

## Libby Gibson

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**From:** Steven Cohen [slc@readelaw.com]  
**Sent:** Wednesday, May 22, 2013 1:55 PM  
**To:** Erika Mooney  
**Cc:** Kara Buzanoski; Andrew Vorce; Libby Gibson  
**Subject:** Baxter Road  
**Attachments:** ToeProtectionProConBaxterRd.doc; ToeProtectionSummaryBaxterRd.doc

Erika,

Based on a review of the Town materials submitted yesterday, my client, SBPF Inc., would like to provide the BOS with the attached materials as a supplement.

Please confirm that you will forward to the BOS and post for the public?

Best,

Steven

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Sconset Bluff Protection  
Pros and Cons

As noted by Town Counsel, the Town of Nantucket has a legal obligation to continue to provide access and utilities to home owners on public ways that are subject to erosion, and it may also be liable to property owners for other losses. Some of these costs and burdens may be passed on to the residents, but they cannot be avoided. Therefore, the concept of taking no action is not a real option for the Town. The only action that will allow the Town to control expenses and make policy determinations is to stabilize the bluff with a coastal engineering structure at the toe and native plantings at the top. Doing so will have significant positive impacts and few negatives, all of which can be mitigated, if desired. Other areas, and even parts of Nantucket, have shown that it works.

PROS:

- Prevents loss of public infrastructure.
- Delays or prevents initial rerouting of public access and utilities.
- Prevents *repetitive* cost and burdens on Town to provide access and utilities.
- Prevents loss of historic structures and places.
- Mitigates Town liability for loss of private property.
- Prevents loss of environmentally sensitive species and habitats.
- Preserves and recreates public access, like the Bluff Walk and beach access, which could be expanded.
- Preserves tax value of local lots and improves taxable value of devalued lots.
- Encourages private funding and cooperation for Town obligations.
- Could be combined with actions that improve fishing habitats.

CONS:

- May lose beach at high-tide (can be mitigated with design options, and not really used now).
- Added upfront cost (offsets larger future costs and encourages private funding).
- Eroding sand may be needed in other locations (can be replicated, at a cost).

## Sconset Bluff Protection Q&A

### 1) Can the Sconset Bluff be secured to protect public infrastructure?

Yes, securing Sconset Bluff requires both protecting the toe of the bank from waves and storm action and also stabilizing the top of the bank with native plantings. Some forms of toe protection have demonstrated their effectiveness on Sconset Bluff, even last year, and various forms of it have worked well in other areas, including on Nantucket. Nantucket has both soft and hard forms of bluff protection in use today.

### 2) What are the choices for toe protection?

Soft protection can include using dune and drift fencing, sand filled jute bags or tubes, and plantings. This essentially recreates a dune to take the impact of waves and sacrifice to the sea. These have limited effectiveness, especially if they cannot be replaced between successive storms, and require ongoing replacement and other substantial costs. Soft protection is not an effective choice here. Harder protections include gabions and marine mattresses (rock filled high density plastic geogrid baskets) and revetments (walls of boulders), which can be combined with sand coverings, or not, and with plantings above the rocks. These can last for many decades and have minimal ongoing maintenance for toe and top protection.

### 3) What does it cost for hard protection?

There are many cost variables, but the most cost effective and longest lasting protection, a revetment, would cost about \$2,500 per linear foot for a section about 20 feet high. The option of adding sacrificial sand to replicate erosion would add about \$400/LF annually.

### 4) What are permits and permissions are required?

The toe of the bluff is partially on Town land and partially on private property. Without a Taking, all land owners would have to agree to the installation of the bluff protection. Additionally, the Conservation Commission must participate in the project, depending on whether and how the BOS determines that there is an emergency. Additionally, the current moratorium on erosion protection in Chapter 67 of the Town Code prohibits (until December 31, 2013) new coastal engineering structures on the Town-owned portion of the land, except for a 400 foot pilot project described therein, or unless the BOS declares an emergency to protect public roads and public assets.

### 5) Why should the BOS declare an emergency for bluff protection?

The bluff is now as close as 37 feet to Baxter Road and getting closer. The continuity of Baxter Road and infrastructure within it could be lost in as little as ONE storm season. Action is required NOW to avoid much worse problems and higher expenses. Because bluff protection works as a system, the emergency area stretches much further than the current closest point of erosion. The BOS could declare an emergency from the Sankaty Light Station to Bayberry Lane, or further, although the project could be installed in phases. Under an emergency, the BOS will have more control over the project and can

fully engage with private parties as partners for funding, easements, operations, public benefits, and otherwise. Further, the emergency designation may help the project qualify for state or federal funds. Due to wetlands and the bluff itself, the Town may also have to declare an emergency to do work on the road and infrastructure replacement as well.

6) Are there public benefits to protecting the bluff?

Bluff protection is not necessarily instead of road and utility relocation in the worst location, but it prevents the Town from having to reroute and replace public infrastructure over and over again. It also preserves historic homes and places, environmentally sensitive habitats and species, and public rights of way. If successful, it could restore taxable value to the area (\$100M in such value has already been lost) and could create usable public access ways to the beach. Further, to the extent that private parties may have a cause of action against the Town for failing to protect or allow protection of their private properties, taking some action may mitigate or eliminate the Town's potential liability in such cases (should be reviewed with Town Counsel).

7) Will the Town set precedent to armor all 87 miles of beach?

No. The Town has a legal obligation to provide and protect public infrastructure and accesses. This type of erosion does not happen in many areas of Nantucket and it does not threaten any public asset or obligation in most areas that it does happen. However, the Town may need to use erosion control for other public infrastructure in the near future, such as the airport and the surfside sewer beds.

8) Does the Town have to pay for the full cost of bluff protection?

No. There is a demonstrated willingness of private parties in the area to contribute to the cost of bluff protection, and some or all of it may qualify under a municipal betterment charge, if needed or desired. A public/private partnership could also help avoid adversarial legal actions, like disputes over Takings or Betterments. However, if the Town does not engage in bluff protection, it could see other costs, such as multiple road and utility replacements, private actions for loss of property, and otherwise, so not doing bluff protection does not necessarily save that cost.

9) What are the next steps, if the BOS approves bluff protection as a portion of dealing with at risk public infrastructure and access?

- Identify Town and private properties to be included.
- Investigate technical, environmental, and cost factors for erosion protection.
- Engage all stakeholders in designing a balanced plan.
- Engage property owners for a public/private partnership on funding, easements and public benefits, as needed.
- Determine net cost/benefit of bluff protection.
- Determine time line and phases for construction.
- Seek Town Counsel advice on legal and regulatory issues.
- Develop a general public infrastructure protection plan and policy for BOS to approve for future projects.