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Nantucket BOS
16 Broad Street
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December 11, 2013

Re: Baxter Rd. Emergency

Dear Chairman Atherton,

The state Department of Environmental Protection has issued an Emergency Certification to the Siasconset Beach Preservation Fund Inc from certifying the emergency at Baxter Road and authorizing abatement through the installation of a four geotube coastal engineering structure combined with significant monitoring and mitigation, as detailed therein. As you will note, the conditions in this Emergency Certification are substantially similar to the project previously proposed jointly by the Town and SBPF that is currently pending before the Conservation Commission and was twice approved by the BOS. This letter is to propose a cooperative way forward for the emergency and beyond.

The DEP Emergency Certification is a significant development for all sides in this ongoing matter because it authoritatively addresses so many questions and concerns that were subject to speculation or disagreement until now. For example, DEP agrees with filings by SBPF and the Town that the likely loss of water, power, sewer and emergency vehicle access is an emergency that poses a threat to public health and safety and justifies urgent action here. DEP rejects the assertion that coastal engineering structures are prohibited along coastal banks and agrees with filings by SBPF and the Town that 310 CMR 10.30(3) provides that coastal engineering structures "shall be permitted" to protect pre-78 homes, including associated infrastructure, which is an exception to the general prohibition against hard armoring coastal banks, as here. DEP accepts the assertion in SBPF and Town filings that that there is imminent danger where the bluff is within a certain distance to the houses or the infrastructure, agrees that protection does not have to be on the lot containing the structure being protected, and even suggests that SBPF expand its project from 91-105 Baxter Road to add 87 Baxter Road for that reason. DEP also agrees with filings by SBPF and the Town that a robust coastal engineering structure is necessary to abate the emergency, and also that, given the closeness of the bluff and the need for a solution that can withstand significant and successive storm events, the four geotube proposal does not go further than necessary to protect the pre-78 homes and essential infrastructure (i.e., that an emergency response need not be weak or temporary).

In fact, DEP notes that it also reviewed the Town's geotube-jute hybrid; if DEP had determined that this hybrid was good enough, it could not have approved the stronger four geotube project. Perhaps most importantly for the Town, the abutters, and the down drift land owners, not only does DEP state that the design of the approved four geotube project and the ordered mitigation plan will address adverse effects, but DEP specifically rejects the idea that a geotube/jute hybrid is a more appropriate solution and states that its robust sand nourishment plan and schedule are appropriate to mitigate down drift impacts. While SBPF is concerned that the 22 CY/LF of sand mitigation is too much (it is about 50% more than the generally accepted bank retreat calculation), SBPF accepts this requirement in this Emergency Certification for purposes of the emergency project.

The DEP Emergency Certification is legally sufficient to construct 900' of the four geotube project without further permitting. However, based on the DEP determinations in the certification, and the fact that the jute needed for the hybrid project separately approved for Town sponsored Emergency Certification is not available from India for six to eight weeks, at best, SBPF believes that the ConCom may now reconsider its prior findings that there is no threat to public health and safety (which it already reversed in the Town's emergency application) and that a lesser project would be appropriate to abate the emergency (which is not technically true or physically possible). SBPF is prepared to act, but strongly prefers to do so jointly with the Town. Therefore, SBPF proposes the BOS do the following 1) vote to approve a land license with SBPF for a coastal engineering structure approved by the ConCom, and 2) vote to file a new joint emergency certification for a four geotube project proposing the terms in the DEP certification. If the Town and SBPF jointly apply on Thursday, it could be heard by the ConCom on Friday. Given the updated law and facts, there should be no reasonable basis for the ConCom to reject such a filing. If a joint emergency project is approved, SBPF will fund the it, and will provide other resources and benefits requested by the Town, but SBPF cannot otherwise sign onto a project that will not reasonably protect the bluff.

If the infrastructure and historic homes at Baxter Road are protected in this environmentally conscious way, the Town will benefit in numerous ways. It is worth nothing that this will also satisfy some of the criteria necessary for the Town to avoid millions of dollars in expenses and damages for takings and infrastructure replacement if the road is abandoned.

Sincerely,



Steven Cohen