



# Nantucket Land Council, Inc.

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Rec. @ 5/14  
Hearing by  
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May 9, 2014

Dr. Ernie Steinauer, Chair  
Nantucket Conservation Commission  
4 Bathing Beach Road  
Nantucket, MA 02554

Re: NOI, Baxter Road Temporary Stabilization Project

Dear Commissioners,

The Nantucket Land Council Inc would like to submit some final comments relative to the Town of Nantucket and Siasconset Beach Preservation Fund's Notice of Intent filing for the temporary stabilization of a section of Baxter Road.

At this time construction has been completed on a three geotube coastal engineering structure with nourishment at the toe of the coastal bank fronting 87-105 Baxter Road per Emergency Certifications by the local Conservation Commission and the MA Department of Environmental Protection. The Commission is now tasked with reviewing this project based on its compliance with the Massachusetts Wetland Protection Act and the Nantucket Bylaw with implementing Wetland Protection Regulations. **We expect the Commission will perform a thorough evaluation of all applicable performance standards and necessary waivers, and make the determination that the proposed project can not be permitted under these regulations.** We believe the Commission can come to this conclusion based on the following:

### Massachusetts Wetland Protection Act

1) *The applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.27 (3) that any project on a coastal beach, except any project permitted under 310 CMR 10.30 (3)(a), shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.*



2) *The applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (3) that no new bulkhead, revetment, seawall, groin or other coastal engineering structure shall be permitted on such a coastal bank except that such a coastal engineering structure shall be permitted when required to prevent storm damage to buildings constructed prior to the effective date of 310 CMR 10.21 through 10.37 (August 10, 1978), including reconstructions of such buildings subsequent to the effective date of 310 CMR 10.21 through 10.37, provided that the following requirements are met:*

*a. A coastal engineering structure or a modification thereto shall be designed and constructed as to minimize, using best available measures, adverse effects on adjacent or nearby coastal beaches due to changes in wave action, and*

*b. The applicant demonstrates that no method of protecting the building other than the proposed coastal engineering structure is feasible.*

3) *The applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (4) that any project on a coastal bank, other than a structure permitted by 310 CMR 10.30 (3), shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.*

4) *The applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (7) that bulkheads, revetments, seawalls, groins or other coastal engineering structures may be permitted on such a coastal bank except when such bank is significant to storm damage prevention or flood control because it supplies sediment to coastal beaches, coastal dunes and barrier beaches.*

#### **Nantucket Wetland Protection Regulations**

5) *The applicant has not met the burden of proof to demonstrate compliance with Section 2.01 B(7) that no new bulkheads of coastal engineering structures shall be permitted to protect structures constructed or substantially improved after 8/78. Bulkheads may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure built prior to 9/78, but not substantially improved, from imminent danger.*

6) *The applicant has not met the burden of proof to demonstrate compliance with Section 2.01 B(8) that water dependent projects shall be designed and performed so as to cause no adverse effects on wildlife, erosion control, marine fisheries, shellfish beds, storm damage prevention, flood control and recreation.*

7) *The applicant has not met the burden of proof to demonstrate compliance with Section 2.02B(2) that no new bulkheads or coastal engineering structures shall be permitted to protect structures constructed, or substantially improved, after 8/78. Bulkheads may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure built prior to 9/78, but not substantially improved, from imminent danger.*

8) *The applicant has not met the burden of proof to demonstrate compliance with Section 2.05 B(1) that no new bulkheads or coastal engineering structures shall be permitted to protect structures constructed,*

*or substantially improved, after 8/78 except for public infrastructures. Bulkheads and groins may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened buildings and/r public infrastructure. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure that has not been substantially improved or public infrastructure built prior to 9/78, from imminent danger.*

*9) The applicant has not met the burden of proof to demonstrate compliance with Section 2.05 B(3) that all projects shall be restricted to an activity as determined by the Commission to have no adverse effect on bank, height, bank stability, wildlife habitat, vegetation, wetland scenic view or the use of a bank as a sediment source.*

The CES proposed is fronting vacant lots on the ocean side of Baxter Road and structures that have been substantially improved on the landward side of Baxter Road and which are not in imminent danger. In their recent submission dated April 25, 2014 the applicants requested a waiver from this provision based on the criteria found in Section 1.03(F) of the Regulations, however, **the applicants have not met the burden of proof to demonstrate that this project will have no adverse impacts to the interests protected in the By-law and that there are no reasonable alternatives that would allow the project to proceed in compliance with the regulations.**

We appreciate all of the time that the Conservation Commission has spent collecting information and testimony from the applicants and from the public.

Thank you for your time,



Emily MacKinnon  
Resource Ecologist