

From: [Steven Cohen](#)
To: [Erika Mooney](#)
Subject: Edits to the draft license
Date: Wednesday, November 20, 2013 12:50:00 PM
Attachments: [LicenseWithAbuttersAndTON.doc](#)

This version is slightly updated from what I sent George last night, so please use this.

Steven

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STATEMENT OF CONFIDENTIALITY:

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LICENSE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2013, by and between the Town of Nantucket, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, acting by and through its Board of Selectmen, having an address of Town & County Building, 16 Broad Street, Nantucket, Massachusetts 02554, being the owner of Assessor's Parcel 48-8 (the "LicenserTown") and Siasconset Beach Preservation Fund, Inc. ("SBPF"), a Massachusetts 501(c)(3) corporation created by residents of Nantucket to protect homes and associated public infrastructure along Baxter Road in the Siasconset area of Nantucket, and the owners of private properties located at 85, 87, 91, 93, 97, 99, 101, 105, 107, and 107A Baxter Road ("LicenseesOwners"). SBPF represents and expressly warrants that it is a corporate entity with the legal authority to contract under state and federal law, and that the undersigned has express authority to sign this license as a binding contract on its behalf. SBPF shall also provide the LicenserTown with such corporate documents as are necessary to confirm these representations and warranty.

WHEREAS, LICENSORTOWN and the Owners is are the owner of record of certain sections of land (the "Licensed Premises") depicted on plans prepared by Milone & MacBroom, dated October 25, 2013 which have been submitted to the Nantucket Conservation Commission (the "Commission") in support of the Notice of Intent described below, copies of which plans are attached hereto as Exhibits A and B;

WHEREAS, the LicenserTown and SBPF have entered into a Memorandum of Understanding and Amendment to the Memorandum of Understanding agreeing that the Town and SBPF shall apply, as co-applicants, for approval of an emergency project (the "Project") to protect Baxter Road temporarily in the areas where Baxter Road appears to be in imminent danger due to erosion of Siasconset Bluff, specifically from 85 to 107A Baxter Road; and

WHEREAS, the LicenserTown and SBPF, with the assent of the LicenseesOwners have filed a Notice of Intent with the Commission for approval of the Project, which, if approved, would involve the entry upon and use of the property of the Town and the Owners for Licensed Premises for construction of a coastal engineering structure upon the Licensed Premises, including the associated supplemental erosion protection, and associated inspections, repairs and mitigation activities, as described in the project narrative submitted in support of the Notice of Intent.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein made, the parties hereto agree as follows:

1. LicenserThe Town and the Owners hereby grants to the LicenseesSBPF a license to enter their properties and to use the Licensed Premises to construct a coastal engineering structure to the extent such structure is permitted by the Commission, including the associated supplemental erosion protection, and

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associated inspection, repairs and mitigation activities and expressly subject to any and all conditions which the Commission shall impose upon such permit, and subject also to any and all other federal, state, or local laws, bylaws, regulations or code provisions which may apply to the project. Such entry and use shall be exercised from the date of the execution of this License, with no work altering the properties to commence until ~~and~~ the date upon which any permit from the Commission shall become effective, ~~whichever occurs later~~, and shall continue until such date as it is terminated or the entry and use is no longer permitted in accordance with the conditions imposed upon the project by the Commission. SBPF shall exercise its rights under this License in a manner so as not to unreasonably interfere with the use of the balance of the private and public properties by the Owners and the Town. ~~Licensee~~The Town and the Owners makes no representation or warranty, by said grant of license hereby or otherwise, that the ~~Licensee~~Town or Owner ~~has~~ ve title to or rights in the Licensed Premises or that the Licensed Premises may be used for any purpose other than that expressly permitted and conditioned by the Commission. ~~Licensees~~SBPF acknowledges ~~that they have it has~~ not relied upon any warranties or representations of the ~~Licensee~~Town or Owners nor any person acting on behalf of the ~~Licensee~~Town or Owners, and that ~~Licensees~~SBPF agrees to accept the Licensed Premises “as is”, with no liability on the part of the ~~Licensee~~Town or Owners for any condition or defect or title in the Licensed Premises, whether or not known to the ~~Licensee~~Town or Owners or any representative of the ~~Licensee~~Town or Owners. The terms of this paragraph shall survive the termination of this License.

2. ~~The Licensees~~SBPF shall own any coastal engineering structure and associated erosion control measures which may be permitted by the Commission and installed on the Licensed Premises. ~~SBPF~~The Licensees shall be solely responsible for the design and construction of the structure and the means, methods and techniques used for building the structure in accordance with the conditions imposed by the Commission and shall also bear all costs of design and construction. ~~The Licensees~~SBPF shall also be solely responsible for all costs necessary for maintenance and repair of the structure in accordance with any and all conditions of approval from the Commission, including the costs of any required mitigation, such as sand replenishment. The Licensees shall also be solely responsible for the costs of removal of the structure upon either expiration of any deadline set forth in the Commission’s Order of Conditions or prior thereto if removal is validly ordered by the Commission, or by the Board of Selectmen in connection with any revocation of this License and shall also be solely responsible for the cost of restoration of the Licensed Premises to ~~pre-project~~ conditions that restore the form and function of the disturbed bank and beach to the fullest extent reasonably possible. ~~The Licensees~~SBPF shall provide the ~~Licensee~~Town with a letter of credit or surety funds in an amount and form satisfactory to the ~~Licensee~~Town in order to secure the faithful performance of any of the

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foregoing obligations should the Licensees fail to fulfill their obligations under this license agreement. Said satisfactory amount and form shall include an escrow, completion bond or similar surety for any portion of the project installation to actual construction and also for the full removal costs of entire installation in place plus a 20% overage.

3. ~~Licensees-SBPF~~ agrees to indemnify, defend with counsel of the ~~Licensee~~Town's choosing, and hold ~~Licensee~~Town harmless from and against all claims, demands, losses, costs, damages, causes of action, or liabilities whatsoever, including but not limited to mechanic's liens and reasonable attorney's fees and expenses, which may be imposed upon, incurred by, or asserted against the ~~Licensee~~Town, or its respective agents, employees, successors and assigns by reason of (a) the ~~Licensees'~~ construction, maintenance, mitigation, or removal of, any coastal engineering structure permitted by the Commission and any failure on the part of ~~the Licensees~~SBPF, their agents, contractors, or representatives to comply with any condition required to be performed or complied with by ~~Licensees-SBPF~~ by the Commission; (b) for death, bodily injury or property damage suffered by any person on account of or based upon the act, omission, fault, negligence or misconduct of any person whomsoever, other than the ~~Licensee~~Town or Owners, relating in any way, to SBPF's ~~the Licensees'~~ exercise of their rights under this License; (c) any claims seeking damages for alleged adverse effects arising from the construction of the coastal engineering structure including but not limited to alleged adverse effects to downdrift properties, claims for takings, property damage, loss of use, negligence, nuisance, trespass, or diminution of property value; (d) the discharge, release or threatened release at or from the Licensed Premises of oil or hazardous material as defined under federal, state or local law which is caused by ~~Licensees~~SBPF, their agents, contractors, or representatives under this License.

4. ~~Licensees-SBPF~~ will be solely responsible for any hazards created through ~~Licensees'~~SBPF's acts or omissions in connection with this License. Furthermore, ~~Licensees-SBPF and the Owners~~ hereby release the ~~Licensee~~Town from any and all claims and liabilities of every kind, nature and description whatsoever, whether known or unknown, in both law and equity, which they have or may have had from the beginning of the world to the date of execution of this License, as they relate to the Licensed Premises. ~~Licensees-The Owners and SBPF~~ also release the ~~Licensee~~Town and the Town from any responsibility or liability for ~~Licensees'~~the Owner's or SBPF's losses or damages related to the condition of the Licensed Premises, and ~~Licensees-the Owners and SBPF~~ agree and covenant that they will not assert or bring, nor cause any third-party to assert or bring any claim, demand, lawsuit or cause of action against the ~~Licensee~~Town related to the Licensed Premises, including without limitation, claims for takings, property damage, loss of use, negligence, nuisance, wrongful death, trespass, diminution in property value, personal injury damages and any other damages relating to or

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arising from ~~the Licensees’ SBPF’s~~ use of the Licensed Premises. The provisions of this Paragraph shall survive the termination of this License.

5. ~~Licensees SBPF~~ also agrees to provide all funding for engineering and design services for the layout of a new public road to be known as Baxter Road Extension, as well as funding for surveys, preparation of easement taking plans and appraisals, ~~and to defend with the Licensor with counsel of Licensor’s choosing and indemnify the Licensor against any claims challenging the amount of compensation awarded for any takings needed for the new public roadway.~~
6. This License shall not be construed as creating or vesting in ~~the Licensees SBPF~~ any estate in the Licensed Premises, but only the limited right of entry and use as hereinabove stated. The Town and the Owners shall have no obligation to provide for SBPF any services, maintenance, utility service or other services whatsoever in connection with the Licensed Premises, but shall provide authorization for SBPF to seek and install such, as needed. SBPF shall not pay any license fee for its use of the Licensed Premises. The Town and the Owners shall pay all taxes, fees and any other assessments related to their portions of the Licensed Areas when due and payable (including, without limitation, real estate taxes).
7. This License is personal and exclusive to ~~SBPF the Licensees and is not intended to run with the land.~~ This License may not be transferred or assigned by ~~SBPF~~ without the express written consent of the ~~Licensor~~ Town and the Owners, or their successors in interest in the Licensed Premises. However, the terms, provisions, agreements and conditions of this License shall be binding upon and inure to the benefit of the successors in interest and assigns of the parties hereto, except that no assignment or transfer in violation of the provisions of this License shall vest any rights in the assignee or transferee, and no such assignment shall be or be deemed to be of any force or effect. Neither party shall have the authority to record this instrument without the express written consent of the other party.
8. This License represents the complete understanding and entire agreement between the parties hereto with respect to the entry and use of the Licensed Premises. The terms of the aforesaid Memorandum of Understanding and Amendment to the Memorandum of Understanding shall remain in full force and effect to the extent they are consistent with this License. To the extent such terms are inconsistent, the terms of the License shall govern and any inconsistent terms shall be superseded and of no effect.
9. This License is to be interpreted under and construed in accordance with the laws of the Commonwealth of Massachusetts. Failure on the part of the Town of Owners to complain of any action or non-action on the part of SBPF, no matter how long the same may continue, shall not be a waiver by such of any

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of its rights hereunder. Further, no waiver by Town or Owners at any time of any of the provisions hereof shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval by Town and Owners to or of any action by SBPF shall not waive or render unnecessary their consent or approval to or of any subsequent similar act by SBPF.

10. ~~The Licensees-SBPF~~ shall procure all necessary permits before undertaking any work on the Licensed Premises. The siting of the coastal engineering structure and associates activities shall be performed in accordance with the conditions set by the Commission. ~~The LicenseeSBPF~~ shall not permit any mechanics' liens or similar liens, to remain upon the Licensed Premises for labor and material furnished to ~~the LicenseeSBPF~~ or claimed to have been furnished to ~~the LicenseeSBPF~~ in connection with any work performed or claimed to have been performed at the direction of ~~the LicenseeSBPF~~ and ~~the LicenseeSBPF~~ shall cause any such lien to be released forthwith at no cost to the ~~LicenseeTown~~.
11. If, in consultation with the Commission and the Director of Public Works, the ~~LicenseeTown~~ determines that this License should be revoked, this License shall be revocable by the ~~LicenseeTown~~ at its sole discretion upon written notice of revocation at least sixty (60) days prior to the termination date stated within said notice. This License shall also be revocable by SBPF or the Owners upon written notice of said revocation at least sixty (60) days prior to the termination date stated within said notice. In the event that this License is terminated, then the ~~Licensee-SBPF~~ at its own expense shall remove the structure from the Licensed Premises and restore the Licensed Premises to conditions that restore the form and function of the disturbed bank and beach to the fullest extent reasonably possible~~its original condition at the commencement of this License, as nearly as possible.~~ This obligation shall survive the termination of this License.
12. ~~The Licensees-SBPF~~ shall maintain during the term of this License public liability insurance, including coverage for bodily injury, wrongful death and property damage, and coverage for any of the claims referenced in paragraphs 3 and 4 above, in the following minimum amounts: General Liability \$10,000,000 per occurrence; Bodily Injury Liability \$10,000,000 per occurrence; and Property Damage Liability or a combined single limit of \$10,000,000 annual aggregate limit. Prior to entering upon the Licensed Premises, and thereafter on or before January 1 of each year of the term of this License, ~~Licensee-SBPF~~ shall provide the ~~LicenseeTown and the Owners~~ with a certificate of insurance in each case indicating the ~~LicenseeTown and Owners~~ as an additional insured on the policy and showing compliance with the foregoing provisions. ~~Licensee-SBPF~~ shall require the insurer to give at least thirty (30) days written notice of termination, reduction or cancelation of

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the policy to LicenserTown. ~~Licensee-SBPF~~ or Licenseeit's contractors shall maintain workmen's compensation insurance during any site work, maintenance or repair on the Licensed Premises, as required by law. ~~Licensee SBPF~~ agrees that while any contractor is performing work on behalf of the ~~SBPF Licensee~~ at the Licensed Premises the contractor shall carry liability insurance and automobile liability insurance in amounts of General Liability and Automobile Liability insurance in amounts of \$3,000,000.00, combined single limit and shall name the LicenserTown as an additional insured party. Prior to any construction or site work on the Licensed Premises performed by ~~SBPF the Licensee~~ or any contractor on behalf of ~~SBPF the Licensee~~ on the Licensed Premises, ~~SBPF Licensee~~ shall provide LicenserTown with a copy of the contractor's insurance certificate indicating liability insurance coverage as herein specified, and copies of any approval, permits, necessary or obtained to construct or siting of the dwelling and any construction or excavation work.

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EXECUTED as an instrument under seal as of the date first above written.

LICENSOR TOWN:

TOWN OF NANTUCKET
By its Board of Selectmen

LICENSEES BPF:

Siasconset Beach Preservation Fund, Inc.

By: _____

OWNERS:

85 Baxter Road

By: _____

87 Baxter Road

By: _____

91 Baxter Road

By: _____

93 Baxter Road

By: _____

97 Baxter Road

By: _____

99 Baxter Road

By: _____

101 Baxter Road

By: _____

105 Baxter Road

By: _____

107 Baxter Road

By: _____

107A Baxter Road

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486559/19726/0001

By: _____