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NANTUCKET, MASS. 02584



C. Elizabeth Gibson
Town Manager
Nantucket Town Building
16 Board Street
Nantucket, MA 02554

Re: Baxter Rd. Enforcement Actions
March 5, 2014

BY HAND AND EMAIL

Dear Libby,

I have reviewed your letter from February 21, 2014 with my client. Please let me offer sincere apologies from myself, Jamie Feely and SBPF for not being more clear at the February 19th Board of Selectmen meeting: SBPF is solely responsible for any actions related to the inquiry from the Army Corps of Engineers and the Enforcement Order issued by the Nantucket Conservation Commission; the Town played no role. I believe that Mr. Feely and I were clear and detailed on this point at the immediately preceding ConCom meeting on the same date, but in retrospect that message was not delivered at the subsequent BOS meeting. After Director Buzanoski gave the DPW report, SBPF's representatives should have repeated this point for this separate audience.

As an update, please be aware that SBPF has engaged again with the ACOE concerning its inquiry of possible work below the High Tide Line. The ACOE has informed SBPF that no further action is needed or planned and that no Federal order or violation notice has been issued or is planned. As we understand it, the ACOE considers the matter of the geotube construction to be closed. However, to be safe, SBPF is providing the ACOE (and the ConCom) with details on how future maintenance and sacrificial sand will be done to make sure that the ACOE does not have any concerns with those future actions. Attached please find the original December 2013 update to the ACOE regarding the geotube installation, which they acknowledge that they received and then misplaced, contributing to the inquiry, as well as summation letter after the later discussions.

Also, based on our discussion with the ConCom, SBPF is preparing a comprehensive package of materials for submission to and review by the Commission so that it can either confirm work that was done or clarify required alterations. To be clear, it is unfortunate that some construction details were not covered during permitting, such as how the tubes would be plugged. In particular, we regret the decision in the field to add the storm water drain (which was never connected and remains capped). The urgency and intensity of the work involved caused us to move too quickly on some aspects leading to the concerns that have arisen. However, compliance with the law and preserving the trust of the Town is a top priority for SBPF. This project has been a learning process for all of us. We are proud of our ability to accomplish so much, under extreme circumstances, and sincerely regret that these concerns have tarnished the otherwise substantial accomplishments of all parties who have worked hard to protect public and private resources in a responsible way. We especially regret any perception

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that Town Administration and/or the Nantucket DPW were in any way responsible. We are confident that these issues will be properly addressed in future meetings.

Please contact me at any time for any reason regarding this matter.

Sincerely,



Steven Cohen
Counsel to SBPF

Steven Cohen

From: Hartnett, Maria <mhartnett@epsilonassociates.com>
Sent: Friday, February 07, 2014 10:05 AM
To: Steven Cohen
Subject: FW: Siasconset Beach, Nantucket (UNCLASSIFIED)
Attachments: USACE approval_2005.pdf; Photos_12-29-13-0831.pdf

-----Original Message-----

From: Smith, Les
Sent: Thursday, February 06, 2014 2:44 PM
To: Kevin.R.Kotelly@usace.army.mil
Cc: Hartnett, Maria
Subject: FW: Siasconset Beach, Nantucket (UNCLASSIFIED)

Kevin,
Here is the email that I sent over on December 30, 2013.
Please review and then let's chat.
Best,
Les

-----Original Message-----

From: Smith, Les
Sent: Monday, December 30, 2013 10:54 AM
To: 'Adams, Karen K NAE'
Cc: 'Kristoff, Richard C NAE'; 'Kotelly, Kevin R NAE'; 'Kara Buzanoski'; Posner Josh (joshposner@mediaone.net); Jamie Feeley - Cottage & Castle, Inc. (jamie@cottageandcastleinc.com); Hartnett, Maria
Subject: RE: Siasconset Beach, Nantucket (UNCLASSIFIED)

Karen,
After our discussion on Friday, I asked for a survey of the location of the high tide line (HTL) at Sconset to locate the US Army Corps jurisdiction to determine if the current work of installing geotubes is within your jurisdiction. A laser level was used to install stakes on the beach at elevation 5.4 feet MLW as shown on the attached 3 photos taken yesterday 12-29-13 at 0831 at high tide.

HTL as shown on the project plans is identified as 5.1 feet MLW, so these stakes are actually 0.3 feet above HTL. Therefore, it appears that the geotube work is not within USACE jurisdiction. In my discussion with the construction manager, all future work will be higher and more landward than the work shown in these photos so also out of USACE jurisdiction.

I remember that the question of HTL height came up previously at Sconset when Duneguard was being used in 2004. At that time, we did an analysis of the highest predicted tides from 1994 to 2003. The highest predicted tide was 4.25 feet MLW over that timeframe and USACE requested that we use that elevation for HTL. In 2005 when SBPF applied for and received a USACE permit for sand delivery via barge (see attached), the elevation of 4.25 feet MLW was used.

Thus, the use of 5.1 feet MLW is a more conservative elevation than was previously accepted.

Let me know if you need any additional information.

Regards,
Les

Lester B. Smith, Jr.
Principal & Coastal Geologist

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www.epsilonassociates.com

-----Original Message-----

From: Smith, Les
Sent: Friday, December 27, 2013 12:33 PM
To: 'Adams, Karen K NAE'
Cc: Kristoff, Richard C NAE; Kotelly, Kevin R NAE; 'Kara Buzanoski'; Posner Josh (joshposner@mediaone.net)
Subject: RE: Siasconset Beach, Nantucket (UNCLASSIFIED)

Karen,

This project is an Emergency Certification which was approved by MassDEP then submitted to the Nantucket Conservation as a joint project by the Town of Nantucket and SBPF and approved.

Their plan set by Milone & MacBroom (attached, approved design was slightly different in terms of the height of the structure) shows that the proposed work was to be conducted above the High Tide Line on the beach. I am copying Kara Buzanoski, the Nantucket DPW Head and Josh Posner from SBPF if you need any additional information regarding the project.

Regards,
Les

-----Original Message-----

From: Adams, Karen K NAE [<mailto:Karen.K.Adams@usace.army.mil>]
Sent: Friday, December 27, 2013 11:03 AM
To: Smith, Les
Cc: Kristoff, Richard C NAE; Kotelly, Kevin R NAE
Subject: FW: Siasconset Beach, Nantucket (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Is this your project? I haven't seen anything recently on this.

Thanks
Karen

-----Original Message-----

From: Boeri, Robert (ENV) [<mailto:robert.boeri@state.ma.us>]
Sent: Friday, December 27, 2013 8:59 AM
To: Adams, Karen K NAE
Subject: [EXTERNAL] Siasconset Beach, Nantucket

Hi Karen,

I don't remember seeing a Corps permit for this. Did they apply? <http://www.nantucketerosion.com/read-me/>

Bob

| Robert L. Boeri | Project Review Coordinator | The Massachusetts Office of Coastal Zone Management | 251
Causeway St., Suite 800 | Boston, MA 02114-2136 |

telephone: 617.626.1050 | fax: 617.626.1240 | email: Robert.Boeri@state.ma.us
<<mailto:dRobert.Boeri@state.ma.us>> |

Classification: UNCLASSIFIED
Caveats: NONE









February 26, 2014

Kevin Kotelly, P.E.
US Army Corps of Engineers,
696 Virginia Road
Concord, MA 01742

Subject: Emergency Geotube Installation below 87-105 Baxter Road
'Sconset, Nantucket, MA. File Number: NAE-2005-350

PRINCIPALS

- Theodore A Barten, PE
- Margaret B Briggs
- Michael E Guski, CCM
- Dale T Raczynski, PE
- Cindy Schlessinger
- Lester B Smith, Jr
- Robert D O'Neal, CCM, INCE
- Andrew D Magee
- Michael D Howard, PWS
- Laura E Rome
- Douglas J Kelleher
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Dear Mr. Kotelly:

The purpose of this letter is to confirm in writing our understanding of the status of Corps review of the above-referenced project, following our conversation on February 21, 2014 in regards to your letter dated February 4, 2014 and follow-up email correspondence from Epsilon on February 6 and February 7, 2014. This letter also provides to you the information you requested about ongoing maintenance of the project.

As we discussed, the project was permitted under an emergency certification and construction occurred from mid-December through the end of January. The as-built plan for the project (dated January 30, 2014) and submitted to the Corps via email on February 7, 2014, shows that the project components are above the high tide line (HTL) elevation of 5.11 feet Mean Low Water (MLW). The HTL elevation was established by averaging each month's highest high tide level recorded from the NOAA Nantucket Station (ID 8449130) over a one year period. I understand that the Corps concurs with the determination that the constructed project is above the high tide line and is therefore outside of your jurisdiction.

As we discussed, the design plans for the project (submitted to the Corps via email on December 27, 2013) indicate that the high tide line elevation is approximately 45- feet or more seaward of the anchor tube (the most seaward component of the project), which led to our determination that construction of the project would not require a Corps permit. Due to the timing of permitting, with the project receiving approval in mid-December, construction had to occur during the winter storm season, when the beach may have temporarily narrowed. Stakes at elevation 5.4 feet MLW (i.e., somewhat higher than the high tide line elevation of 5.11 feet) were placed on the beach at the end of December. Photographs of the staked elevation

and work on the beach were provided to the Corps via email on December 30, 2014. The construction crew was aware of the HTL location on the beach and made every effort to stay landward of that line; however, it was sometimes hard to determine the exact location of the HTL on the beach due to storm conditions and associated wave runup. We note that the Army Corps definition of high tide line excludes storm surges:

“The term ‘high tide line’ means the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the fore shore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency *but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm*” [emphasis added].

Overall, there were no permanent impacts below the HTL and any temporary impacts that may have occurred below the HTL elevation have been restored to pre-existing conditions through natural wind and wave action.

Based on our conversation, I understand that the Corps is taking no further action on the work completed to date. Specifically, the Corps is not requesting additional information, not issuing an enforcement order, and not requiring or seeking an after-the-fact permit. I also understand that the Corps is requesting (1) that we provide information on maintenance of this project to the Corps and obtain a permit if required, and (2) that we contact the Corps if any expansion of the project is proposed and obtain a permit if required. The attachment to this letter provides the requested information on maintenance. Additionally, a Notice of Intent for the project is under review that contemplates expansion of the geotube approximately 400 feet southward to the southern border of 85 Baxter Road. We will provide information to you on the construction of the proposed expansion in a subsequent submittal to assist your determination of whether a Corps permit is required for this work.

Mr. Kevin Kotelly
US Army Corps of Engineers
February 26, 2014

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Please contact me at (703) 489-8945 or mhartnett@epsilonassociates.com, or Les Smith at (978) 461-6212 or lsmith@epsilonassociates.com, for any questions regarding this submission.

Sincerely,

EPSILON ASSOCIATES, INC.



Maria B. Hartnett
Senior Consultant

Enclosure

Copy Furnished (via email):

Jeff Carlson, Natural Resources Coordinator, 2 Bathing Beach Road, Nantucket, MA 02554, jcarlson@nantucket-ma.gov

Ms. Elizabeth F. Kouloheras, DEP Southeast Regional Office, Wetlands and Waterways, 20 Riverside Drive, Lakeville, MA 02347, elizabeth.kouloheras@state.ma.us

Robert Boeri, Coastal Zone Management, Boston, MA, robert.boeri@state.ma.us

Kara Buzanoski, Town of Nantucket Department of Public Works, kbunzoski@nantucket-ma.gov

Joshua Posner, President, Sconset Beach Preservation Fund, jposner@risingtidellc.net

sconsetbeachpreservationfund@gmail.com

MAINTENANCE PROTOCOLS FOR THE GEOTUBE SYSTEM AT
87-105 BAXTER ROAD, NANTUCKET, MA
FEBRUARY 26, 2014

Maintenance of the above-referenced project is primarily anticipated to include replacing the sand cover. It is anticipated that sand will be added over the geotubes two times each year (spring and fall), with possible additional deliveries during the winter if required by severe storms. As during the initial installation, sand will be delivered at the top of the bluff to a conveyor belt that will dump it over the edge. (Once the coastal bank is vegetated, ADS pipes will be placed on the bank face to convey the sand while protecting the vegetation.) An excavator and a bulldozer will be positioned on the template above the third geotube; the excavator will pull sand from the pile and make it available to the dozer, which will spread the sand over the length of the geotubes and up and down the face of the geotube as necessary. During a small maintenance event, a skid steer or loader could be used in place of the excavator and bulldozer; these would work in approximately the same locations as the excavator or bulldozer. Overall, the sand maintenance activity will occur either on top of the geotubes and/or at the back of the beach (within approximately 15 feet of the seaward edge of the lowest geotube). The equipment will access the beach via the Hoick's Hollow accessway to the north of the project location. Therefore, the sand maintenance would not appear to be within Army Corps jurisdiction.

The only other maintenance activity that may be required is repair of the geotubes from any storm damage. This activity would involve a skid steer or an excavator depending on the scale and location of the damage and required patch. This would not involve slurry pumping, only infilling and patching. As with the sand maintenance activity, this work would occur at the back of the beach, above the high tide line, and equipment access would be via Hoick's Hollow. Therefore, any geotube repair activities would not appear to be within Army Corps jurisdiction.