer system.

SECTION 9. The Nantucket sewer commission may, from time to time, adopt and prescribe rules and regulations for the means of connection of estates and buildings with sewers and for inspection of the materials, the construction, alteration, and use of all connections entering to such sewers, but not including the expansion of districts except as provided in sections 1

and 10, and may prescribe penalties, not exceeding \$300 for the violation of any such rule or regulation. Such rules and regulations shall be available for public review at the sewer commission's designated office during regular office hours. Any changes, deletions, additions or revisions to said rules and regulations deemed necessary by the Nantucket sewer commission from time to time, shall take full effect after a notice of change has been published at least once a week for 2 successive weeks in a newspaper of general circulation in the town of Nantucket, which notice shall detail where and when such revised rules and regulations may be viewed by the general public.

SECTION 10. Notwithstanding any provision of law to the contrary, owners of land not within the sewer districts defined and established pursuant to section 1 of this act shall not be permitted to connect to the town's sewer system except as is set forth in this act. The territory covered by said sewer districts may be amended from time to time by the board having charge of sewers, after a public hearing conducted to consider such amendment, upon approval of the department of environmental protection if otherwise required by law and upon enactment by town meeting of a by-law defining or establishing a new or expanded sewer district. In the event that the board having charge of sewers votes not to amend the territory of any sewer district in accordance with the foregoing sentence, the amendment may nevertheless be enacted in a form of a by-law upon a two-thirds vote of town meeting. Any by-law adopted pursuant to the authority granted to the town of Nantucket by this act may include authorization to the Nantucket sewer commission without a town meeting vote to add to the sewer districts created pursuant to this act properties located within "needs areas" as defined by Nantucket's Comprehensive Wastewater Management Plan prepared by Earth Tech dated March 2004, approved by the secretary of environmental affairs on May 14, 2004, with such conditions and limitations with respect to such authorization as such by-law may provide.

SECTION 11. Notwithstanding anything to the contrary contained herein, the board having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings or public restrooms or other public service uses as defined by the municipality; provided, however, that such uses may include, but shall not be limited to, affordable housing constructed pursuant to chapters 40B and 40R of the General Laws, without thereby creating any entitlement on the part of any person to connect to such sewer system, and subject to capacity, in order of application, may permit or if in the public interest, may require, extensions, new connections or new flow to the sewer system within such districts.

SECTION 12. This act shall take effect as of July 1, 2008.

Approved December 17, 2008

Exhibit 2

Chapter 41: Board of Sewer Commissioners

[HISTORY: Adopted by the Annual Town Meeting of the Town of Nantucket 5-8-1990 by Art. 17, approved 9-5-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Solid waste enterprise — See Ch. 42.

§ 41-1 Responsibilities.

Pursuant to Chapter 169 of the Acts of 1965 of the Commonwealth of Massachusetts and pursuant to this chapter, the Board of Public Works is to be the Sewer Commissioners responsible for the maintenance, management, operation, direction, control and protection of the assets of the sewer enterprise.

§ 41-2 Power to enter contracts.

The Board of Sewer Commissioners is authorized to enter into contracts, to expend such sums as may be necessary as are authorized and appropriated by the Town and to take such action as may be necessary or advisable to provide the people of Nantucket with all the sewer uses in accordance with this chapter and with the laws of the commonwealth.

§ 41-3 Sewer districts.

[Added 4-12-2004 ATM by Art. 56, approved 9-3-2004^[1]]

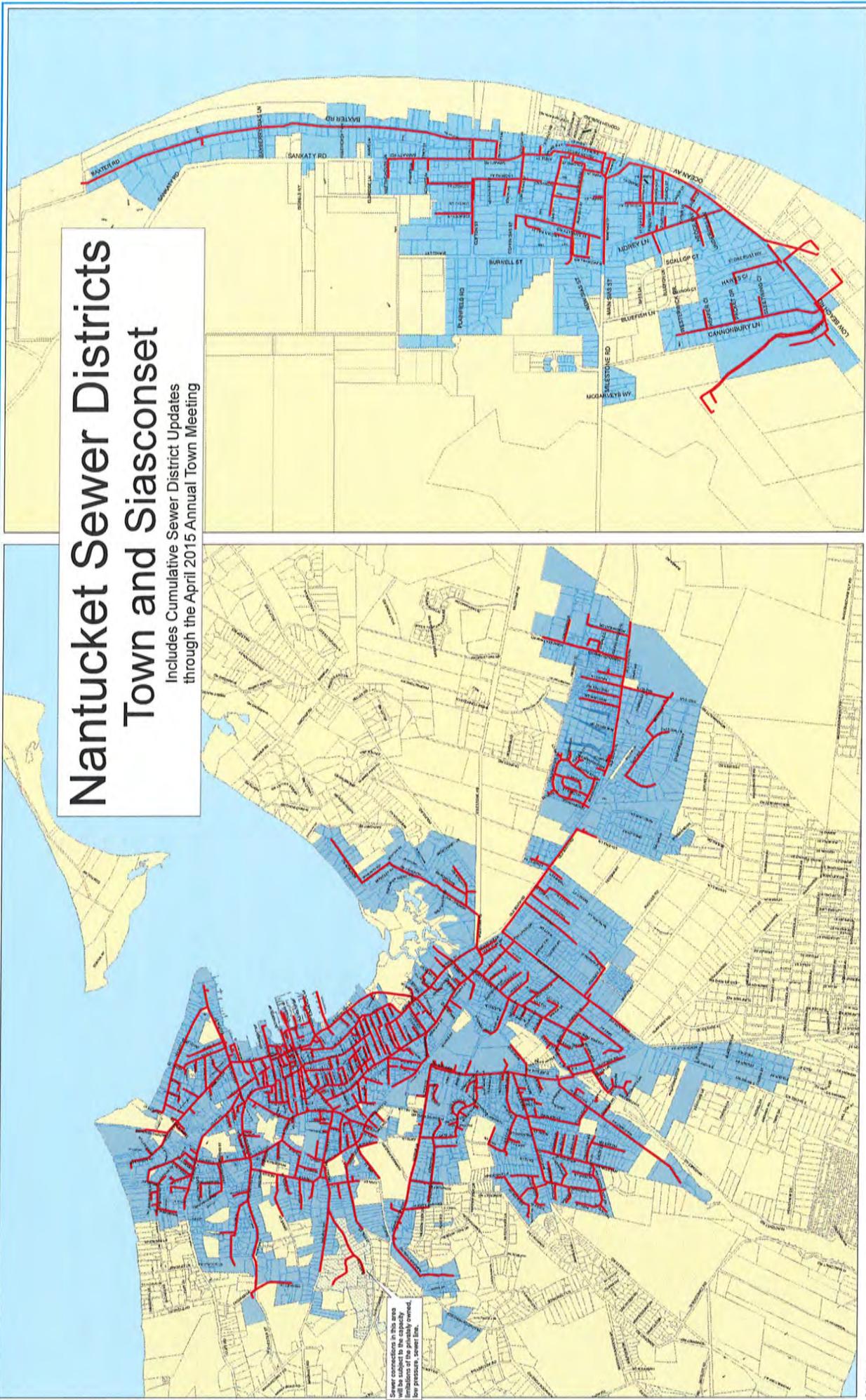
The Board of Sewer Commissioners is authorized to lay out, construct, maintain and operate a system or systems of common sewers and main drains in public or private ways for a part of the Town as set forth below for the public convenience or the public health with such connections and other works as may be required for a system or systems of sewerage or drainage and sewage treatment and disposal within the sewer districts set forth below. Such works for sewage treatment and disposal may include any wastewater treatment facility for treating, neutralizing or stabilizing sewage including treatment or disposal plants; the necessary intercepting, outfall and outlet sewers, pumping stations integral to such facilities; and equipment and appurtenances related to the foregoing. For the purposes of this chapter the word "sewage" shall mean wastewater from homes, public buildings, commercial or industrial establishments, or any combination thereof, and shall include any surface or ground water that may be present therein. The following systems of common sewers and main drains are hereby designated:

- A. Town Sewer District is shown on a map entitled "Nantucket Sewer Districts Town and Siasconset" prepared by the Town of Nantucket GIS Coordinator, dated April 20, 2010, as may be amended from time to time. The above referenced map incorporates the original sewer district map dated March 2004 as approved through Article 56 of the 2004 Annual Town Meeting and all subsequent amendments as may be approved by Town Meeting from time to time. The Town Sewer District, projected to have a summer average daily flow capacity of 2,800,000 mgd, is serviced by the Surfside Wastewater Treatment Facility.
[Amended 10-19-2004 STM by Art. 14, approved 2-22-2005; 4-11-2007 ATM by Art. 43, approved 6-28-2007; 4-5-2010 ATM by Arts. 38, 40, approved 6-17-2010; 4-4-2011 ATM by Art. 47, approved 9-15-2011; 4-2-2013 ATM by Art. 42, approved 7-26-2013]
- B. Siasconset Sewer District: as shown on a map entitled "Nantucket Sewer Districts Town and Siasconset" prepared by the Town of Nantucket GIS Coordinator, dated April 20, 2010, as may be amended from time to time. The above referenced map incorporates the original sewer district map dated March 2004 as approved through Article 56 of the 2004 Annual Town Meeting and all subsequent amendments as may be approved by Town Meeting from time to time. The Siasconset Sewer District, projected to have a summer average daily flow of 220,000 gallons per day, is serviced by the Siasconset Wastewater Treatment Facility.
[Amended 4-11-2007 ATM by Art. 41, approved 6-28-2007; 4-6-2009 ATM by Art. 53, approved 8-10-2009; 4-5-2010 ATM by Art. 38, approved 6-17-2010; 4-2-2013 ATM by Art. 43, approved 7-26-2013]

- [1] *Editor's Note: Pursuant to Acts of 2008, ch. 396, the Town adopted this section as a bylaw 4-15-2010 ATM by Art. 31, approved 6-17-2010.*

Nantucket Sewer Districts

Includes Cumulative Sewer District Updates through the April 2015 Annual Town Meeting



Color Key:
 The blue areas in this map represent sewer districts. The red lines represent sewer lines. The blue shaded areas represent sewer districts. The red lines represent sewer lines. The blue shaded areas represent sewer districts. The red lines represent sewer lines.

Disclaimer:
 The information on this map is provided for informational purposes only. It is not intended to be used as a legal document. The information on this map is provided for informational purposes only. It is not intended to be used as a legal document.

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Town of Nantucket - GIS Mapsheet



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Please send identification of any errors and corresponding corrections to:
 GIS Coordinator
 27 Forewinds Road
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MEMORANDUM



TO: Libby Gibson, Town Manager
Kara Buzanoski, DPW Director
FROM: Rosemary Blacquier, Project Manager – CWMP Update
DATE: September 14, 2015
RE: Surfside WWTF Capacity Analysis and Areas of Sewer Planning from 2014 Comprehensive Wastewater Management Plan Update Report.

The Comprehensive Wastewater Management Plan (CWMP) Update completed in 2014, updated the Town's state-approved 2004 CWMP. The CWMP Update provides the Town with a 20-year wastewater planning document. The 2014 Update Report reviewed current and future conditions on Island with regards to wastewater to identify areas of the Town that were not long-term sustainable with on-site wastewater disposal systems. All areas from the 2004 CWMP were re-evaluated in 2014 to address a decade of changes. Together with physical attributes of the land, opportunities and constraints of soils, groundwater conditions, size of properties, updated Board of Health records noting on-site issues and environmental impacts, the areas determined to need an off-site wastewater solution (sewer) were identified with a capacity for 4.0 mgd flow at the Surfside WWTF. These are detailed in the 2014 CWMP Update as the eight *Needs Areas* as follows:

Madaket	Warren's Landing
Somerset	Hummock Pond North
Hummock Pond South	Miacomet
Monomoy	Shimmo

The areas identified and approved in the 2004 and the 2014 CWMP Update as sustainable with on-site systems include the following *Study Areas*:

Pocomo	Polpis
Quidnet	Surfside*
Tom Nevers High Density	Tom Nevers Low Density
Wauwinet	

***106 Surfside Road is within the Surfside Study Area**

A major portion of the state-approved 2014 CWMP Update included a complete capacity analysis of the Surfside Wastewater Treatment Facility (WWTF) and its associated Groundwater Discharge Permit. The results of the 2014 CWMP Update identified a need for 4.0 million gallons per day (mgd) of wastewater capacity at the WWTF to treat and discharge effluent within the required permit limits. This 4.0 mgd includes existing wastewater from the Town Sewer District, approved Needs Areas and projected infiltration and inflow. The attached Figure 2-20 identifies all of these and totals 4.0 mgd. Figure 2-20 also identifies those areas shown in the CWMP Update as being able to support on-site wastewater systems. Also attached is Section 2.14.3 and Table 2-16 from the CWMP Update Report with the total projected flows and loads-both existing and future based on the identified Needs Areas.

The Town's current Groundwater Discharge Permit was previously set at 3.5 mgd. The CWMP Update identified a need to modify the existing permit to 4.0 mgd. A comprehensive hydrogeological evaluation was completed at the Surfside site and concluded that the discharge beds could handle up to 4.0 mgd, but no more. An application to modify the existing Groundwater Discharge Permit was filed with and approved by the Massachusetts Department of Environmental Protection (MassDEP) in 2014, setting the new permit total at 4.0 mgd. A comprehensive WWTF evaluation showed a need to update various WWTF processes to support the 4.0 mgd. Annual Town Meeting in spring 2015 approved the plan and is working towards these improvements at

Exhibit 5

this time. The 4.0 mg is fully accounted for in the above noted Needs Areas and areas currently included within the delineation of the Town Sewer District.



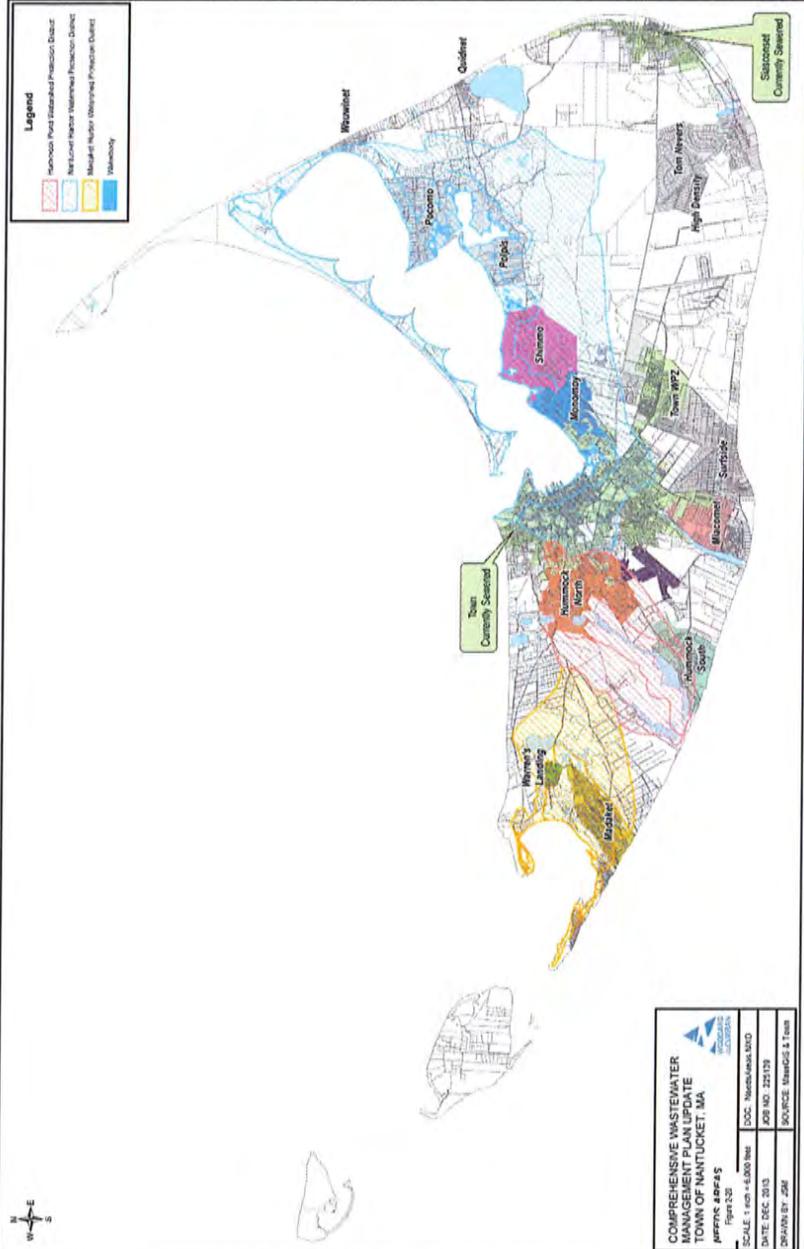
The property in question, 106 Surfside Road, is within the Surfside Study Area, which was deemed suitable for on-site wastewater and not included in a sewer plan. This is clearly shown in Figure 2-20 from the 2014 CWMP Update Report and is attached hereto for reference.

Town of Nantucket CWMP Update

Exhibit 5

AREAS RECOMMENDED FOR SEWER SERVICE

<p>MADAKET</p> <p>Drivers:</p> <ul style="list-style-type: none"> • Draft TMDL – Water Quality • Madaket Harbor Watershed • Small, Dense Lots • Severe Soils • Severe Groundwater • Inability to Meet Title 5 • Inability to Meet Local BOH Regs • Private Water Supply <p>Recommendation: Municipal Sewer at Surfside WWTF</p>	<p>HUMMOCK POND SOUTH</p> <p>Drivers:</p> <ul style="list-style-type: none"> • Pending TMDL – Water Quality • Hummock Pond Watershed • Small, Dense Lots • Severe Soils • Inability to Meet Title 5 • Inability to Meet Local BOH Regs • Private Water Supply <p>Recommendation: Municipal Sewer at Surfside WWTF</p>
<p>WARRENS LANDING</p> <p>Drivers:</p> <ul style="list-style-type: none"> • Draft TMDL – Water Quality • Madaket Harbor Watershed • GW Flow Towards Hither Creek Water Quality • Small, Dense Lots <p>Recommendation: Municipal Sewer at Surfside WWTF</p>	<p>MIACOMET</p> <p>Drivers:</p> <ul style="list-style-type: none"> • Water Quality • Small, Dense Lots • Severe Soil and Groundwater Conditions <p>Recommendation: Municipal Sewer at Surfside WWTF</p>
<p>HUMMOCK POND NORTH</p> <p>Drivers:</p> <ul style="list-style-type: none"> • Pending TMDL – Water Quality • Hummock Pond Watershed • Head of Hummock <p>Recommendation: Municipal Sewer at Surfside WWTF</p>	<p>MONOMOY</p> <p>Drivers:</p> <ul style="list-style-type: none"> • TMDL – Water Quality • Nantucket Harbor Watershed • Polpis Harbor TMDL • Severe Soil and Groundwater Conditions <p>Recommendation: Municipal Sewer at Surfside WWTF</p>
<p>SHIMMO</p> <p>Drivers:</p> <ul style="list-style-type: none"> • TMDL – Water Quality • Nantucket Harbor Watershed • Polpis Harbor TMDL • Severe Soil and Groundwater Conditions <p>Recommendation: Municipal Sewer at Surfside WWTF</p>	<p>SOMERSET</p> <p>Drivers:</p> <ul style="list-style-type: none"> • Small, Dense Lots • Severe Soil and Groundwater Conditions • Inability to Meet Title 5 • Private Water Supply <p>Recommendation: Municipal Sewer at Surfside WWTF</p>



AREAS RECOMMENDED FOR SEPTAGE MANAGEMENT PLAN

<p>Polpis</p> <p>Quidnet</p> <p>Tom Nevers High Density</p>	<p>Pocomo</p> <p>Surfside</p> <p>Tom Nevers Low Density</p>	<p>Wauwinet</p>
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SPECIAL AREAS RECOMMENDED FOR SEWER

<p>TOWN WPZ</p> <p>Drivers:</p> <ul style="list-style-type: none"> • Town's Wellhead Protection <p>Recommendation: Municipal Sewer at Surfside WWTF IF IMPACTED</p>	<p>TOWN SEWER DISTRICT UNSEWERED</p> <p>Drivers:</p> <ul style="list-style-type: none"> • TMDL – Water Quality • Nantucket Harbor Watershed • Polpis Harbor TMDL <p>Recommendation: Municipal Sewer at Surfside WWTF</p>
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2.14.3 Wastewater Flow and Loads Update

In order to update the assessment of the Town’s wastewater disposal needs and recommend appropriate wastewater disposal solutions for each Need Area and Study Area, W&C estimated the wastewater flows and waste loads that would be generated in the Areas. A key component of these updates was reflecting the revised zoning and extent of the Town Sewer Districts.

A defined methodology was utilized to calculate these estimates as described below.

W&C revised the flows and loads for the Need and Study Areas by updating counts of developed and undeveloped residential and commercial parcels in each Area, and verifying land use, zoning, and sewer status for each parcel using the Town’s Assessor’s Database, State Land Use Codes, and the Town’s Sewer Districts, sewer users, and zoning mapping in GIS.

After these updates were made, we assigned the following rules to parcels:

- All developed single-family residential parcels were assumed to have at least one wastewater connection.
- All developable or potentially developable residential parcels that met zoning were assumed to have at least one wastewater connection.
- We assumed any parcel that meets zoning could have a second dwelling. For example, single-family residential parcels that met zoning were assumed to have two wastewater connections. However, based on discussions with the Town Planner and the fact that approximately only 12% of residences on the island currently have second dwellings, overall to be conservative we assumed only 25% of the second dwellings could be built.
- All developed commercial parcels were assigned a flow based on acreage.
- Developable and potentially developable commercial parcels that met zoning were also assigned a wastewater flow based on acreage.
- Based on discussions with Nantucket Assessor, we assumed all multi-family parcels in the Areas are equal to two residential wastewater connections.

Average Daily Flow estimates for both summer and winter were developed using the above described parcel count methods and applying the unit flows consistent with the previous CWMP work. In the Phase I CWMP, wastewater flows from 1999 at the Surfside Wastewater Treatment Facility were analyzed in conjunction with the number of residential and commercial units connected to the system to estimate unit wastewater flows. Population data were used to determine the average number of people per residential household. Table 2-13 presents the results of this analysis from the Phase I CWMP. These values were used in wastewater flow calculations for this CWMP update.

Table 2-13: Phase I CWMP Wastewater Winter and Summer Wastewater Unit Flows

Season	Average Number of People per Household	Gallons per Capita Per Day	Residential Wastewater Flow (GPD)	Commercial Wastewater Flow (GPD)
Summer (June – September)	4.5	71.1	320	345
Winter (December – March)	2.5	74	185	260

Note that wastewater is typically composed of residential, commercial and industrial sources. As was the case in both the Phase I CWMP and the 2004 CWMP/EIR, industrial sources continue to be absent in Nantucket and therefore to



be representative of current conditions and consistent with these reports, only residential and commercial flows are developed for this update.

Infiltration and inflow (I/I) was estimated assuming 250 gallons per day-inch-mile (gpdim) for new pipe in accordance with MassDEP I/I standards. Infiltration/inflow was not estimated for any low pressure sewer. The length of gravity sewer in Somerset presented in the 2004 CWMP was included in these calculations. The 2004 CWMP identified Madaket and Warrens Landing as being sewered with 100% low pressure. For the remaining Areas, to determine the total length of sewer, the approximate length of streets within each area was extracted from GIS mapping.

To be consistent with the Phase I CWMP, wastewater loads were calculated by applying industry standard factors from the New England Interstate Water Pollution Control Commission Guides for the Design of Wastewater Treatment Works (TR-16) and from Table 3-15 of Wastewater Engineer Treatment and Reuse, 4th Edition, by Metcalf & Eddy, to the estimated average daily wastewater flows. Table 2-14 presents a summary of the wastewater load factors.

Table 2-14: Wastewater Load Factors

Parameter	Residential (lbs/capita/day)	Commercial/Industrial (mg/L)
BOD	0.22	250
TSS	0.25	300
Total Nitrogen	0.04	40

In the Phase I CWMP, "Peak Hourly Flow" and "Maximum Daily Flow" were estimated using peaking factors from TR-16. However, for this CWMP update, to better represent actual conditions experienced at the WWTF, ratios from existing treatment plant data were utilized to estimate maximum month, maximum day, and peak hourly flows, as well as the maximum month loads. Table 2-15 shows these ratios.

Table 2-15: Wastewater Flow and Load Ratios Based on Existing WWTF Data

Parameter	Ratio
Max Month Flow	1.07
Max Day Flow	1.37
Peak Hourly Flow	2.65
BOD Max Month	1.17
TSS Max Month	1.32
TN Max Month	1.15

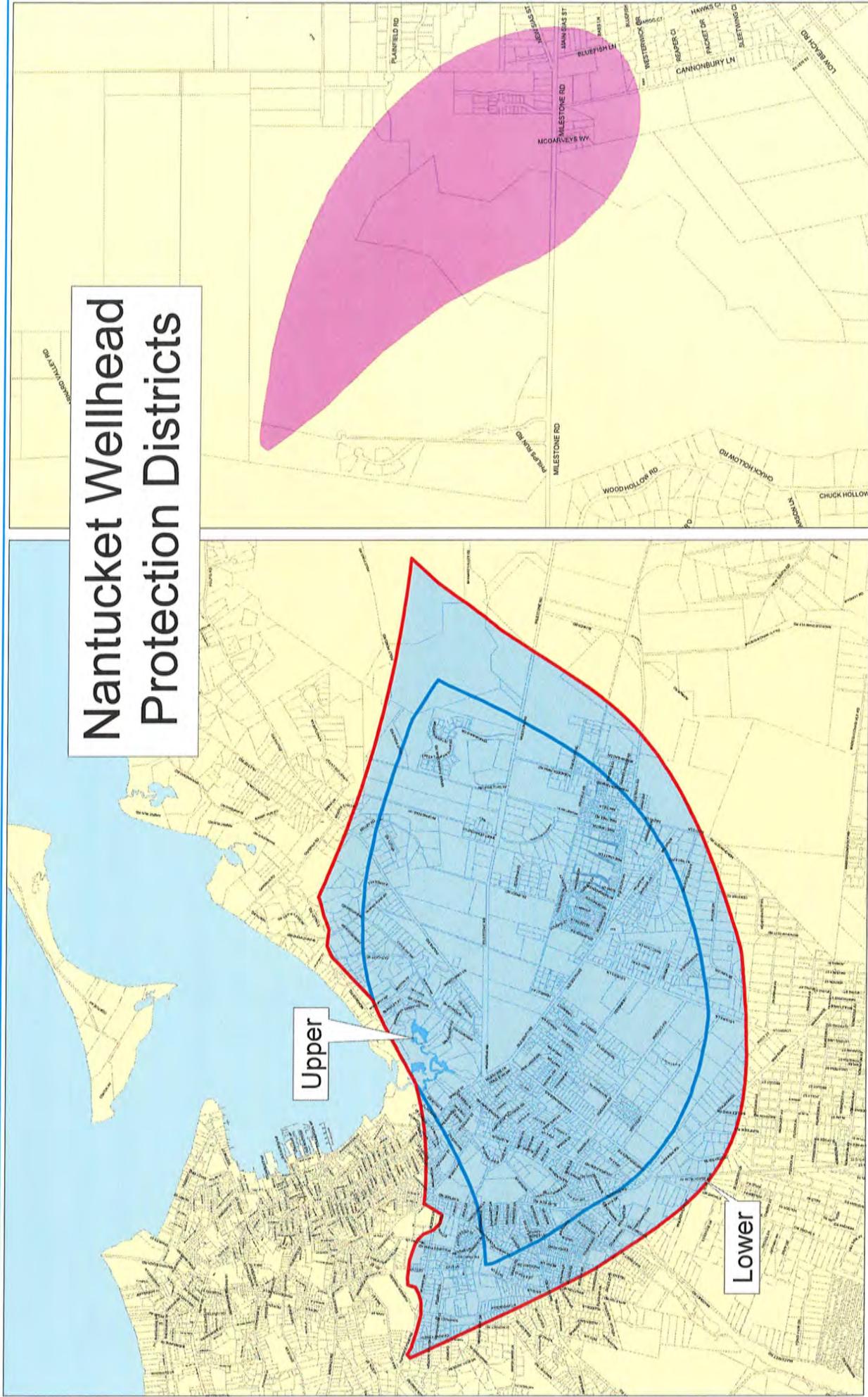
Detailed calculations are included in Appendix F and a summary of the wastewater flow and loading estimates are presented in Table 2-16.

Table 2-16: Average Daily Flow and Peak Hour Flow

	Flow (MGD)	BOD ₅ Load (lbs/day)		TSS Load (lbs/day)		Total Nitrogen Load (lbs/day)	
		Maximum Monthly	Peak Hourly	Maximum Monthly	Average Daily	Maximum Monthly	Average Daily
Projected by Study / Need Area	Average Daily - Summer						
Madaket	0.16				560		90
Warren's Landing	0.03				110		20
Hummock Pond South	0.07				230		40
Hummock Pond North	0.09				330		50
Somerset	0.10				360		60
Monomoy	0.08				300		50
Shimmo	0.06				220		30
Town	0.59				2,050		330
Nantucket PLUS	0.07				260		40
Miacomet	0.07				240		40
Subtotal Projected	1.33	1.42	3.52	4,660		750	
Projected Infiltration/Inflow (Future)	0.06	0.06	0.06				
Total Projected	1.39	1.48	3.58	4,660	4,790	6,150	750
Existing Conditions at Surside WWTF	1.53	1.64	4.06	4,980	5,830	4,610	530
Total Projected and Existing (Future Conditions)	2.9	3.1	7.7	9,100	10,600	10,800	1,300

Total projected flow under Max Day conditions is 4.0 mgd per Groundwater Discharge Permit

Nantucket Wellhead Protection Districts



Please send notification of any errors and corresponding corrections to:
 GIS Coordinator
 227 Foreman's Road
 Nantucket, MA 02554

This map is an approximation of the actual data. The GIS Coordinator is not responsible for any errors or omissions. The GIS Coordinator is not responsible for any errors or omissions. The GIS Coordinator is not responsible for any errors or omissions.



Town of Nantucket - GIS Mapsheet



Municipal governmental agencies will not necessarily approve or disapprove of the information contained herein. The presence of information on this mapsheet does not necessarily imply public right-of-way or the right of public access.

Data Sources:
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Letter referenced on pg. 10
of BOS comment letter



Nantucket Land Council, Inc.

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

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President

October 29, 2015

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Nantucket Board of Selectmen
16 Broad Street
Nantucket, MA 02554

William Willet
Vice President

Howard N. Blitman
Treasurer

Sara P. Congdon
Assistant Treasurer

RE: "Surfside Commons", Nantucket, Massachusetts

Susan E. Robinson
Clerk

Dear Members of the Nantucket Board of Selectmen:

Karen K. Borchert
Larry Breakiron
William S. Brenizer
Karen K. Clark
William M. Crozier, Jr.
Christine Donelan
Josh Eldridge
Robert Friedman
Nancy Gillespie
Wade Greene
Mary Heller
Charles A. Kilvert III
Laurel Ried Langworthy
Matthew B. Liddle
Peter McCausland
Fritz McClure
Eileen P. McGrath
Paul P. Moran
Carl H. Sjolund
H. Brooks Smith
James W. Sutherland, Ph.D.
David Troast
Peter Watrous
Jon Wisentaner

Please accept this letter on behalf of the Nantucket Land Council ("NLC") in reference to the application for project eligibility/site approval submitted to the Massachusetts Housing Partnership ("MHP") by Surfside Commons, LLC (the "Applicant") for a development of sixty (60) units off of Surfside Road, Nantucket, Massachusetts ("Development"). For the reasons set forth in detail below, we respectfully advise that the Applicant's request for project eligibility/site approval cannot be granted under the standard of review employed by MHP. Accordingly we urge the Board of Selectmen to likewise urge MHP to deny the Applicant's request for project eligibility/site approval.

In summary, our recommendation is based on our review of the Application, our personal knowledge of the locus and the immediate neighborhood, including the history of the site; of relevant environmental and infrastructural constraints; and of Nantucket's robust and documented planning for affordable housing and growth management to reach two conclusions:

Honorary Directors

Jean Haffenreffer
Suzanne Mueller

First, the Application fails to satisfy threshold requirements and policies of MHP designed to protect the public's interest and properly promote affordable housing. Second, and most importantly, the Application fails to address substantive issues particular to the site in a manner that would give the Board of Selectmen any confidence of the appropriateness of this project. Presenting the "bare minimum" in its application for project eligibility/site approval to MHP, the Board of Selectmen and the public is not sufficient or acceptable.

Staff

Cormac Collier
Executive Director

Emily Molden
Resource Ecologist

Emma Johnson
Development Director



As we discuss in detail below, there is no rational support for issuing project eligibility approval for this project at this location given both threshold technical and substantive deficiencies readily apparent. The proposed project for this locus is anything but sustainable, smart or appropriate and we ask the Board of Selectmen to request MHP to reject the application for project eligibility approval now, before additional private and public resources are expended.

1. The development does not qualify for the program under which it has applied, nor does it have any eligible federal or state subsidy as required under GL. c. 40B

The Applicant has ostensibly filed an “Information Form for Project Eligibility Letter”. On the Application form, the Applicant has identified in “Section IV: Project Financing” (page 7 of the Application Form), that the proposed program subsidy is “MHP Fixed Rate Permanent Financing or 5 + 5 Program”.

With regard to the proposed project’s “affordability”, the requirements of both the “Fixed Rate Permanent Financing” and “5 + 5 Program” are the same: where the project will not provide dwelling units at 50 percent of median income—which this project does not—or at least 50 percent of the dwelling units at 80 percent of median income—which this project does not—no less than 25 percent of the dwelling units must be available to households earning *less than* 80 percent of the median area income.

As included in the applicant’s “project financing” information (see pages 34 and 47 of the Application), the proposed below market rate dwelling units are to be rented *at—not below*-80 percent of the median area income.

Moreover, and anticipating a response from the applicant that it reserves the right to pursue project financing from others, there is no letter of interest from a current FHLBB member bank confirming that NEF funds will be used for the project. Where the Applicant has filed for project eligibility approval that violates the unambiguous requirements of MHP and has not submitted even the fig leaf of a federal subsidy, certainly no approval of this Application can be forthcoming where MHP must find (as required by 760 CMR 56.04 (4)) that the Proposed Project is “eligible under the requirements of the housing subsidy program...”.

The Applicant has submitted no evidence of any other federal or state subsidy, without which the project does not qualify for *any* approval by MHP. The Application should be denied on this ground alone.

2. The Deed to the Locus Prohibits the Uses and Structures Being Proposed

As a second threshold deficiency for project eligibility/site approval, the Applicant also failed to demonstrate site control. Absent evidence of site control, MHP should deny further review of the Application, and certainly cannot grant approval.

The purchase and sales agreement identifies the locus as identified on the Plan of Land found at Plan No. 2015-43 with the same referencing Book 1410, Page 205 (Nantucket Registry of Deeds). The application identifies the locus as containing 108,533 square feet of land. The Plan of Land identifies three additional parcels (7, 8 and 10) that, when added to the land referenced in the above noted deed, comprise 108,533 square feet¹.

Parcels 7, 8 and 10 were acquired from the Town of Nantucket on or about June 25, 2015 and recorded in a deed recorded at the Nantucket Registry of Deeds at Book 1488, Page 213. The deed conveying the three parcels—7, 8 and 10—contains unambiguous restrictions and was premised upon the “Grantee’s warranty and representation to the Grantor that such Parcels shall be used for residential purposes only and shall, for all intents and purposes, be combined with and considered as one parcel with the abutting lot at 106 Surfside Road...(collectively with the Parcel, the ‘Combined Premises’).”

Most notably, the deed states, “[t]hat no part of such Parcels or the Combined Premises shall hereafter be use for non-residential purposes...” and second, that the Parcels “[a]re conveyed subject to permanent restrictions... forever restricting the Parcels and Combined Premises to residential use...”.

A review of the application makes clear that the proposed uses for the locus as contain non residential uses and structures—the “clubhouse” and the “pool”—and the proposed principal use—“apartment” buildings—violate the deed’s clear prohibitions and the “Grantee’s warranty and representations that the assembled land would be used for a single family dwelling unit. The proposed use of the locus as contained in the application before MHP violate the express conditions and restrictions imposed on the locus and, accordingly, the applicant lacks the requisite site control to pursue this matter with MHP.

The NLC and the Board of Selectmen are aware of the low evidentiary bar applied by MHP during the project eligibility/site approval process. Yet we assume that the deed upon which the applicant relies must permit the application before MHP. It does not. Hence, as there is no support in the Application for a finding that the Applicant controls the site, as required by 760 CMR 56.04 (4), the Application must be denied.

3. The Initial Capital Budget contains unsupported and contrived costs that serve to disguise the true costs of the project and profit to the developer

As a related threshold matter, the project financing/capital budget provided by the Applicant includes vague and unexplained expenses, which intentional or not, serve to obscure the true costs of the project, and the profit to the developer. The hard costs portion of the pro forma include a \$601,071 contingency cost, and an additional \$1,751,000 cost for unidentified “Site Improvements”. The soft costs portion of the pro forma contains a \$116,357 contingency, \$140,000 for “Owner’s Rep” and \$120,000 for “marketing” among many other development soft costs.” The “Gen’l Condition, OH Profit” value of “11%”

¹ Discussed further below, 60 dwelling units on 108,533 square feet results in a development density of 24 dwelling units/acre.

appears to violate MHP's rules governing maximum developer's fee. In addition, the claimed land acquisition value of \$1.5M is unsupported (note that the purchase and sales agreement contains conflicting sales prices of \$1.5M and \$1.475) and accordingly appears to violate MHP's "Allowable Acquisition Cost".

Simply stated, we respectfully suggest to the Board of Selectmen that many of the included costs within the capital budget, including the proposed contingency costs, are nothing other than a means to increase the project's costs on paper, so as to justify an increased number of units "needed" for the project to be financially feasible. In this case, the pro forma's contingency and unidentified costs serve no more than to disguise developer profits for which comprehensive permit projects are renowned.² In sum, where the Application at best reflects a lack of transparency on site control, land valuation, and budgeting, we trust that MHP can appreciate that each these threshold deficiencies individually and collectively merit denial of this Application.

4. The proposed development is entirely inconsistent with Nantucket's Master Plan, Open Space Plan and Affordable Housing Plan

Nantucket has an extensive history of master planning for growth and development through a robust public process, including a specific area plan for Surfside. The Nantucket Master Plan balances residential and commercial growth with preservation of natural resources and open space, according to sound planning principles and in consideration of Nantucket's existing development patterns. Even the Housing Appeals Committee has recognized the legitimacy of such planning efforts. See 28 Clay Street v. Middleborough Board of Appeals, No. 08-06, September 28, 2009.

The Master Plan designates certain areas of Nantucket appropriate for increased or intensive housing development. The proposed site is decidedly not one of them. The proposed site is not located within or near an existing area of concentrated development, nor is it within or near any area designated in the Master Plan as appropriate for future concentrated development. To the contrary, it is a parcel located significantly distant from any commercial activity. This is directly *contrary* to numerous goals and strategies of the Comprehensive Plan not to mention the April 2015 RKG Report on "Workforce Housing Needs Assessment". While the Application goes to great length to include the entirety of the RKG Report, it fails to make any logical connection to the same and the Application itself contradicts the very goals articulated in the Report³.

² As MHP is aware, any profit in excess of that allowed by the subsidy program is required to be returned to the municipality, not retained by the developer. We advise the Board and ask the Board to remind MHP, that the Town of Grafton was recently successful in settling a \$54M lawsuit regarding the retention of excess profits from a developer in a comprehensive permit project.

³ Among the many conflicts with the RKG Report, the current proposal, with below market rate units at 80% of median income, proposes development pursuant to G.L. c.40B, s.20-23 whereas the Report unambiguously recommends pursuant of other mechanisms.

The proposed project entails the crowding of buildings, parking, and related development on too small a parcel and it proposes a virtual wall of buildings at a density totally inconsistent with rational planning techniques or objectives. Together with its location remote from existing development, the project manages to speak negatively to *every factor* MHP purports to consider in the site approval process.

Although MHP is no more a planning agency than the Housing Appeals Committee, surely the agency recognizes that consistency with a municipal comprehensive plan is a means to measure a project's compliance with 760 CMR 56.04(4)(c): "that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns." Inconsistent with Nantucket's Master Plan, Open Space Plan and Affordable Housing Plan, this project fails such measure and the Application must be denied.

5. The proposed development is wholly out of character with its neighborhood with respect to density, scale, massing and height of buildings

The Applicant proposes a 60-unit project (recently revised to 56 units) on a buildable parcel of slightly over two acres, yielding a density, of 24 units per acre. This density is entirely out of character with the adjacent single-family neighborhood, with no context or justification other than maximizing developer profit. There are areas of Nantucket with existing dense development, or targeted by the Town for such dense development. The project site is not one of them.

There are no large-scale residential or commercial buildings proximate to the site. The project introduces into the existing single-family neighborhood massive, wall-like buildings that are also wholly out of scale and character with adjacent homes and streetscape. The four main monolithic buildings stretch across the width of the property, to heights over forty (40) feet. The massing, scale and height of these buildings dwarf neighboring residences and is completely out of scale with the neighborhood's and Nantucket's historic character, notwithstanding the application's insulting—and wrong—comparisons to “some of the most desirable and expensive neighborhoods on the Island such as Town and Sconset” (Application page 2).

Unless MHP has concluded that the character and fabric of existing neighborhoods are irrelevant; that visual impacts on a streetscape and neighboring residences are irrelevant - in short, that the context of a proposed project may be ignored in its entirety - this Application must be denied. See 760 CMR 56.04(4)(c)("that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, *conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns*")(emphasis supplied).

6. The Project Scores Zero (0) on the Commonwealth's "Sustainable Development Principles" or MHP's and MassHousing's "Smart Growth" Criteria Scorecard.

Contrary to the Applicant's tepid and cynically unsupported claims found at pages 60 and 61 of the application, this project does not represent "Sustainable Development." Instead, it fails to meet each of MassHousing's "Smart Growth Criteria," which incorporate the Commonwealth's "Sustainable Development Principles."

- The project does not "contribute to revitalization of town center"
- The project does not "preserve and reuse" historic structures;
- The project does not have a "letter of support from the Chief Elected Official";
- The project cannot be said to "concentrate development" - unless by "concentrate" is meant "*cover the entire area with buildings, parking lots and infrastructure*";
- The project does not "restore and enhance the environment";
- The project is not "fair"; it does not "improve the neighborhood" or include a "concerted public participation effort";
- The project does not "conserve resources";
- The project provides no realistic "transportation choice[s]"; the project is isolated from commerce and car-dependent; and a bike trail is not a realistic year-round transit option
- The project does not "increase job opportunities";
- The project does not "foster sustainable businesses"; and
- The project does not "plan regionally".

With a score of zero (0) on Commonwealth's and MHP's own "Scorecard," we assume that the agency cannot but reject this Application. If approval is granted notwithstanding the project's failure to conform to the criteria, we ask the Board of Selectmen to ask why MHP bothers to have criteria at all.

For all the reasons noted above, we see no rational means of MHP issuing a project eligibility letter for the proposed project. Assuming *arguendo* that MHP is willing to ignore its own regulations, policies and normative guidelines for land development and issue a project eligibility letter for this proposal, we request that the Board of Selectmen ask that the following minimum conditions be imposed:

1. The Applicant should be required to provide evidence that the deed for the locus permits the use and construction of the proposed structures proposed;
3. The applicant should be required to submit supporting documentation for its development budget, and submit a revised pro forma without inclusion of contingency costs or unidentified "other" costs;
4. The Applicant should be required to submit a revised project application consistent with the Town's Master Plan, Open Space Plan and Housing Plan;
5. The Applicant should be required to submit a revised project application with a proposed density, scale, massing and height consistent with the context of the project site;
6. The Applicant should be required to submit a revised project application that is consistent with the Commonwealth's "Smart Growth Criteria"
7. The applicant should be informed that the Town of Nantucket will not grant waivers from local regulations without strict and audited proof that waivers from these regulations is required to keep the project from becoming uneconomic.

Conclusion

Any first year planning student, any credible developer and any competent site designer knows that developing a site requires as a first—*not as a final step*—the determination of a site's constraints and limitations. Outrageously, in this case, the Applicant has done the opposite. They have proposed a massive project first—without even a rudimentary evaluation of the site's constraints—and now seek local, state and federal endorsement of the same and its attendant drain of taxpayer resources.

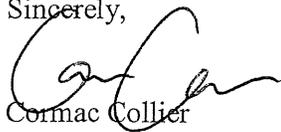
We ask the Board of Selectmen to suggest that MHP prevent any further waste of public and private dollars reviewing this poorly conceived and cynical application.

We know, that MHP knows, that once a project eligibility letter is issued, the Applicant has little incentive to work with the host community and little incentive to do anything but wait out the hearing process for a chance to appear before the Housing Appeals Committee. We have little doubt that such a harsh and sad conclusion is accurate in the present case. MHP has an opportunity to end this process now for this ill fated and wholly inappropriate project.

We ask that MHP reject this application as the agency must—it violates every requirement, policy and standard the agency has established. Granting project eligibility approval for this project would make clear to the Commonwealth's 351 cities and towns that no project eligibility application would ever be bad enough to warrant disapproval.

Thank you for your time and consideration of our letter.

Sincerely,



Cormac Collier
Executive Director

Cc:

Nantucket Planning and Land Use Department
Massachusetts Housing Partnership
Nantucket Zoning Board of Appeals