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Nantucket Board of Selectmen
16 Broad Street
Nantucket, MA 02554
BY HAND

June 14, 2012
Re: Baxter Road

Dear Selectmen,

Based on the June 12 workshop and our discussion with Town Counsel, the following is a summary of the proposal to address the dangers facing Baxter Road.

1) The Town and private owners must file a joint ConCom application. Due to current erosion, bluff protection would be placed on both Town and private land. In general, the now empty lots have eroded such that bluff protection would be on private land, and the lots with houses would have bluff protection on Town Land. Protecting the infrastructure requires private cooperation and protecting homes requires Town cooperation. As a co-applicant, the BOS maintains control. The permitting and planning should take place concurrently, but the BOS can authorize construction and other acts when it is satisfied.

2) Immediate action is needed. Several homes and multiple sections of Baxter Road may be lost in the 2013 storm season. These losses would increases costs and lower available funds and funders. In order for the most urgent work to be done before November 2013, a Notice of Intent has to be filed and approved by the ConCom in July, 2013.

3) The Conservation Commission must be involved. The ConCom should decide all design and environmental issues (including sand contribution) under its ordinary process, not its emergency process. However, the BOS should request that the ConCom expedite the process.

4) The Moratorium does not apply. Chapter 64 does not apply to work on private land and has an exemption to protect Town infrastructure, which the BOS should exercise.

5) This Bluff protection is sized for the endangered area. Bluff protection would be 3,500 to 4,000 feet long and about 16+/- feet above the beach (about 26 feet above mean low-water mark), which is roughly 20-30% of the height of the bluff.

6) Bluff protection would be one application with two installation phases. The first phase, to protect the most endangered infrastructure and homes, would be three segments totaling about 1,500 feet in length and located between 75 and 119 Baxter Road, to be installed in 2013. The second phase, protecting the remaining exposed bank on the north end and moving south about 2500 feet to the start of the eroding bank, would be installed in 2014.

7) Alternative access planning is still done. The alternative road and utility access should be planned concurrently, but not implemented unless needed.

8) The Town needs consultants. Private parties have engaged engineers to design and apply for bluff protection, but the Town should get independent consultants for peer review and advice.

9) The public/private proposal benefits the Town. The Town has an obligation to provide access. Those costs are likely to reach $10-15M for an initial action and would be repeated over the years as erosion continues. Bluff protection could cost $4-5M this season and $13-16M in total. However, SBPF is prepared to undertake significant operational burdens and to raise funds to privately pay for a) all of the urgent phase one bluff protection installation, b) all of the related design and permitting costs, including the Town's peer review engineer, and c) all of the alternative access and utility engineering. In order for the private funds and pledges to be raised in a timely fashion, the BOS would commit to seeking a future financial contribution by the Town. Public funding should be meaningful and will likely require future Town approvals, but will be a fraction of Town costs without bluff protection. These costs may be eligible for various private and governmental funding options. The details should be developed concurrent to environmental review, but before any construction.

10) The Town is already paying for erosion. Aside from the liability and obligations that Town Counsel has already noted, the Town is already paying for the erosion of Baxter Road. Since 1991, the Town has lost an estimated $63M in assessed value on the water side of Baxter Road, which is $230,000 in lost tax revenue this year. If the rest of the water side of Baxter Road erodes, the lost assessed value would be $200M today, or a loss of $734M in annual revenue, this year and every year. Further, corresponding declines on the inland side of Baxter Road are also eating away at Town revenues. Bluff protection will stop and reverse this trend. Between improvements to the tax base and avoiding repetitive alternative access and utility costs, privately subsidized bluff protection can benefit the Town in excess of $20M over just the next 10 years.

11) Bluff protection will increase public access. The beach along the eroding bluff is now rarely used and highly inaccessible, and the Bluff Walk has been cut short. Bluff protection could incorporate stairs for vertical access to the beach, could preserve lateral beach access, and could expand the Bluff Walk. There would be no perpendicular features that block public access.

12) The Town's liability shrinks with bluff protection. If the Town does nothing, it has liability for access and utilities, as well for property damage. If it acts, it may eliminate both of those liabilities. Participating in bluff protection has liabilities, but they can be fully addressed by law or agreement. For example, the Town has limited or no liability for some claims under state law, and could mitigate other liability in advance through contracts, indemnities, and releases.

13) BOS should take four immediate actions.

a) Declare imminent danger to public infrastructure, historic structures, and tax base, and issue a commitment to address the issue.
b) Authorize filing a joint NOI at ConCom for bluff protection and accept related gifts.
c) Request that ConCom undertake an expedited process.
d) Direct Town staff to concurrently prepare and propose plans to protect infrastructure and property, to provide alternative access options, to secure rights and protections, to identify and secure public and private funding, to address liability, and to ensure public benefits. The Town will review and approve these and other aspects of the project at appropriate points.

Sincerely,

Steven Cohen

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