Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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

DEVAL L. PATRICK
Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

BY EMAIL AND FIRST CLASS MAIL

December 10, 2012

Siasconset Beach Preservation Fund
c/o David S. Weiss, Esq.
Goulston & Storrs
400 Atlantic Avenue
Boston, Massachusetts 02110-3333

RE: NANTUCKET—Wetlands
Emergency Certification
91-105 Baxter Road

Dear Attorney Weiss:

The Department of Environmental Protection is in receipt of your November 29, 2013, request on behalf of the Siasconset Beach Preservation Fund ("SBPF") for an Emergency Certification ("Request") proposing the installation of 4 layers of sand-filled Geotubes in a terrace pattern along the toe and face of an eroding coastal bank and on a coastal beach to abate the threat of coastal erosion to several existing pre-1978 dwellings and a section of Baxter Road with associated underground public utilities. In considering your request, the Department also exercised its authority pursuant to 310 CMR 10.06(5) to review the Emergency Certification application filed by the Town of Nantucket, filed subsequent to your request, and approved by the Conservation Commission on December 12, 2013 ("Certification") for an area of the bank and beach that overlaps and extends beyond the area that is the subject of your request.

The Department applied the criteria at 310 CMR 10.06(1) that the work allowed under an emergency certification not include work beyond that which is necessary to abate the emergency. In reviewing the extensive information in the Request and the Certification that documented the threat presented by storm-related erosion, the Department also applied the criterion at 310 CMR 10.30(3) which provides that a coastal engineering structure "shall be permitted" to protect homes constructed prior to 1978 from storm damage. This regulation creates an exception to the general rule that precludes the installation of hard armoring of coastal banks. Based on the facts presented in the Request, this exception applies to the homes identified in the area subject to the determination of an emergency.

The Department concludes that the design of the coastal structure proposed in the Request does not go farther than necessary to protect these homes and essential public infrastructure serving the homes. In making this determination, the Department considered the specific facts presented

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by the proponents including, without limitation, the proximity of the homes and infrastructure to the edge of the coastal bank, the ability of the four Geotubes to withstand a significant storm event and the threat posed by successive storm events.

The total length of the SBPF proposed project is approximately 900 feet long running between 91-105 Baxter Road. In the documentation supporting SBPF's conclusion of the emergency status for the homes and public infrastructure, it was concluded that the engineering criteria for installation of a coastal structure also applied to Lot 87. This Lot also retreated 40' in the previous year. The Town's Certification also concluded that an emergency condition existed at Lot 87. We concur that an emergency condition exists at this location and encourage the SBPF and the Town to coordinate efforts to abate the emergency.

In addition, the Request has proposed to place an initial sand cover over the Geotubes and annually thereafter as mitigation. This Emergency Certification requires that SBPF promptly file a Notice of Intent (NOI) under the Wetlands Protection Act for installation and maintenance of the proposed Getubes, as well as for ongoing beach nourishment as mitigation. The Emergency Certification sets out a mitigation and nourishment plan that will remain in effect pending the issuance of final Order of Conditions. The implementation of the nourishment plan will mitigate any potential difference in down drift impacts between the four Geotube design and the hybrid design approved in the Town's Certification.

The Department is issuing the enclosed Emergency Certification allowing the installation of the requested sand-filled Geotubes as conditioned herein. The Department deems the allowed work necessary to abate the present threat to public safety from storm damage to buildings, Baxter Road and water infrastructure. This Emergency Certification is issued pursuant to the Wetlands Protection Act, MGL, c. 131, s. 40, and subject to certain special conditions.

If you have any questions concerning this matter please contact Jim Mahala at (508) 946-2806.

Sincerely,

Philip Weinberg
Regional Director

W/JM

Enclosure

cc: Nantucket Conservation Commission

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Emergency Certification Form

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. Emergency Information

Issuance From: MassDEP-Southeast Regional Office
Issuing Authority

Issued To: Siasconset Beach Preservation Fund (SBPF), c/o David S. Weiss, Esq.
Name
Goulston & Storrs, 400 Atlantic Ave., Boston, MA 02110-3333
Address

1. Site Location: 91-105 Baxter Road

2 Reason for Emergency:

Eroding coastal bank imminently threatens pre-1978 dwellings and Baxter Road and associated underground public utilities. The erosion poses an immediate threat to public safety.

3. Public agency to perform work or public agency ordering the work to be performed:

Massachusetts Department of Environmental Protection. The Town of Nantucket and the Nantucket Conservation Commission concurred on the emergency conditions in the area subject to the Certification.

4. Date of Site Visit: 12/5/2013 Start Date: 12/11/2013 End Date: 1/10/2014

* no later than 30 days from start date or 60 days in the case of an Immediate Response Action approved by DEP to address an oil/hazardous material release.

5. Work to be allowed*:

Installation of 900 linear feet of 4 layers of sand-filled Geotubes with sand cover as shown on plans entitled: Baxter Road Temporary Stabilization NOI Submission, revised November 5, 2013 with the exception that this Emergency Certification is only for 91-105 Baxter Road.

B. Signatures

Certified to be an Emergency by this Issuing Authority.

Signature:

Philip Weinberg, Regional Director

12/10/13
Date

WPA Emergency Certification Form

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

C. General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Emergency Certification or subject to enforcement action.

2. This Emergency Certification does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of property rights.

3. This Emergency Certification does not relieve the applicant or any other person of the necessity of complying with all other applicable federal, state, or local statues, ordinances, by laws or regulations.

4. Any work conducted beyond that described above, and any work conducted beyond that necessary to abate the emergency, shall require the filing of a Notice of Intent.

5. The Agent or members of the Conservation Commission and the MassDEP shall have the right to enter and inspect the area subject to this Emergency Certification at reasonable hours to evaluate compliance with this Certification, and may require the submittal of any data deemed necessary by the Conservation Commission or the Department for the evaluation.

6. This Emergency Certification shall apply to any contractor or any other person performing work authorized under this Certification.

7. No work is authorized beyond 30 days from the date of this certification without extension by the Commissioner of MassDEP or his/her designee.

D. Special Conditions

SEE ATTACHED SHEET

E. Appeals

The Department may, on its own motion or at the request of any person, review: an emergency certification issued by a conservation commission and any work permitted thereunder; a denial by a conservation commission of a request for emergency certification; or the failure by a conservation commission to act within 24 hours of a request for emergency certification. Such review shall not operate to stay the work permitted by the emergency certification unless the Department specifically so orders. The Department's review shall be conducted within seven days of: issuance by a conservation commission of the emergency certification; denial by a conservation commission of the emergency certification; or failure by a conservation commission to act within 24 hours of a request for emergency certification. If certification was improperly granted, or the work allowed thereunder is excessive or not required to protect the health and safety of citizens of the Commonwealth, the Department may revoke the emergency certification, condition the work permitted thereunder, or take such other action as it deems appropriate.

Special Conditions for Siasconset Beach Preservation Fund Emergency Certification for 91-105 Baxter Road:

1. This Emergency Certification authorizes the installation of 900 linear feet of 4 layers of sand filled Geotubes as shown on the referenced plans. The SBPF also proposes the placement of 14.3 cubic yards per linear foot of sand. The Department, however, requires the initial placement of 18 cubic yards per linear foot of sand for mitigation purposes. Ongoing beach nourishment shall be in accordance with condition 8 below.
2. All sand used to fill and cover the Geotubes shall be imported from an off-site source and shall be compatible with the existing beach sediments.
3. The sand-filled Geotubes shall be tapered into the beach/bank at the southern and northern ends to minimize end effects.
4. Within 30 days of this certification, the SBPF shall file a Notice of Intent in order to (a) install and maintain the Geotubes and (b)incorporate mitigation (beach nourishment) into the proposed project design. The SBPF shall diligently pursue and obtain a Final Order of Condition under the Wetlands Protection Act for ongoing beach nourishment and other appropriate mitigation as deemed necessary.
5. The SBPF shall be responsible for the retrieval and proper disposal of all geotextile products associated with this emergency project in the event wave action and erosion destroys or otherwise causes damage to the Geotube system.
6. This Emergency Certification does not relieve the applicant/owner from complying with the Town of Nantucket Wetland Bylaw.
7. The beach shall continue to be monitored through the ongoing quarterly surveying program conducted by Woods Hole Group.
8. Sand mitigation will be at a rate of 22 cubic yards per linear foot in accordance with the following schedule:

    a. Provide initial cover of 18 cubic yards per linear foot immediately following construction (December 2013). The reason for this is to provide the initial cover and to provide a large upfront volume of sand while observing how the entire system performs into the first months of installation.

    b. January through March 2014: Provide the remaining four cubic yards per linear foot on an as-needed basis.

    c. Annual in April starting in 2014: Provide additional sand to obtain a minimum of 12 cubic yards per linear foot of sand cover. Twelve cubic yards per linear foot is the minimum sand volume required to provide the desired two minimum feet of cover. If some portion of the previous year's sand is in place at the time of April nourishment then the volume needed to get to 12 cubic yards per linear foot will be provided, with the remaining sand added in November. For example, if 10 cubic yards per linear foot of sand is needed in April to meet the 12 cubic yard minimum, then the remaining two cubic yards will b e added in November instead of April.

    d. Annually in November starting in 2014; Add an additional six cubic yards per linear foot plus any excess volume left over from April requirement. The reason for this is to ensure that the bulk of the mitigation volume is available in November for potential mobilization during winter storms.

    e. Annually November through March: Add the remaining four cubic yards per linear foot on an as-needed basis, in accordance with the replenishment trigger presented in our November 12, 2013 letter. If the 22 cubic yards per linear foot volume is not placed in its entirety before March 1, the balance of the sand will be place on March 1.

    f. End volumes will be replaced and nourished on the same schedule as outlined above. Delivery tickets from sand supplier will be provided to the Department and Conservation Commission to document the total volume of sand provided.