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June 7, 2013

Rick Atherton, Chairman
Nantucket Board of Selectmen
16 Broad Street
Nantucket, MA 02554

Re: Baxter Road, Nantucket

Dear Mr. Atherton:

Together with Sarah Alger, Esq., this office represents Patrick T. and Molly Ryan, owners of 110 Baxter Road in connection with matters arising out of the continuous erosion of the Sconset Beach bluff and its likely impact on their home. I have been furnished with the letters and supporting materials submitted to the Board by the Siasconset Beach Preservation Fund, Inc., ("SBPF"), Sankaty Head Golf and Beach Club, Inc., and the Sconset Trust.

As Attorney Alger indicates in her letter of today's date, we urge the Board to adopt the SBPF proposal, but find it alarming that the Board, at this late stage with actual knowledge of the deteriorating public infrastructure, has taken no definitive action to address the problem to date. The inaction of the Board has already cost several families their homes and given rise to cognizable claims for takings of those properties. *See Wilson v. Commonwealth*, 413 Mass. 352 (1992). But it is the Board's abdication of its duty to maintain Baxter Road and the sewer and water systems housed in the way which, foreseeably, will not only result in extensive property damage to the Ryans' property and to those of every resident of Baxter Road, but also jeopardizes public safety. Exposing the Town's taxpayers to property damage claims in the tens of millions of dollars as a direct consequence of Board inaction is one thing, but it is hard to fathom the Board's indifference to users of Baxter Road who will be injured as a result.

The Board needs to be reminded that municipalities have a duty to maintain publicly owned infrastructure, such as public roadways and water systems. It is not a matter of discretion, or a matter of choice, but a duty that is owed not only to the users of the way, but to owners of adjacent properties as well and to the public at large. The consequences of the Board's failure to do so will be addressed in court if the Board fails to take decisive action immediately.

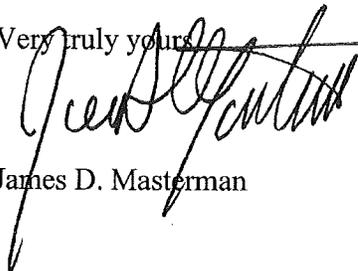
The recent proposal to misuse \$3.68 Million of taxpayer money for relocation of Baxter Road and the water and sewer system set forth in the PLUS Report dated May 3, 2013, as amended, is not the responsible solution. Even if this proposal had any merit, it is my understanding that this is but a preliminary estimate which fails to account for soft costs, the cost of defending and paying property damage claims, and the cost of defending the certain legal

Rick Atherton, Chairman
June 7, 2013
Page 2

challenges to come. On the other hand, the construction of environmentally sensitive erosion control on the bluff, as proposed by SBPF, would be at a fraction of the cost, has gained consensus from a number of disparate groups of citizens and can be achieved in a relatively short time frame. This is the responsible alternative even without the financial commitment from many of the Baxter Road private owners, the SBPF and others which has been offered to the Town many times. The erosion control project will use virtually no public money and save the public millions.

Any other alternative is indefensible and irresponsible in terms of money, time, public safety and the environment. We urge your immediate endorsement of the SBPF proposal.

Very truly yours,



James D. Masterman

JDM/nck

cc: Mr. Patrick T. Ryan and Ms. Molly Ryan
Sarah F. Alger, Esq.
Kevin F. Dale, Esq.
Steven Cohen, Esq.

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